SPEED POST

F. No.198/21/2016-R.A.
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 26/9/22

Order No. 50/2022-CX dated 23-09- 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 Application filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. VIZ/EXCUS/001/APP/079/15-16, dated 24.02.2016, passed by the Commissioner of Custom, Central Excise & Service Tax (Appeals), Visakhapatnam.

Applicant : Commissioner of CGST & Central Excise, Visakhapatnam.

Respondent : M/s. Dakuni Steel Ltd., Srikakulam.

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ORDER

A Revision Application No. 198/21/2016-R.A. dated 18.05.2016 has been filed by the Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I, presently Commissioner of CGST & Central Excise, Visakhapatnam (hereinafter referred to as the Applicant), against the Order-in-Appeal No. VIZ/EXCUS/001/APP/079/15-16 dated 24.02.2016, passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 547/R/2014-15 dated 01.10.2014 passed by the Deputy Commissioner of Central Excise, Viziaynagaram-Division, in an appeal filed by M/s. Dakuni Steels Ltd., Srikakulam (hereinafter referred to as the Respondent).

2. Brief facts of the case are that the Respondents herein filed a rebate claim for Rs. 32,53,152/-, under Rule 18 of the Central Excise Rules, in respect of Central Excise duty paid on the goods exported. Upon verification, it was found that the goods said to have been exported were not exported directly from the factory, in contravention of Para 2(a) of the Notification No. 19/2004-CE (NT) dated 06.09.2004. It was also found that, the goods were cleared to DTA and, thereafter, exported without any permission from the competent authority. Further, the procedure specified in Para 3 of the notification dated 06.09.2004 was also not followed. Accordingly, the original authority rejected the rebate claim, vide the aforesaid Order-in-Original dated 01.10.2014. On an appeal filed by the Respondents herein, the Commissioner (Appeals) set aside the Order-in-Original and allowed the appeal, vide the impugned Order-in-Appeal.

3. Revision Application has been filed, mainly, on the grounds that the Condition-2(a) of the notification dated 06.09.2004 requires that the goods should be exported directly from the factory; that a relaxation from the said condition of direct export from the factory has been provided vide Board's Circular No. 294/10/1997-CX dated 30.01.1997; that the Respondent did not follow the procedure mentioned in the said Circular dated 31.09.1997 also; that the

Respondent failed to submit the triplicate and quadruplicate copies of the ARE-1s to the jurisdictional Superintendent within 24 hours of removal of the goods which is in contravention of Condition -3(a) (xi) and Condition 3(b)(ii) of the said notification; that by not submitting these copies of the ARE-1, the respondents prevented the jurisdictional Central Excise Authorities from verifying the identity of the goods and, consequently, it cannot be proved that the duty paid goods cleared from factory have actually been exported; that the goods cleared from the factory on payment of duty cannot be correlated with the goods actually exported, even otherwise, as the goods were only inspected by the Custom authorities and not physically examined; and that, therefore, the impugned Order-in-Appeal cannot be sustained.

4. Personal hearing in the matter was held before the earlier revisionary authority on 21.06.2022 which was attended by Sh. Kalyan Chakraborty, DC. In the personal hearing held on 21.09.2022, in virtual mode, Ms. S. Suresh, AC appeared for the Applicant and reiterated the contents of the RA. She highlighted that the goods had not been cleared for export directly from the factory in contravention of the condition 2 (a) of the notification no. 19/2004-CE (NT). Further, the goods were not examined when cleared for export and hence their identity as being the same goods which were cleared from factory on payment of duty cannot be established. Hence, the OIA cannot be sustained. No one appeared for the Respondent nor any request for adjournment has been received.

5. It is observed that in pursuance of the RA, a show cause notice dated 19.10.2016 was issued to the Respondent herein, requiring them to show cause within 15 days as to why the impugned Order-in-Appeal should not be annulled. There has been no response from the Respondent, till date, even after a lapse of about six years. The Respondents have also not joined the personal hearings and no requests for adjournment have also been received. Thus, even after granting sufficient opportunity, the Respondents have failed to join these proceedings and, accordingly, it will be reasonable to presume that they have nothing to add in the matter. As such, the revision application is taken up for disposal based on records and oral submissions made by the Applicant department.

6. The Government has carefully examined the matter. The subject rebate claim was denied by the original authority on the following grounds:

(a) The Respondents failed to comply with the condition 2 (a) of the notification no. 19/2004-CE (NT) dated 06.09.2004.

(b) The procedure specified in Para 3 of the notification has also not been followed.

(c) It is not possible to co-relate the exported goods with the goods cleared from the factory on payment of Central Excise duty.

7.1 Condition 2 (a) of the notification reads as under:

> *"(2) (a) that the excisable goods shall be exported after payment of duty, directly from a factory or a warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order."*

It is not disputed that the goods were not exported directly from the factory. Further, the goods were also not exported in accordance with the Board's Circular dated 30.01.1997. Therefore, there is no doubt that requirements of condition 2 (a) of the notification dated 06.09.2004 are not fulfilled. Similarly, the procedure specified in Para 3 of the notification has also not been followed. The Commissioner (Appeals) has, however, allowed the appeal by observing that the rebate cannot be denied for procedural infractions.

