

SPEED POST



F.No. 195/84/2014-RA
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...28/09/22

Order No. 5/2022-CX dated 28-09-2022 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 Applications filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. 271/2013(M-IV) dated 10.12.2013, passed by the Commissioner of Central Excise (Appeals), Chennai.

Applicant : M/s L & T Valves Limited, Chennai.

Respondent : Commissioner of CGST & Central Excise, Chennai (Outer).

ORDER

The Revision Application No. 195/84/2014-RA dated 18.03.2014 has been filed by M/s L & T Valves Limited (formerly Audco India Limited), Chennai, (hereinafter referred to as "Applicant") against the Orders-in-Appeal No. 271/2013(M-IV) dated 10.12.2013 passed by the Commissioner (Appeals), Central Excise, Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 531/2011(R) dated 05.12.2011, passed by the Assistant Commissioner of Central Excise, Maduravoyal Division of the then Chennai-IV Commissionerate, vide which the rebate claim of Rs. 12,27,138/- filed by the Applicant herein was rejected.

2. Briefly stated, the Applicant herein filed a rebate claim dated 01/06/2019 for Rs. 12,27,138/-, under Rule 18 of the Central Excise Rules, 2002, in respect of the duty paid on export of 4 numbers of Industrial Valve Cast cleared for export to United Kingdom under ARE-1 No. 144 dated 11.07.2008. The Original Authority, vide the order dated 05.12.2011, rejected the rebate claim on the grounds that the Applicant herein had not produced the original copy of the ARE-1 No. 144 dated 11.07.2008, which is a requirement under Notification No. 19/2004-CE (NT) dated 06.09.2004, issued under Rule, 18 ibid. The appeal filed by the Applicant herein was rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The Revision Application has been filed, mainly, on the grounds that the requirement of production of ARE-1 is covered by Para 3 of the Notification No. 19/2004-CE (NT) which contemplates procedure; that the procedural infractions are condonable; that the subject original copy of the ARE-1 has been misplaced but they had produced extra copy, duly endorsed by the Customs officers, along with other documents to confirm export.

4. Personal hearing, in virtual mode, was held on 28.09.2022. Shri B. Mani, Consultant appeared for the Applicant and submitted that the rebate claim has been rejected only on the grounds that original and duplicate copies of ARE-1

were not produced. He submitted that it is merely a procedural issue and factum of export is duly confirmed with reference to the extra copy of ARE-1, SB and BL. Therefore, rebate claim ought not to have been rejected. He relied upon the judgment of Hon'ble Gujarat High Court in 2017(345) ELT 498 (Guj) in support of his case. No one appeared for the Respondent department nor any request for adjournment has been received. It is, therefore, presumed that the Respondent department has nothing to add in the matter.

5. The Government has carefully examined the matter. Short point involved in this Revision Application is whether the subject rebate claim could have been rejected for non-production of the original copy of ARE-1. It has been correctly pointed out by the Applicant herein that the requirement of producing the original copy of the ARE-1 is a part of the procedure prescribed under Para 3 of the Notification No. 19/2004-CE (NT). [The Hon'ble Bombay High Court has, in the case of UM Cables Ltd. Vs. UOI {2013 (293) ELT 641 (Bom)}, held that the Rule 18 *ibid* "10..... 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 fulfillment of such procedure 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 rebate and matters of procedure separately". Accordingly, the Hon'ble High Court has held that as the Rule 18 itself makes distinction between conditions and limitations on the one hand and the procedure governing the grant of rebate on the other hand, "12..... conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory". Further, the Hon'ble Bombay High Court has, in the case of Zandu Chemicals Ltd. Vs. UOI {2015 (315) ELT 520 (Bom)}, followed the judgment in the case of UM Cables (*supra*) and has held that the procedural requirements are capable of substantial compliance and cannot be held to be mandatory.] Accordingly, in the present case, the requirement of producing the original copy of ARE-1, being a matter of procedure specified in Part 3 (b)(i) of the Notification dated 06.09.2004, has to be held to be only directory in nature and as such capable of

substantial compliance. The Government observes that the Applicant herein has produced an extra copy of the ARE-1 which is duly endorsed by the Customs officers as well as the copies of the Shipping Bill and Bill of Lading to establish the factum of export. This extra copy also bears the duty payment details. Therefore, it has to be held that the requirement of producing the original copy of ARE-1, which is to assist the rebate sanctioning authority in confirming that the export had actually taken place and the duty paid character of the goods, has been substantially complied in the present case. This view is also supported by the judgment of Hon'ble Gujarat High Court in the case of Raj Petro Specialities Vs. UOI {2017 (345) ELT 496 (Guj.)}. As such, the orders of the authorities below cannot be sustained.

6. In view of the above, the revision application is allowed with consequential relief.


(Sandeep Prakash)

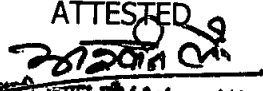
Additional Secretary to the Government of India

M/s L & T Valves Limited, L & T Campus,
TC-III, Tower A,
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Manapakkam,
Chennai – 600 089.

G.O.I. Order No. 51/22-CX dated 28-01-2022

Copy to: -

1. The Commissioner of CGST & Central Excise, Chennai Outer, No. 2054-1, II Avenue, 12th Main Road, Newry Towers, Anna Nagar, Chennai-600 040.
2. The Commissioner of Central Excise (Appeals), 26/1, MG Road, Nungabakkam, Chennai-600 034.
3. Sh. V. Mani, Consultant, C/o M/s L & T Valves Limited, L & T Campus, TC-III, Tower A, Mount – Poonamallee Road, Manapakkam, Chennai – 600 089.
4. PS to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED

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