F. No. 195/158-161/2017-RA

SPEED POST

F. No. 195/158-161/2017-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 15/12/22

Order No. 88-91/2022-CX dated 15-12- 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 289-292/2016 dated 30.12.2016, passed by the Commissioner of Central Excise (Appeal-I), Chennai.
Applicant	:	M/s KCP Ltd., Chennai.
Respondent	:	The Commissioner of CGST & Central Excise, Chennai.

ORDER

Four Revision Applications, bearing Nos. 195/158-161/2017-RA all dated 07.04.2017, have been filed by M/s KCP Ltd., Chennai (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 289-292/2016 dated 30.12.2016, passed by the Commissioner of Central Excise (Appeals-I), Chennai.

2. Briefly stated, the Applicants herein are manufacturers of machinery parts, falling under Section 84 of the Central Excise Tariff Act, 1985, for cement and sugar industries. During the period November 2013 to April 2014, the Applicants cleared certain goods without payment of duty and certain exports were made on payment of duty under claim for rebate. 04 rebate claims were filed by the Applicants in respect of duty paid on goods exported under claim of rebate, in terms of Rule 18 of the Central Excise Rules 2002. The rebate claims were rejected by the Assistant Commissioner of Central Excise, A Division, Chennai-I. Commissionerate, vide 04 separate orders. The appeals filed by the Applicant herein have also been rejected. The details of the rebate claims and the orders passed by the lower authorities are tabulated hereunder:

SI No.	OIA No & Date	OIO No. & Date	Amt. involved (Rs)	Period involved
(1)	(2)	(3)	(4)	(5)
1	282-292/2016 dt. 30.12.2016	07/2016 (R) dt. 31.03.2016	3,60,348/-	Dec'13
2	-do-	06/2016 (R) dt. 31.03.2016	16,21,269/-	Nov'13
3	-do-	08/2016 (R) dt. 31.03.2016	2,09,128/-	Nov'13
4	-do-	09/2016 (R) dt. 31.03.2016	4,85,215/-	Apr'14
		Total	**Rs. 26,75,960/-**	

3. The Revision Applications have been filed, mainly, on the grounds that the Applicants have bought out certain items for supply and installation for a sugar plant; that these bought out items were exported along with certain machineries manufactured in their own factory on payment of duty; that the department had not allowed them to avail CENVAT credit on these bought out items holding them to be neither inputs nor capital goods in respect of the goods manufactured by them; that they had filed rebate claims in

respect of subject bought out items as the CENVAT credit had not been allowed; that the authorities below had failed to appreciate that the Hon'ble Madras High Court had in the case of M/s Ford India Pvt. Ltd. vs. Assistant Commissioner of Central Excise, Chennai {2011 (272) ELT 353 (Mad.)}, in an identical matter, allowed the rebate claims; that the findings of Commissioner (Appeals) that the Applicants can only be considered as a trader and merchant exporter is totally unfounded and uncalled for; that identity, assessment and duty paid nature of exported goods has been certified by the proper Customs officers; that the Commissioner (Appeals) had stated that the instant case is covered by the definition of the inputs only post the amendments made in CENVAT Credit Rules, 2004, in 2011, but inference drawn from his own earlier order and Hon'ble Supreme Court's decision in Applicants own case pertaining to period prior to 2011 regarding eligibility is contradictory; that they had submitted original and duplicate copy of ARE-1s and the findings of the Commissioner (Appeals) in this regard are factually incorrect; that rejection of rebate claim of duty paid when cleared for export and disallowance of CENVAT credit on such inputs simultaneously is in violation of principles of taxation as it results in double payment of Central Excise duties on the same goods; and that the penalty under CENVAT provisions is not imposable. Written Submissions dated 13.12.2022 have also been filed by the Applicants.

4. Personal hearing in the matter was fixed on 02.11.2022 which was adjourned to 21.11.2022 at the request of the Applicants. However, no one appeared for the personal hearing on 21.11.2022. Therefore, last and final opportunity was granted on 14.12.2022. Sh. Alok Agrawal, Advocate appeared for the Applicant, in virtual mode, and reiterated the contents of the RA as well as written submissions dated 13.12.2022. Upon being asked, Sh. Alok Agrawal, Advocate confirmed that:

(i) The issue of availing CENVAT of duty paid on same goods stands decided against them by a judgment of Hon'ble Supreme Court in their own case. Hence, the matter is no longer in dispute.

(ii) In the dispute regarding availment of CENVAT credit the duty paid nature of the goods was never disputed by the department. The issue involved therein was

whether the subject goods could be treated as inputs for availing CENVAT credit.

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.

5.1 The Government has carefully examined the matter. Before proceeding further, certain undisputed facts need to be culled out. The Applicants had bought out certain items on payment of central excise duty and exported them, from their factory, alongwith other goods manufactured by them. The Applicants had availed CENVAT credit of the central excise duty paid on the bought out items upon their receipt in their factory. However, on being disputed by the department, the CENVAT credit so availed has been reversed. Further, the subject bought out items have been cleared from the factory of the Applicants on payment of central excise duty on FOB value basis. It is the rebate claimed in respect of duty so paid, which is the subject matter of the instant revision applications.

