2014 (1) ECS (15) (HC – All.)

The High Court Of Judicature At Allahabad
Civil Side
Original Jurisdiction
Court No. 34

Date of Decision: 07.01.2014

M/s. VEE EXCEL DRUGS & PHARMACEUTICALS PVT. LTD.

Vs.

UNION OF INDIA

C.M.A No. 2800 of 2006

WRIT TAX No. 1020 of 2013

Appearance:
A.P. Mathur — For the Petitioner
A.S.G.I.,Amit Mahajan, Sr. S.C. — For the Respondent

"Rebate under Rule 18 of Central Excise Rules 2002- Procedure under Notfn. 19/2004-CE(NT) dated 06.09.2004 mandatory- in order to entitle a persons to claim rebate, it is open to Government of India by notification to provide a procedure for claiming rebate benefit. It is in purported exercise of power thereunder that the notification dated 06.09.2004 has been issued which specifically contemplates filing of ARE-I, verification of goods sought to be exported and sealing of goods after such verification by authorities on the spot, i.e., factory premises etc. In case the procedure of filing ARE-I is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. Theobjective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction." (Para 23)

"It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner. It is well established that when law requires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law." (Para 24)

"The notification dated 06.09.2004 very clearly has said that rebate can be claimed in the manner the procedure has been laid down therein. It is difficult to hold that detail procedure regarding

filing of ARE-I, which is the foundation in respect of verificationof commodity sought to be exported and its exportabilityetc.isnot mandatory but directory or condonable. I find no hesitation in confirming the view taken by respondent no. 1 that the procedurelaid down in notification dated 06.09.2004 with respect to filingof ARE-I is mandatory." (Para 32)

Hon'ble Sudhir Agarwal,J.

Heard Sri A.P. Mathur, learned counsel for the petitioner and Sri Amit Mahajan, Advocate for respondent no. 3.

2. The parties have requested and agreed that this matter may be heard and decided finally at this stage since only a question of law has been raised regarding interpretation of notification dated 06.09.2004 and, hence, I proceed to hear and decided the matter finally at this stage under the Rules of the Court.

3. The petitioner is a Merchant Exporter. He claims to procure medicines from other manufacturer like, M/s Shifa Laboratories (P) Ltd. Noida for export of purchased goods at it send. Hesought rebate for Rs. 3,97,003/-, Rs. 4,63,714/-, Rs. 3,37,184/- and Rs. 2,78,256/- by lodging his claims before Assistant Commissioner, Central Excise Division-I, Noida (hereinafter referred to as the "ACCE") vide applications, received in the office of ACCE on 15.02.2005. The ACCE while processing aforesaid claims found that petitioner has not complied with the procedure prescribed in Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 (hereinafter referred to as the "Rules, 2002") and hence issued Show Cause Notice to adduce evidence in support of claim, else his claim may be rejected under Section 11(B) of Central Excise Act, 1944 (hereinafter referred to as the "Act, 1944") read with Rule 18 of Rules, 2002.

4. The petitioner admitted non-compliance of said procedure but contended that it was due to ignorance of said procedure on his part and since the goods have actually been exported, hence the procedural lapse on his part be condoned and claim for rebate be allowed.

5. The ACCE, however, rejected claim vide order dated 20.04.2007, whereagainst, petitioner preferred appeal before Commissioner (Appeals), Noida, who allowed the same on technical grounds and remanded matter to ACCE vide order dated 29.11.2007 (issued on 05.12.2007). Aggrieved by this order of Commissioner (Appeals), petitioner filed revision before Government of India, who disposed of the same vide order dated 16.09.2010 holding that Commissioner

(Appeals) himself should decide the matter on merits instead of remanding, and should examine whether admitted lapse on the part of petitioner in compliance of procedure prescribed for claiming rebate, could be condoned or omitted. Pursuant thereto, the Commissioner (Appeals) decided appeal afresh vide order dated 24.02.2011. It allowed the appeal holding that petitioner had submitted all relevant documents except ARE-I. He held that the procedure to file ARE-I was not followed which is only a procedural and technical infraction and is condonable in view of Tribunal's decision in Home Care (I) Pvt. Ltd. Vs. CCE, Delhi, [2006(197) ELT 110 (Delhi)]. It also relied on an earlier decision of Government of India in a revision preferred by one M/s Harison Chemicals, reported in [2006 (200) ELT 171]. The Department carried the matter again to Government of India by filing four revisions, which have now been allowed vide order dated 18.06.2013 (issued on 19.06.2013), served on petitioner on 30.06.2013 and it is this order which is impugned in this writ petition.

