AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.2994 of 2011

M/s Triputi Steel Traders, (Prop. M/s Mahamaya Mines Pvt. Ltd.) A Company constituted & Incorporated under the Indian Companies Act, 1956, Registered office at Ravi House, 5/7, Nehru Nagar East, Bhilai, District-Durg (CG)

-----Petitioner

Versus

1. The Assistant Commissioner of Central Excise, Division-I, Nagpur, 440001
2. The Assistant Commissioner of Central Excise & Customs (Appeals) Civil Lines, Telengkedi Road, Nagpur, 440001
3. The Joint Secretary (Revision) Application), Govt. of India, Ministry of Finance, North Block, New Delhi

---- Respondents

For Petitioner	:	Mr.Anumeh Shrivastava, Advocate
For Respondents	:	Mr.Vinay Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/04/2018

1. The petitioner is a registered merchant exporter and engaged in trading of iron & steel products such as MS Angles, MS Rounds, MS Channels etc. The petitioner has exported 261.925 Metric Tone of its products to a Nigerian Buyer-M/s. Alecon Nigeria Ltd. on 2.1.2008 and 7.3.2008. The petitioner moved an application under Rule 18 of the Central Excise Rules 2002 (hereinafter called as "the Rules of 2002") read with notification dated 6.9.2004 for refund/rebate of duty paid on goods exported. That application was rejected by respondent No.1 and affirmed in statutory appeal by the appellate authority and further affirmed by the revisional authority under Section 35EE of the Central Excise Act, 1944 (hereinafter called as "the Act of 1944").

Feeling aggrieved against the order of the revisional authority, this writ petition has been filed by the petitioner herein.

2. Mr.Anumesh Shrivastava, learned counsel for the petitioner, would submit that Rule 18 of the Rules of 2002 read with notification dated 6.9.2004 is a beneficial exemption brought for the purposes of promotion of activities and they should be liberally interpreted in the light of the principles of law laid down by the Supreme Court in **Commissioner of Customs (Preventive), Mumbai v. M. Ambalal and Co.**[1] and such a technical breach, if any, could not come in the way of granting refund/rebate of duty to the petitioner and as such, the order of the revisional authority deserves to be set aside.

3. On the other hand, Mr.Vinay Pandey, learned counsel for the respondents, would submit that three authorities have concurrently held that the petitioner has failed to produce original copy of ARE-1, which is a mandatory/substantial requirement to establish that the same goods which have suffered duty at the time of clearance from the factory of manufacture are actually exported and concurrent findings recorded by three authorities are based on material available on record and it is not liable to be interfered with.

4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. Rule 18 of the Rules of 2002 provides for rebate of duty, which reads as under:-

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"**RULE 18. Rebate of duty**. - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

6. Notification dated 6.9.2004 states as under:-

"In exercise of the powers conferred by Rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No.40/2001-CE(NT), dated the 26.6.2001 [GSR 469 (E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified in this notifications."

As per Notification No.19/2004-CE(NT), dated 6.9.2004 as amended, admissible quantified rebate of CENVAT and Education Cess paid on the goods exported is available to the claimant, subject to fulfillment of the conditions and procedures.

3. As per procedure prescribed in Para 8.3 of Part-I of Chapter 8 of said Supplementary Instructions, the following documents are required for filing of Rebate claims.

(i) A request on the letterhead of the exporter containing claim of rebate, ARE-1 Nos. and dates, corresponding Invoice Nos. and dates, amount of rebate on each ARE-1 and its calculation.

(ii) original copy of ARE-1.

(iii) invoice issued under Rule 11.

(iv) self Attested copy of Shipping Bill and

(v) self Attested copy of Bill of Lading

(vi) Disclaimer Certification [in case where the claimant is other than exporter]."

7. From perusal of Rule 18 of the Rules 2002 read with notification dated 6.9.2004, it would appear that a person who claiming rebate is required to file original copy of ARE-1. ARE-1 which is the basic document/an application for removal of goods for export. If the goods are cleared with certain schemes, the application for removal of goods is to be addressed to proper authority claiming that scheme.

8. The Supreme Court in the matter of **M. Ambalal** (supra) has held about the construction of the notification as under:-

> "10. It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of Judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the Judgements at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances."

9. At this stage, it would be appropriate to notice clearcut finding recorded by the revisional authority while affirming the orders of the original authority and the appellate authority which reads as under:-

> "7. From the perusal of records, Government observes that the applicant purchased the goods from various manufactures/traders and exported them as a merchant exporter without following any procedure as

> prescribed in the Notification No.19/2004-CE(NT) dated 6.09.04 issued under Rule 18 of the Central Excise Rules, 2002 for claiming rebate of duty. The said notification has prescribed the conditions/limitations and procedures which are to be followed by the exporter to become eligible to claim rebate of duty paid at the time of clearance of goods from the factory of manufacture. The goods are to be cleared on ARE-1s. This procedure has been prescribed to ensure that the duty paid at the time of clearance of goods from the factory of manufacture is rebated by comparing the triplicate copy of the ARE-1 certifying the duty payment by the concerned Range and duplicate copy of ARE-1 being properly endorsed by the Customs officer at the port of export with the original copy of the ARE-1. This is a mandatory/substantial requirement to establish that the same goods which have suffered duty at the time of clearance from the factory of manufacture are actually exported."

10. The revisional authority has categorically recorded a finding that production of original copy of ARE-1 is mandatory and substantial requirement to establish that the same goods which have suffered duty at the time of clearance from the factory of manufacture are actually exported. Such finding recorded by the revisional authority affirming the orders passed by the original authority as well as the appellate authority is based on material available on record. I do not find any perversity or jurisdictional error in the concurrent finding recored by the three authorities.

11. Accordingly, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-