5.2 The Commissioner (Appeals) has rejected the appeals filed by the Applicants herein essentially for the following reasons:

(i) There is no inherent right vested with the Applicants to demand rebate in the event the CENVAT credit in respect of the same goods is denied.

(ii) The goods have to be directly exported from the factory of manufacture for claiming of rebate of duty and even if the export is by merchant exporter the procedure prescribed in Notification No. 19/2004-CE (NT) dated 06.09.2004 has to be followed, which has not been done by the Applicants herein.

(iii) The Applicants have not furnished the original/duplicate copies of the ARE-1s along with the rebate claims and, therefore, substantive conditions and procedures have been violated.

6. The Government observes that, in terms of Rule 18 ibid, the Central Government may, by notification, grant rebate of duty paid on excisable goods or duty paid on the materials used in the manufacture or processing of such goods and the rebate shall be

subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Aforesaid Notification No. 19/2004-CE (NT) has been issued in pursuance of Rule 18. The conditions and limitations governing the grant of rebate are specified in para 2 of the said notification, whereas the procedure has been laid down in para 3. The Government observes that the Hon'ble Bombay High Court has, in the case of UM Cables Ltd. vs. Union of India {2013 (293) ELT 641 (Bom)}, held that *"12----------While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory."* The Hon'ble Bombay High Court has, in a subsequent judgment in the case of Zandu Chemicals Ltd. vs. Union of India {2015 (315) ELT (Bom.), followed the judgment in UM Cables Ltd. (supra) and has held *"10---------- the procedural provisions are capable of substantial compliance----------"*. Further, the Hon'ble Madras High Court, i.e., jurisdictional High Court has, in the case of Ford India Pvt. Ltd. (supra), held that *"39----------Given the fact that the assessee had paid the duty on the exported goods and the factum of export is also admitted by the Revenue and the fact that the assessee's original claim of CENVAT credit is now reversed by the assessee paying duty thereon, there being no leakage of revenue on the assessee giving the particulars relevant to its case, as had been required under Notification No. 41 of 2001, we do not find, there could be any impediment in considering the claim of the assessee for a rebate under Rule 18 of the Central Excise Rules."* Hon'ble Madras High Court has, in the case of Ford India Pvt. Ltd., also held that *"36---------- it is wholly unnecessary for the first respondent herein to get into the question as to whether the petitioner is entitled to have the benefit of rebate, where the assessee is a manufacturer or not, to come under the scope of Rules 12 or 18 of the Central Excise Rules, as the case may be, pertaining to the relevant period under consideration."* The judgment in the case of Ford India Pvt. Ltd. (supra) has been followed by the Government earlier in the case of Uttam Galva Steels Ltd. {2015 (329) ELT 772 (G.O.I.)}. Further, in the case of Samsung India Electronics Pvt. Ltd. vs. Union of India {2019 (368) ELT 917 (All.)}, the Hon'ble Allahabad High Court has held that the requirement of Rule 18 *"11----------is with respect to 'any goods'. ----------The eligibility of rebate does not hinge on the fact that goods may have been manufactured inside the country but on the fact that the goods must be 'excisable goods'."* Accordingly, it has been held that the rebate shall be

admissible in respect of any goods which are specified in the First Schedule or the Second Schedule of the Central Excise Tariff Act, 1985, as 'excisable goods' irrespective of whether these were manufactured in the factory of the exporter.

7.1 The Government now proceeds to examine each of the grounds taken by Commissioner (Appeals) to reject the appeals of the Applicants herein in light of the undisputed facts, statutory provisions and the judicial dictum as above:

(i) As already brought out hereinabove the Commissioner (Appeals) has held that there is no inherent right to claim rebate in case of denial of CENVAT credit on the good exported. The Government observes that in the case of Samsung India Electronics Pvt. Ltd. (supra), the petitioners therein had imported some parts and panels not subjected to manufacturing activity inside the country but the same were re-exported to other manufacturing locations outside the country, in the same form and conditions. At the time of export the petitioners had reversed the CENVAT credit availed on such goods which were earlier imported. Similarly in the case of Ford India Pvt. Ltd. (supra), the petitioners had reversed the CENVAT credit by paying duty thereon. In the present case also, the CENVAT credit availed has been reversed. Therefore, keeping in view the decisions in Samsung India and Ford India, it has to be held that rebate can be considered under Rule 18, in case, the CENVAT credit on the goods exported directly (without carrying out any manufacturing activity on the goods so exported) is reversed.

