

SPEED POST



F.No. 195/219/2017-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 21/12/22

Order No. 109-110/2022-CX dated 21-12-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal No. VIZ-EXCUS-001-APP-026-17-18 and VIZ-EXCUS-001-APP-030-17-18 both dated 11.05.2017, passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Visakhapatnam.

Applicant : M/s Andhra Organics Ltd., Srikakulam.

Respondent : The Principal Commissioner of CGST & Central Excise, Visakhapatnam.

ORDER

Two Revision Applications, bearing Nos. 195/219/2017-RA and 195/220/2017-RA both dated 06.06.2017, have been filed by M/s Andhra Organics Ltd., Srikakulam, (hereinafter referred to as the Applicant), against the Orders-in-Appeal No. VIZ-EXCUS-001-APP-026-17-18 and No. VIZ-EXCUS-001-APP-030-17-18 both dated 11.05.2017, passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Orders-in-Original No. 203/R/2015-16 dated 05.06.2015 and No. 782/R/2016 dated 21.01.2016, passed by the Assistant Commissioner of Central Excise, Customs and Service Tax, Vizianagaram Division, Visakhapatnam.

2. Briefly stated, the Applicants herein had exported goods under claim of rebate of duty, under Rules 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE (NT) dated 06.09.2004. They filed rebate claims for Rs. 28,08,598/- in respect of the goods exported, vide ARE-1 No. 203 dated 22.01.2014 and for Rs. 8,85,275/- in respect of goods exported under ARE-1 No. 156 dated 11.11.2014. The rebate claims were rejected by the original authority as the Applicants herein did not submit the original and duplicate copies of the relevant ARE-1s to support their rebate claims. The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals).

3. The Revision Applications have been filed, mainly, on the grounds that the requirement of filing the original and duplicate copies of the ARE-1, countersigned by the proper officer of the Customs, is not a mandatory condition but only a directory condition; that they had, in the subject cases, submitted the 5th copy of the ARE-1s duly endorsed by the Customs officers since the original and the duplicate copies of the ARE-1s had been misplaced; that, therefore, there is no room to doubt the actual export of the goods cleared from factory on payment of duty.

4. Personal hearing in the matter was held, in virtual mode, on 21.12.2022. Shri M. Rajendran, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that though in this case original and duplicate copies of ARE-1s could not be presented as these were misplaced, quintuplicate copy has been presented which has been endorsed by the Customs officers. Therefore, there is sufficient evidence available to establish the factum of exports. Upon being pointed out, Shri Rajendran confirmed that RA Fee of Rs. 1000/- has been paid in both the cases and the challans were sent by the registered post. He will furnish copies of challans by email immediately after the hearing. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the respondent department has nothing to add in the matter. The copies of TR-6 Challans have been subsequently furnished by email.

5.1 The Government has carefully examined the matter. The rebate claims of the Applicants herein have been rejected as the original and duplicate copies of the relevant ARE-1s were not submitted alongwith the rebate claims. The Government observes that the requirement of producing the original and duplicate copies of the ARE-1 is a part of the procedure prescribed under para (3) of the notification no. 19/2004 CE (NT), which lays down the conditions, limitations and the procedure governing the claims of rebate under Rule 18 *ibid*. The Hon'ble Bombay High Court has, in the case of *UM Cables Ltd. vs. UOI* {2013 (293) ELT 641 (Bom)}, held that the conditions and limitations for the grant of rebate are mandatory whereas matters of procedure are directory. Several other Hon'ble High Courts have taken a similar view and followed the judgment in *UM Cables Ltd. (supra)* [Ref. *Jubilant Life Sciences Ltd.* {2016 (341) ELT 44 (Allahabad)}, *Raj Petro Specialities* {2017 (345) ELT 496 (Gujarat)}, *Triputi Steel Traders* {2019 (365) ELT 497 (Chattisgarh)} & *Haldia Petrochemicals Ltd.* (2019 (368) ELT 502 (Calcutta))]. It is further observed that another Division Bench of the Hon'ble Bombay High Court has, in the case of *Zandu Chemicals Ltd. vs UOI* {(2015 (315) ELT 0520 (Bom))}, held that the

procedural provisions are capable of substantial compliance. On a plain reading of the notification no. 19/2004-CE (NT), it is clear that the original and duplicate copies of the ARE-1s are required to establish the factum of export. In the present case, in absence of the original and duplicate copies, which are said to have been misplaced, the Applicants have produced the quintuplicate (5th copy) of the ARE-1s which are also duly endorsed by the Customs officers. It is observed from these quintuplicate copies that they bear endorsement of the Customs officers to the effect that the goods have been exported against the Shipping Bill No. 9628958 dated 22.01.2014 and Shipping Bill No. 5983889 dated 11.11.2014. These quintuplicate copies have also been certified by the Range superintendent. Therefore, the factum of export of the goods, cleared from factory on payment of duty, can be established with reference to these quintuplicate copies produced by the Applicants. In other words, by producing these quintuplicate copies, the Applicants have substantially complied with the requirement of para 3 of the notification no. 19/2004 CE (NT).

5.2 The authorities below have relied upon the judgment of Hon'ble Allahabad High Court in the case of M/s Vee Excel Drugs & Pharmaceuticals Ltd. Vs. UOI {2014 (1) ECS (15) (HC-All)}, for rejection of the rebate claims. The Government observes that, though in the present case the original and duplicate copies of the ARE-1s have not been produced, as in the case of Vee Excel (supra), but in the present case duly endorsed quintuplicate copies have been produced with reference to which factum of exports can be established, as brought out hereinabove. Therefore, the facts of the present case are different from those obtaining in the case of M/s Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. (supra).

5.3 In view of the above, the orders of the authorities below cannot be sustained.

6. The revision applications are, accordingly, allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Andhra Organics Ltd.,
PlotNo. 110-A,
Pydibhimavaram,
Srikakulam Dist. -532 409.

G.O.I. Order No. 109-110/22-CX dated 11-12-2022

Copy to: -

1. The Principal Commissioner of CGST & Central Excise, Visakhapatnam, GST Bhawan, Port Area, Visakhapatnam – 530 035.
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, 4th Floor, Custom House, Port Area, Visakhapatnam -530 035.
3. Shri M. Rajendran, Advocate, Plot No. 206, Velmurugan Street, Krishnamachari Nagar, Valasaravakkam, Chennai – 600 087.
4. PS to AS (RA)
- ✓ 5. Guard File.
6. Spare Copy
7. Notice Board

ATTESTED



21.12.22

(लक्ष्मी राघवन)

(Lakshmi Raghavan)

अनुभाग अधिकारी / Section Officer

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt. of Rev.)

भारत सरकार / Govt. of India

नई दिल्ली / New Delhi