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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
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Mumbai- 400 005

F. No. 198/62/17-RA/6186 Date of issue: 02/11/2022

ORDER NO. 998/2022-CX (WZ)/ASRA/MUMBAI DATED 31.10.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Ahmedabad-I

Respondent : M/s. Bodal Chemicals Ltd., Unit-IV

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against Order-in-Appeal No.
AHM-EXCUS-001-APP-055-2016-17 dated 02.02.2017
passed by Commissioner (Appeals-I), Central Excise,
Ahmedabad.

ORDER

This Revision Application is filed by the Commissioner of Central Excise, Ahmedabad-I (hereinafter referred to as the Applicant-Department) against Order-in-Appeal No. AHM-EXCUS-001-APP-055-2016-17 dated 02.02.2017 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. Brief facts of the case are that M/s. Bodal Chemicals Ltd., (hereinafter referred to as the Respondent), a manufacturer-exporter, had filed a rebate claim for duty paid on export of goods amounting to Rs.30,597/- under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. The rebate sanctioning authority rejected the rebate claim, vide Order-in-Original (OIO) No. MP/641/DC/2016-Reb dated 28.04.2016, on the ground that the claim was filed without the original and duplicate copy of ARE-1. Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3.1 Hence, the Applicant-Department has filed the impugned Revision Application mainly on the grounds that:

- i The respondent had cleared their goods for export (under Rebate) vide ARE-1 No. 40 dated 03-06-2015 & paid duty of Rs. 30,597/- & filed rebate claim under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944.
- ii On going through the provisions specified in Chapter 8 (8.3 & 8.4) of Central Board of Excise & Customs (CBEC), Basic Excise Manual Supplementary Instructions aforementioned provisions & conditions, it is evident that the provisions/instructions contained in the Supplementary Instructions has the legal backing to this effect, as the procedure to file rebate claim has been clearly mentioned in Para 3 (b) (ii) of the Notification No. 19/2004-CE (NT) dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002.

- iii The reliance of the Commissioner (Appeals-I), Central Excise, Ahmedabad in the case of judgment of Hon'ble Bombay High Court in the case of M/s. Aarti Industries Limited [2014(305) ELT 196] & relying in the case of M/s. Garg Tex-O-Fab Private Limited & also in the case of M/s. UM Cables Limited [2013(293) ELT 641] is not legally tenable since all these judgments were pronounced in the year 2013 & 2014.
- iv The Joint Secretary (Revisionary Authority), Government of India, Ministry of Finance, Department of Revenue, New Delhi in the matter of M/s. West Coast Pigment Corporation [2013(290) ELT 135 (GOI)] has clearly mentioned that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. Among the documents required to be submitted along with the rebate claim only original / duplicate copy of ARE-1 are the original documents and in case of all other documents, photocopies of the same are admissible. In the absence of said original & duplicate ARE-1, rebate sanctioning authority has no chance to compare these documents with triplicate copy of ARE-1 as stipulated under the provisions of Notification No. 19/2004- CE (NT) dated 06-09-2004 & therefore he cannot satisfy himself of the correctness of the rebate claim & thus ordered that rebate claim is not admissible where original ARE-1 form is not submitted along with the claim.
- v Further, in the latest order of the Joint Secretary (Revisionary Authority), in the matter of M/s. Cipla Limited [2016 (343) ELT 894 (GOI)] the application has been rejected on the grounds that the documents to be submitted along with the rebate claim availing the benefit of Notification No. 19/2004-CE (NT) dated 06-09-2004 issued under Rule 18 of the Central Excise Rules, 2002 is a fundamental requirement for sanctioning the rebate claim.

3.2 The respondent vide letter dated 28.06.2017 have filed their response to the impugned revision application wherein they have inter alia contended that:

- i. On going through para 6 and 7 of the application, it is revealed that in the said para the provisions of Central Excise Rules and supplementary instructions of CBEC, Basic Excise Manual have been reproduced. In the said two para viz 6 and 7, no grounds have been mentioned so as to suggest that the order passed by the Commissioner (Appeals) is not legal and proper.
- ii. In para 8 of the grounds of appeal, it has been mentioned that the provisions/ instructions contained in the supplementary instructions has legal backing. It is submitted that it is well settled law that an instruction issued by the Board has no legal sanctity.
- iii. In para 9 of the said review order, a reference to the decision of the Hon'ble High Court of Bombay in the case of Aarti Industries Ltd and the decision of the Hon'ble Revisionary Authority in the case of Garg Tex-O-Fab Pvt. Ltd. and also the decision in the case of M/s. UM Cables have been referred and thereafter in para 10 of the grounds of appeal it has been mentioned that as all the above Judgments were pronounced in the year 2013 and 2014, and therefore the same are legally not tenable. It is submitted that making such an observation reveals of a clear pre-determined and prejudged approach to hold the impugned order passed by the Commissioner (Appeals) as not legal and proper. In the judicial fora, the ratio of the judgment has to be applied and due weightage has to be given to a judgment unless the said judgment is modified or set aside by the higher appellate forum. In the grounds of appeal no judgment has been brought on record with revealed that all the above three judgment have either been modified or quashed and set aside. In absence of any such judgment, merely because the said judgments were passed in 2013 and 2014, it cannot be said they do not have binding effect.
- iv. In para 11 of the grounds of appeal the decision of the Government of India in the case of West Coast Pigment Corporation have been relied upon in support of the contention of Commissioner (Appeals) order being not legal and proper. At this stage, reference is invited to para 10 of the grounds of appeal, where the judgments of Hon'ble High

