



आयुक्त का कार्यालय, (अपीलस)
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.): V2(30)92 /North/Appeals/ 2018-19

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-38-18-19

दिनांक (Date): 09-Aug-18 जारी करने की तारीख (Date of issue): 28/8/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No 326/REBATE/2018 Dated: 27/04/2018

issued by: Deputy Commissioner Central Excise (Div-IV), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s HCR Formulation Pvt. Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है ।

Any person an aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो ।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।



Cont...2

(b) In case of rebate or duty or excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल है।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(?) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. के मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(२) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-
Appeal to Customs, Excise & Service Tax Appellate Tribunal:-

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/35E of CEA, 1944 an appeal lies to:-

(क) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and



(ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघाणी नगर, अहमदाबाद-380016.

(b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्याधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/ फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/ फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty/penalty/demand/refund is upto 5 Lac. 5 Lac to 50 Lac and above 50 Lac respectively in the form crossed bank draft in favour of Asst. Registrar of branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिये फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिये इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्याधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है ।

In case of the order covers a number of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

(4) न्यायालय शुल्क अधिनियम १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs. 6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।

(6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.



ORDER-IN-APPEAL

M/s. HCR Formulation Pvt. Ld, Plot No. A-38, Mahagujarat Estate, Moraiya, Sarkhej-Bavla Highway, Ahmedabad[for short - 'appellant] has filed this appeal against OIO No. 326/REBATE/2018 dated 27.04.2018 passed by the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad (North) (for short - 'the adjudicating authority').

2. Briefly stated, the facts are that the appellant had filed a claim of Rs. 56,494/- on 30.01.2018 seeking rebate in respect of goods exported under rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004.

3. On the appellant's failure to submit triplicate copy of ARE-1, a show cause notice dated 26.03.2018 was issued to the appellant proposing rejection of the rebate claim. The notice was adjudicated vide the impugned OIO wherein the rebate claim was rejected.

4. Feeling aggrieved, the appellant has filed this appeal raising the following averments:

- (a) that the said goods were exported;
- (b) that the triplicate copy of the ARE-1 had been mis-placed and an affidavit of the same had been submitted to the adjudicating authority but the same has not been considered;
- (c) that the duty paid character of the goods can be verified from the ER-1 returns where the details of goods exported under claim of rebate is shown and the self-certified copy of the PLA had been submitted with the rebate claim which is sufficient to verify the duty paid character of the goods;
- (d) that the goods have been exported is also evident from the original and duplicate copies of the ARE-1 duly endorsed by the Customs authorities;
- (e) that all the safeguards and conditions under the Notification No. 19/2004-CE (NT) have been met;

5. Personal hearing in the matter was held on 25.07.2018 in which Shri Nilesh Bhatt, Consultant, appeared on behalf of the appellant, and reiterated the arguments made in the grounds of appeal and further submitted that the 3rd copy has been lost and affidavit to this effect has been filed.

6. I have gone through the facts of the case, the grounds of appeal and the oral averments, raised during the course of personal hearing.



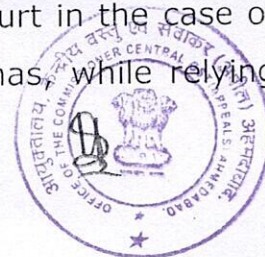
7. The short question to be decided in this appeal is whether the appellant is eligible for rebate.

8. As is evident, the original adjudicating authority rejected the rebate on the grounds that the claim was filed without submitting triplicate copy of ARE-1 and had not followed the mandatory condition laid down in the Notification No. 19/2004-CE(NT), dated 6-9-2004 and chapter 8 of the Central Excise Manual.

9. The procedure prescribed in notification No. 19/2004-CE(NT), dated 6-9-2004, is that goods shall be exported on the application ARE-1, wherein the original and duplicate copies of ARE-1, are handed over to exporter, who will present it before customs. The triplicate copy is sent to the office, wherein rebate claim is to be filed. Customs shall thereafter, examine the consignments and allow export and certify on the application that the goods have been duly exported citing the shipping bill number and date & other particulars of export and return the original copy of the ARE-1 to the exporter and forward duplicate copy of ARE-1 either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the ARE-1 application. The rebate sanctioning authority shall compare the duplicate copy of ARE-1 received from Customs with original copy of ARE-1 received from exporter and also with triplicate copy of ARE-1 received from Superintendent of Central Excise and if satisfied that claim is in order, he shall sanction the claim either in whole or in part.

10. The documents required to be submitted along with rebate claim includes the original/duplicate copy of ARE-1. The Customs certification on these copies of ARE-1 proves the export of goods. In the instant case, original and duplicate copies of the ARE-1 duly endorsed by the Customs authority have been filed with the rebate claim and this fact is not in dispute. The Rebate sanctioning authority has to compare these documents with triplicate copy of ARE-1 as stipulated in notification No. 19/2004-CE(NT) dated 6-9-2004 and I find that it is procedural requirement and not a condition and he could have satisfied himself of the correctness of the rebate claim with the help of other supporting documents and there is no dispute that all other documents have been filed with the rebate claim.

