

(2014) 02 BOM CK 0223

In the Bombay High Court

Case No : Writ Petition No. 582 of 2013

Aarti Industries Limited, (formerly known as M/s. Surfactant Specialties Limited)

APPELLANT

Vs

Union of India and The Deputy Commissioner of Central Excise Customs

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35EE
Constitution of India, 1950 — Article 226

Citation : (2014) 6 BomCR 118 : (2014) 305 ELT 196 : (2014) 25 GSTR 381

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Prakash Shah along and Jas Sanghvi instructed by PDS Legal, for the Appellant; Suhas M. Oka for Respondent Nos. 3 and 4, for the Respondent

Judgement

1. Rule, returnable forthwith. By consent of the parties, petition is taken up for final hearing at the stage of admission. By this petition under Article 226 of the Constitution of India the challenge is to the order dated 7 September 2012 passed by the Government of India in Revision u/s 35EE of the Central Excise Act, 1944 ("the Act").

2. The petitioner had exported goods on payment of duty aggregating to Rs. 1,34,415/-. On export of their goods the petitioner filed rebate claim on 24 November 2009. However, as the rebate claim was not accompanied with original and duplicate copy of ARE-1 for the goods exported, a show cause notice was issued seeking to reject the rebate claim in the absence of requisite documents. The petitioner responded to the same and pointed out that the original and duplicate copies of ARE-1 of the goods exported have been lost in transit and a FIR of the loss has been lodged at Khanval Police Station. The petitioner sought to support its rebate claim by providing photo copies of the requisite original and duplicate ARE-1 of the goods exported. However, by an order dated 26 March 2010, the Deputy Commissioner of Central Excise rejected the petitioner's claim

for rebate for non furnishing of original and duplicate copies of ARE-1.

3. Being aggrieved the petitioner filed an appeal before the Commissioner (Appeals). By an order dated 20 September 2010 the Commissioner (Appeals) allowed the appeal of the petitioner. The Commissioner (Appeals) held that even if the original and duplicate copies of ARE-1 is not available/lost, the proof of export can be established by supporting collateral documents such as Shipping Bill, Mate receipt, Bill of landing etc. The production of original and duplicate copies of ARE-1 was held to be a procedural and not a mandatory requirement.

4. The Commissioner of Central Excise, Vapi preferred a Revision application u/s 35EE of the Act to Government of India against the order dated 20 September 2010 passed by the Commissioner (Appeals).

5. By the impugned order dated 7 September 2012 the Government of India in Revision allowed the application of the Commissioner of Central Excise and restored the order passed by the adjudicating authority namely Deputy Commissioner of Central Excise dated 26 March 2010 rejecting the claim for rebate. The impugned order holds that where goods are exported on payment of duty then proof of export in the absence of the original and duplicate copies of ARE-1 cannot be accepted on the basis of collateral documentary evidence. This conclusion was in view of the fact that under Rule 18 of the Central Excise Rules 2002 there is no provision to accept collateral documents as evidence of export in the absence of original and duplicate of ARE-1. It is held that the requirement of production of ARE 1 form cannot be relaxed for the purposes of sanctioning the rebate claim under Rule 18 of the Central Excise Rules 2002 as it may lead to possible fraud of a party obtaining double benefit. In view of the above, it was held that rebate claim cannot be allowed.

6. Mr. Prakash Shah appearing on behalf of the petitioner submits that there is no dispute that the goods in respect of which rebate is being claimed were in fact exported. In view of the above hyper technical attitude adopted by the revenue of not permitting the production of collateral evidence to establish the export of goods was not justified. Moreover, the Revisional authority itself has in an identical fact situation upheld the claim of another exporter for rebate of duty in Garg Tex)-Fab Pvt. Ltd. 271 ELT 449. The Revisional authority in the above matter had remanded the issue to the adjudicating authority to permit the assessee therein to furnish collateral evidence/documents to prove the export duty paid of the goods as the original and duplicate copies of the ARE-1 were lost. The collateral evidence was permitted to be led before the lower authorities to establish the export of the goods. In view of the above, there was no reason for the Revisional authority to come to a different conclusion in the petitioner's case.

7. As against the above, Mr. Suhas Oka, learned Counsel for the revenue in support of the impugned order submits that the impugned order calls for no interference as there is no provision to establish the export on the basis of

collateral documentary evidence in Rule 18 of the Central Excise Rule, 2002. This was contested as in case of goods exported under Rule 19 of the Central Excise Rules 2002 under bond permits collateral evidence of export of goods unlike goods exported on payment of duty under claim for rebate. Granting of rebate in the absence of original and duplicate copies of ARE-1 would lead to possible fraud and an scrupulous exporter could claim benefit of rebate claim twice over i.e. one by forwarding original documents and thereafter by forwarding collateral evidence. Moreover, it is submitted that the impugned order itself records various orders dated 17 March 2011, 13 June 2011 and 13 April 2012 of the Revenue authorities wherein on identical fact situation to that of the petitioner the rebate claim has been rejected.

8. 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-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 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 Fab Pvt. Ltd (supra)*.

9. We do note that there are other decisions of the Government of India on identical fact situation, where the rebate claim has been disallowed. Nevertheless there must be an attempt to reconcile the differing views. Non consideration of the decision which appear to cover the petitioner's case does indicate a flaw in the decision making process warranting interfere in our writ jurisdiction.

10. Therefore, in view of the above (without considering the merits of the petitioner's claim for rebate) we quash and set aside the impugned order dated 7 September 2012 passed by the Government of India in revision u/s 35EE of the Act and restore the issue to the file of Government of India in revision for fresh disposal. It is expected that Government of India in revision while dealing with the application before it would deal with the petitioner's contention that the issue is covered by the decision of *Garg Tex Fab Pvt. Ltd. (supra)* and reconcile the different decisions taken by the Government of India in revision. This has become necessary as the revenue is not able to point out before us any distinguishing features in facts of *Garg Tex Fab Pvt. Ltd. (supra)* and in this case. It is for Government of India in revision to pass fresh order after considering the

applicability of its own decision in Garg Tex-Fab Pvt. Ltd. (supra) to the present facts. Accordingly the petition is allowed in the above terms. No order as to costs.