(ii) It is not in dispute that the goods in question were not manufactured in the factory of the Applicants nor were they directly exported from the factory of manufacturers. The Commissioner (Appeals) has held that in such a case the Applicants should have followed the procedure prescribed in para 3 (ix) of the notification dated 06.09.2014 so that the jurisdictional range officer of the factory where the exported goods were manufactured could have certified about the identity, assessment and duty payment of the goods

cleared for export. As already brought out hereinabove, the provisions made in para 3 of the notification prescribing the procedure are only directory in nature and are, therefore, capable of substantial compliance. In the present case, the good were bought out by the Applicants herein and brought into their own manufacturing premises. They claimed CENVAT credit on these bought out goods. Thus, obviously, these goods were covered by excise invoices evidencing payment of duty thereon. The Commissioner (Appeals) has in the impugned Order-in-Appeal referred to the earlier proceedings regarding denial of CENVAT credit on these goods which were held before him and has recorded that in those proceedings covered by Orders-in-Appeal Nos. 275-276/2016 dated 26.10.2016, the Applicants were found to be not eligible for input credit on the subject goods under Rule 2 (k) (ii) of the CENVAT credit Rules, 2004. Therefore, it is apparent that the CENVAT credit was denied only on the grounds that the goods could not be considered to be 'input' and their identity, correctness of assessment and the duty paid thereon was never in dispute. This position also appears to be forthcoming from the judgment dated 03.09.2013 of the Hon'ble Supreme Court in the Applicants' own case (Civil Appeal Nos 5509-5510 of 2003). Therefore, there is no doubt that the goods were received on payment of duty by the Applicants herein and the same goods were, thereafter, cleared for export by paying duty on FOB value basis. In such a case, identity and the duty paid nature of the goods stands established, even though the Applicants did not follow the procedure prescribed in para 3 (ix) of the Notification 09/2004-CE(NT).

(iii) The Commissioner (Appeals) has stated that the Applicants did not file the original/duplicate copies of the ARE-1s along with the rebate claim. This contention has been disputed by the Applicants herein. It has been submitted that the copies of ARE-1s were indeed filed along with rebate claims. Along with written submissions dated 13.12.2012, the Applicants have filed the receipted copies of 04 rebate claims dated 13th August, 2014, 20th August, 2014, 21st January, 2015 & 20th August, 2014. The copies

bear the stamped acknowledgement of the office of the original authority dated 13th August, 2014, 21st August, 2014, 6th February, 2015 and 21st August, 2014, respectively. These claims include copies of ARE-1s No. 489/2013-14 dated 14.11.2013, No. 589/2013-14 dated 04.12.2013, No. 34/14-15 dated 28.04.2014 and No. 518/2013-14 dated 22.11.2013. It is also stated therein that the original and duplicate copies had already been filed with the Division Office through the Range, with due endorsement of the Customs Officers. It is observed that before the Commissioner (Appeals) also this plea was taken and it was stated that the originals of these documents were filed along with Annexure-19 statement before the original authority. However, the Commissioner (Appeals) has not accepted this position on the grounds that the Annnexue-19 statement is a requirement under Rule 19 of the Central Excise Rules, 2002 relating to export of goods under bond whereas, in the present case, the exports have been made under claim for rebate under Rule 18 and, therefore, the original/duplicate copies should not have been enclosed with Annexure-19 statement. Thus, the only difficulty faced by the Commissioner (Appeals) appears to be as to why the original/duplicate copies were enclosed with the Annexure-19 statement and not with the rebate claims. As such, it is not a case that original and duplicate copies were not filed at all before the original authority. The original authority, being one and the same, nothing prevented him from co-relating the originals of the ARE-1s with those filed with the rebate claims. In any case, the requirement of filing of ARE-1s with the claims is also a part of procedure prescribed under para 3 (b) of the notification dated 06.09.2004 and, hence, being a matter of procedure is capable of substantial compliance. In the present case, the photocopies of the ARE-1s were presented along with rebate claims and the originals were otherwise available to the original authority along with Annexure-19 filed by the Applicant herein. There is no finding of the authorities below that there was any mismatch between the copies and the Originals. As such, substantial compliance is shown even in this respect.

7.2 In a nutshell, the factum of export and duty paid nature of goods is established. Substantial compliance is also evidenced in respect of procedural infractions. Thus, the Government finds that the rebate claims ought not to have been denied.

8. In view of the above, the Government holds that the impugned Orders-in-Appeal cannot be sustained and are, therefore, set aside. The revision applications are allowed with consequential relief.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s KCP Limited, No. 8, Basin Road,
Thiruvottiyur, Chennai-600019.

G.O.I. Order No. 88-91/22-CX dated 15.12.2022

Copy to:

1. The Commissioner of CGST & Central Excise, Chennai-I, 26/1, Mahatma Gandhi Road, Nugambakkam, Chennai-600034.
2. The Commissioner of Central Excise (Appeal-I), Central Excise Building, 26/1, Mahatma Gandhi Marg, Nungambakka, Chennai-600034.
3. Sh. Alok Agarwal, Advocate, 2346, Sector D-2, Vasant Kunj, New Delhi-110070.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED

15.12.22

(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