11. I find support from the Hon'ble Bombay High Court in the case of Aarti Industries Limited [2014(305) ELT 196] which has, while relying

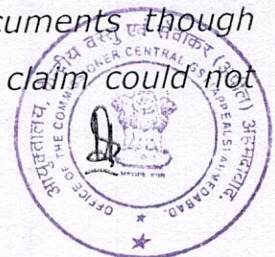


on the case of M/s. Garg Tex-O-Fab Private Limited[2011(271) ELT 449], held as follows :

9. *It is not disputed before us that the goods on which duty has been paid and rebate claimed has in fact been exported. The exporter has to file along with his claim for rebate self-attested export promotion copies of the shipping bill and bill of lading along with original and duplicate copies of the ARE-1. In this case, the petitioner has admittedly filed self-attested copies of shipping bill as well as bill of landing along with the mate receipts for establishing the proof of export. We find in an identical fact situation arising in Garg Tex-O-Fab Pvt. Ltd. (supra) Government of India in revision had held that the assessee therein could claim rebate duty by furnishing collateral document evidencing export of duty paid on goods for the purpose of rebate claim. The aforesaid decision was cited by the petitioner before the Government of India in Revision and the same is recorded in the impugned order at Paragraph 5.4. However, the impugned order does not consider the decision in Garg Tex-O-Fab Pvt. Ltd. (supra) and point out why the same is inapplicable to the facts of the present case. Counsel appearing for the revenue has not been able to point out any distinguishing features in the present case from that existing in the case of Garg Tex-O-Fab Pvt. Ltd. (supra).*

I also find support from the case law of 2017 (345) E.L.T. 496 (Guj.) passed by the High Court Of Gujarat in the case of RAJ PETRO SPECIALITIES Vs. UNION OF INDIA in which it has been held and I quote the relevant part as under;

"6.4 *The aforesaid issue is also required to be viewed from another angle. It cannot be disputed that an exporter is entitled to the rebate of the duty under Rule 18 on fulfillment of the conditions and limitations mentioned in Clause (2) of the notification issued under Rule 18 of the Rules. Submission of documents along with the rebate claim is falling under the head "procedure". Therefore, as such production of the original and duplicate copies of ARE1 along with the rebate claim is a procedural one. Therefore, even if some documents though required to be produced along with the rebate claim could not*



be produced but from other documents it can be established and proved that all the conditions and liabilities for rebate claim are satisfied, the exporter shall be entitled to the rebate of duty. There can be more than one valid reasons for non-production of one or two documents required to be produced as per the procedure. Merely because for some valid reasons the exporter is not able to produce some documents which are required to be produced as per the procedure, if on facts and considering other documents, if the exporter is able to prove and satisfy the Authorities with all the conditions and limitations mentioned in Clause (2) are satisfied, in that case, exporter shall be entitled to the rebate of duty."

12. Para 3 of the impugned OIO clearly records the documents attached with the claims whereas in para 6, it is recorded that the appellants have not submitted the triplicate copy of the ARE-1. Based on the said documents, the adjudicating authority has nowhere recorded that the goods have not been exported. Accordingly I hold that the export of the said goods involving the rebate amount is not disputed and the only question of not filing triplicate copy of the said ARE-1 is a matter of procedure and not a mandatory requirement in absence of which substantial benefit can be denied to the appellant.

13. I further find that the appellants have submitted an affidavit regarding the loss of the triplicate copy of the concerned ARE-1 which cannot be ignored in case it is found satisfactory in all other respects.

14. Now on perusal of the impugned order, I find in para 13 that the adjudicating authority has recorded that no duty payment was made at the time of export of goods. I further find that this allegation was not made against the appellants in the show cause notice dtd. 26.03.2018. It is not necessary that the payment of duty is made at the time of export. It can be made within a stipulated period as provided in the central excise rules and from the impugned order, it is clear that the appellants have submitted self certified photocopy of RG 23 A Part-II and the appellants have also submitted in their appeal memorandum that they have submitted copy of PLA and the fact of payment of duty can also be ascertained from the concerned month's ER-1 return. This is very essential that the fact of payment of duty on the exported goods is established and for this purpose alone, the matter needs to be remanded to the adjudicating authority who shall, with the help of



documents discussed above, ascertain whether the applicable duty involved in the rebate claim has been paid or not. In case it is found that the duty has been paid, the rebate claim shall stand allowed. I accordingly remand the case to the adjudicating authority for the purpose stated above.

14. The appeal filed by the appellant stands disposed of in above terms.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

उमा शंकर

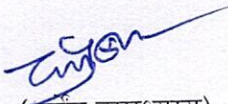
उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित


(घर्मद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s. HCR Formulation Pvt. Ld,
Plot No. A-38,
Mahagujarat Estate,
Moraiya,
Sarkhej-Bavla Highway,
Ahmedabad

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Astt. Commissioner, CGST, Div.-VI, Ahmedabad (North),
- (4) The Dy./Astt. Commissioner(Systems),CGST, Ahmedabad (North),
- (5) Guard File,
- (6) P.A.File.