7.2 The Government observers that the provisions of Rule 18 of the Central Excise Rules, 2002 and the notification dated 06.09.2004 issued by the Government, under the said Rule 18, have been elucidated and interpreted by the Hon'ble Bombay High Court, in the case of UM Cables Limited vs. Union of India {2013 (293) E.L.T. 641 (Bom.)}, in the following manner:

> *"10. Rule 18 of the Central Excise Rules, 2002 empowers the Central Government by a notification to grant a rebate of duty on excisable goods or on materials used in the manufacture or processing of such goods, where the goods are exported. The rebate under Rule 18 shall be subject to such conditions or limitations, if any, and the fulfilment of such procedure as may be specified in the notification. Rule 18, it must be noted at the outset, makes a clear distinction between matters which govern the conditions or limitations subject to which a rebate can*

be granted on the one hand and the fulfilment of such procedures as may be prescribed on the other hand. The notification dated 6 September, 2004 that has been issued by the Central Government under Rule 18 prescribes the conditions and limitations for the grant of a rebate and matters of procedure separately. Some of the conditions and limitations are that the excisable goods shall be exported after the payment of duty directly from a factory or warehouse, except as otherwise permitted by the CBEC; that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as may be allowed by the Commissioner; that the market price of the excisable goods at the time of export is not less than the amount of rebate of duty claimed and that no rebate on duty paid on excisable goods shall be granted where the export of the goods is prohibited under any law for the time being in force. The procedure governing the grant of rebate of central excise duty is specified in the same notification dated 6 September, 2004 separately. Broadly speaking the procedure envisages that the exporter has to present four copies of an application in Form ARE-1 to the Superintendent of Central Excise. The Superintendent has to verify the identity of the goods and the particulars of the duty paid and after sealing the packet or container, he is required to return the original and duplicate copies of the application to the exporter. The triplicate copy is to be sent to the officer with whom a rebate claim is to be filed either by post or by handing it over to the exporter in a tamper proof sealed cover. After the goods arrive at the place of export, they are presented together with the original and duplicate copies of the application to the Commissioner of Customs. The Commissioner of Customs after examining the consignment with the particulars cited in the application is to allow the export if he finds that the particulars are correct and to certify on the copies of the application that the goods have been duty exported. The claim for rebate of duty is presented to the Assistant or Deputy Commissioner of Central Excise who has to compare to duplicate copy of the application received from the officer of customs with the original copy received from the exporter and he triplicate received from the central excise officer.

11. The Manual of Instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-1, the invoice and self attested copies of the shipping bill and the bill of lading. Paragraph 8.4 specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by the customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that

the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

12. The procedure which has been laid down in the notification dated 6 September, 2004 and CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be grated and procedure governing the grant of a rebate on the other hand. ***While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory."*** *(emphasis supplied)*

Thus, it is clear that conditions and limitations specified in Para 2 of the notification are mandatory in nature whereas the procedure specified in Para 3 of the notification is directory. As such, it was incorrect of the Commissioner (Appeals) to hold that contravention of condition 2 (a) was merely a procedure infraction. To the contrary, this condition is mandatory in nature and by not following the same, the Respondents have forefeited their right to claim rebate.

8. In respect of the infractions of procedure specified in Para 3 of the notification, it appears to the Government that the infractions are of such a nature that the identity of the export goods cannot be co-related with the goods cleared from the factory on payment of Central Excise duty. It has been correctly pointed out by the department that the Hon'ble Allahabad High Court, in the case of Vee Excel Drugs & Pharamceuticals Pvt. Ltd. vs. Union of India {2014 (305) E.L.T. 100 (All.)}, has held as under:

"23 From a bare reading of Rule 18 of Rules, 2002 it is evident that in order to entitle a person to claim rebate, it is open to Government of India by notification to provide a procedure for claiming rebate benefit. It is purported exercise of power thereunder that the Notification dated 6-9-2004 has been issued which specifically contemplates filing of ARE-I, verification of goods sought to be exported and sealing of goods after such verification authorities on

the spot, i.e., factory premise, etc. In case the procedure of filing ARE-I is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. The objective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction."

In the present case, the Commissioner (Appeals) has observed in his order that the Applicants had cleared 40,356.230 MTs from their factory on payment of duty and rebate was claimed against a quantity of 37,680.750 MTs whereas Mate's Receipt showed that 37,600 MTs was loaded on board. Despite these variations in quantities and there being no substantial evidence or compliance to prove that the goods exported and the goods that were cleared from the factory could be correlated, the Commissioner (Appeals) has allowed the rebate.

9. In view of the above, the Government finds that the impugned Order-in-Appeal cannot be sustained. The revision application is, accordingly, allowed and the impugned Order-in-Appeal is set aside.

(Sandeep Prakash)
Additional Secretary to the Government of India

The Commissioner CGST & Central Excise,
Vishakhapatnam, GST Bhawan,
Port Area, Vishakapatnam-530035.

G.O.I. Order No. 50/22-CX dated 23-9-2022

Copy to: -

1. M/s. Dakuni Steels Ltd., Unit Concast Ferro Inc, Near Dusi Railway Station Dusi PO, Amdalavalasa, (Mandal), Srikakulam Distt. Andhra Pradesh- 532484.
2. The Commissioner Customs, Central Excise and Service Tax (Appeals), 4th Floor, Custom House, Port Area, Vishakapatnam-530035.
3. PS to AS (RA).
4. Guard File.
5. Spare Copy

ATTESTED

(Poonam Guggal)
Supdt. (R.A)