Court have not been considered only on the ground that the same were passed in 2013 and 2014. On going through the decision in the case of the West Coast Pigment Corporation, it is observed that the said application pertained to the year 2011 and the order was passed 2012. It is submitted that on one hand the decisions of 2013 and 2014 are not considered and on the other hand decision of 2012 is sought to be relied upon in holding the order of the Commissioner (Appeals) as not legal and proper. It is submitted that such an approach is not permissible.

- v. Without prejudice to aforesaid contention, it is submitted that the decision in the case of West Coast Pigment Corporation is per incuriam. It is submitted that the decision in the case of Garg Tex-O Fab Pvt Ltd was not brought to the notice of the Revisionary Authority and therefore the decision in the case of West Coast Pigment Corporation does not have any binding effect.
- vi. In the grounds of appeal the decision of the Government of India in the case of Cipla Ltd. has been relied upon. On going through the said decision it is submitted that the facts in the said decision and the present application are entirely different and therefore ratio of the said decision cannot be applied.
- vii. It is submitted that the said Notification 19/2004-S.T. (N.T.) dated 06.09.2004, is a directory notification whereby the Central Government has directed that the rebate of whole of duty paid on all excisable goods falling under first schedule to the Central Excise Tariff Act 1995, exported to any country shall be granted subject to the conditions/ limitations and procedure specified therein. Thus, if the payment of duty of excise and the export of such duty paid goods is not in dispute, the rebate of the whole of duty excise is required to be granted. In the present case, the show cause notice does not alleged nonpayment of duty and export of such duty paid goods and therefore there cannot be any reason for denying the rebate of duty paid. The subject notice deserves to be dropped on this count alone without considering any technical or procedural infractions, if any.

- viii. Without prejudice to aforesaid contention, it is submitted that on filing of the said claim, an explanation was called for and it was submitted by us that after considering the collateral evidence, in form of documents submitted, the export of goods and the payment of duty thereon not being in dispute, the rebate claim in terms of Rule 18 of the Central Excise Rules 2002. The Government of India in the case of United Phosphorus Ltd. reported at 2015 (321) E.L.T. 148 (GOI.), has held that if the proof of export if the co-relation between the export documents and the excise documents can be established, then the export of duty paid goods may be treated as completed and the rebate is eligible.
- ix. The Hon'ble High Court of Bombay in the case of UM Cables Ltd. Vs Union of India reported at 2013 (293) E.L.T. 641 (Bom.), has held that non production of original and duplicate copy of ARE-I cannot ipso facto invalidate the rebate claim. The Hon'ble Court further held that in such a case if the exporter can demonstrate by cogent evidence that the goods exported were duty paid, the rebate claim has to be allowed. Applying the ratio of the above decision in the present case, having submitted sufficient and cogent evidence to prove that the exported goods were duty paid, the proposal to reject the rebate claim is not justified and is unwarranted.
- x. As regards, sub clause (ii) of clause (b) of para 3 of said notification 19/2004, the original documents are required for the purpose of comparison and satisfaction by the rebate sanctioning authority. We have submitted documents which bear and conclusively proves that the goods which were exported under ARE-I No.40, dated 03.06.2015 on payment of duty, have been exported. The export of goods and payment of duty not being in dispute, there cannot be any reason to reject the rebate *claim*.
- xi. Without prejudice to aforesaid contention, it is submitted that the entire para 3 of the said notification 19/2004 being procedural in nature, the rebate claimed by us may not be rejected even if, there is some procedural infractions. It is well settled law that the substantive

benefit flowing out of a statutory provision may not be denied for procedural infractions, if any. In view of above the proposal to reject the said rebate claim is not sustainable.

- xii. It has consistently been held by various courts and Tribunals that the substantive right of a citizen should not be deprived on technical and minor procedural irregularities. In this connection we crave to refer to the decision of the Hon'ble Tribunal in the case of COLLECTOR OF C. EX. Versus FORT WILLIAM CO. LTD. reported at 1989 (43) E.L.T. 339 (Tribunal). The Hon'ble Tribunal has made the following observations:-

"32 Even otherwise, as already held in a number of cases by us (in the light of judgments of various High Courts and the Hon'ble Supreme Court a citizen should not be deprived of his substantive right merely because of some minor procedural infraction if the claim was otherwise due on merits."

- xiii. Applying the ratio of the above decision, it is submitted that it is not the case of the department that the rebate of duty paid has been claimed by us improperly i.e. on the goods which have not been exported. Once it is established beyond doubt that the duty was paid on the goods which were exported, then the rebate is admissible if even if certain minor technical irregularities. In this case, the goods have been exported and the duty thereon having been paid, the rebate claimed by us is legal and proper and is required to be sanctioned.

4. Personal hearing in the case was fixed for 07.10.2022. Shri N. K. Tiwari, Consultant attended the online hearing and submitted that Commissioner (Appeals) has correctly allowed the rebate as export of duty paid goods is not in doubt. He requested to maintain the Order of Commissioner (Appeals). However, the Applicant-Department did not attend the hearing nor have they sent any written communication.

5. Government has carefully gone through the relevant case records, oral and written submissions and perused the impugned Order-in-Original, Order-in-Appeal, and Revision Application filed by the Applicant-Department.

6. Government notes that the issue to be decided in this case is whether due to non-submission of original and duplicate copy of ARE-1, a rebate claim filed under Rule 18 of the Central Excise Rules, 2002 can be rejected?

7.1 From the perusal of records, Government observes that the rebate sanctioning authority rejected the rebate claims as the respondent could not produce the original & duplicate copies of the ARE-1 as required under Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004. However, as evident from para 12 of the impugned OIO, all other documents pertaining to the relevant export had been submitted by the respondent. The said para 12 is reproduced hereunder:

12. In the present case, the claimant has submitted the claim for rebate of duty on the basis of Triplicate copy of ARE-1 and other self certified documents like EP copy of shipping bill, Bill of Lading and Mate Receipt etc., but they have failed to submit the Original and Duplicate copies of the aforesaid ARE-1. Thus, the essential documents required for sanction of the claim have not been submitted by the claimant before the rebate Sanctioning Authority and therefore rebate claim filed by the claimant are liable for rejection in terms of the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 and Section 11B of the Central Excise Act, 1944.

7.2 Government further observes that the respondent, in its reply to the original authority, had contended that –

In the present case, the goods were exported under Shipping Bill No.9971334, dated 03.06.2015. In the said shipping bill the ARE-1 Number has been shown as 40, dated 03.05.2015. Further, we have submitted a copy of the Bill of Lading No. SDB 82S 025 891 issued by SAVINO DEL BEND, Mumbai. In the said Bill of Lading the Shipping Bill No. 9971334, dated 03.06.2015 has been shown. The said bill of lading refers to Invoice Number as BOD-094/15-16, dated 29.05.2015, which has been reflected in the above referred shipping bill also. It is also submitted that along with the rebate claim, we have submitted a copy of the Mate Receipt No. 58725, dated 27.06.2015, which is again reflected in the said shipping bill.

7.3 Government observes that Hon'ble Bombay High Court in the case of M/s. Zandu Chemicals Limited [2015 (315) E.L.T. 520 (Bom.)], held that: *the condition of submission of original as well as duplicate copies of ARE1 was only directory/procedural, and not mandatory and that Rebate claim could not be rejected for their non-submission, as there was proof of export of goods in other documents like shipping bill on which ARE1 was mentioned.*

7.4 Government further observes that Hon'ble Gujarat High Court in the case of M/s. Raj Petro Specialities [2017 (345) E.L.T. 496 (Guj.)] held that: *as per requirement of law, submission/production of original and duplicate copies of ARE1 along with rebate claim, is not the only requirement. Since exporter producing other documents supporting and establishing export of excisable goods on payment of duty from factory/warehouses and all other conditions and limitations mentioned in Clause 2 of Notification issued under Rule 18 of Central Excise Rules, 2002 satisfied, exporter to be entitled to rebate of duty. Assessee's entitlement to rebate under Rule 18 ibid on fulfillment of conditions and limitations mentioned in Clause 2, is undisputed. Submission of documents along with rebate claim falls under head "procedure" therefore, production of original and duplicate copies of ARE1 along with rebate claim, merely, procedural one. Production of impugned documents as per procedure required to be held directory and not mandatory. Merely on the ground of non-submission of said documents, rebate claim ought not to be rejected.*

7.5 Government observes that these judgments overruled the Orders passed by this authority wherein it had been held that non-submission of statutory document of ARE-1 could not be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty. Similar view had also been taken in the matter of M/s. West Coast Pigment Corporation and M/s. Cipla Limited, which have been relied upon by the Applicant-Department and therefore Government does not find them applicable in the instant matter.

7.6 Government observes that in the instant case too, there was sufficient collateral evidence to verify the rebate claim filed by the respondent. The details of export goods available in triplicate copy of ARE-1 can be used to verify with the details of same appearing in the Shipping Bill/Invoice/Bill of Lading. Further, as pointed out the Appellate authority, duty paid nature of the goods and their export have not been challenged by the Applicant-Department.

8. In view of the above findings, the Government finds no reason to annul or modify the impugned AHM-EXCUS-001-APP-055-2016-17 dated 02.02.2017 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad. The impugned Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 998 /2022-CX (WZ)/ASRA/Mumbai dated 31.10.2022

To,
M/s. Bodal Chemicals Ltd.,
Plot No. 252-253, C-I/254,
Phase-II, GIDC, Vatva,
Ahmedabad - 382 445.

Copy to:

1. Pr. Commissioner of CGST,
Ahmedabad South,
7th Floor, CGST Bhavan,
Rajasva Marg, Ambawadi,
Ahmedabad - 380 015.

2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.