6. Sri A.P. Mathur, learned counsel for the petitioner, contended that respondent no. 1 has completely misdirected itself by holding that procedure with regard to filing of ARE-I was mandatory and it has also erred in law in distinguishing the decisions of Delhi Tribunal in Home Care (I) Pvt. Ltd. (supra) and its own decision in M/s Harison Chemicals (supra). He vehemently contended that procedure is for the benefit of exporter so as not to deny him certain rebate which is admissible when goods have actually been exported and not to deny him rebate on technical view of non-observance of a procedural part, which itself does not mitigate the admitted position that the goods have already been exported.

7. Though in this writ petition vires of notification dated 06.09.2004 has also been challenged but Sri Mathur, did not advance any argument in this regard and confined his arguments only to the extent that procedural lapse was condonable and since provision laying down this procedure was not mandatory, therefore, respondent no. 1, in taking a view otherwise, has committed patent illegality and the impugned order dated18.06.2013 is liable to be set aside.

8. On the contrary, Sri Amit Mahajan, learned counsel appearing for respondent no. 3, contended that procedure for filing ARE-I is mandatory since its basic purpose is to avoid any mischievous or bogus claim by an alleged exporter. Once petitioner has admitted his lapse, i.e., contravention of requirement of filing ARE-I, as prescribed in notification dated 06.09.2004, it can not be said that respondent no. 1 has committed any illegality in allowing revisions and setting aside appellate order, holding that lapse with regard to

non-filing of ARE-I, as per procedure prescribed in notification, is mandatory and its non- compliance is not condonable.

9. The short question up for consideration is, "whether aforesaid procedure is mandatory or not".

10. It is not in dispute that notification dated 06.09.2004 has been issued with reference to Rule 18 of Rules, 2002. It reads as under:

"18.Rebateofduty.--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 fulfillment of such procedure, as may be specified in the notification.

Explanation-"Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft." (emphasis added)

11. The notification dated 06.09.2004 has been issued in supersession of Ministry of Finance, Department of Revenue's earlier notification dated 26.06.2001, in so far as it relates to export to countries other than Nepal and Bhutan. It further says 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, exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified in the notification.

12. In Para (3)(a)(iv) of the notification it is said that exporter shall present goods along with four copies of application in Form ARE-I, specified in the Annexure to notification, to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory of production or manufacture or warehouse.

13. Para (3)(a)(v) then provides that Superintendent or Inspector of Central Excise shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by Commissioner of Central Excise and endorse each copy of the application in token of having such examination done.

14. Para (3)(a)(vi) provides that the original and duplicate copies of application thereupon shall be returned to Exporter by Superintendent or Inspector of Central Excise.

15. Para (3)(a)(vii) of notification dated 06.09.2004 says that triplicate copy of application shall be sent to officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a

tamper proof sealed cover, after posting the particulars in official records, or sent to the Excise Rebate Audit Section at the place of export, in case, rebate is to be claimedby electronic declaration on Electronic Data Inter-change systemof Customs.

16. Para (3)(a)(ix) of notification dated 06.09.2004 provides that the goods, if any, exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward triplicate copy in the manner specified in sub-paragraph (vii).

17. Para (3)(a)(xi) provides, where the exporter desires self- sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application alongwith goods at the placeof export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty four hours of removal of the goods.

18. Para (3) (a)(xii) says that in case of self sealing, the Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars, send to the officer with whom rebate claim is to be filed, or send to Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration.

19. Then, Paras (3)(a)(xiii) and (xiv), read as under:

"*(xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;*

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export:

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export."

20. The purpose of aforesaid procedure has been highlighted by respondent no. 1 in the impugned order dated 18.06.2013 by observing in para 9.4 and 9.5 that the ARE-I application is the basic essential document for export of duty paid goods under rebate claim. The custom certification of ARE-I proves export of goods but in absence of duly certified copies of ARE-I, rebate sanctioning authority would have no chance to compare these documents with triplicate copy of ARE-I, as stipulated in notification dated 06.09.2004 and has no material to satisfy itself about correctness of rebate claim in respect of goods allegedly exported. It is said that in case of export of goods, regarding payment of duty under bond, in terms of Rule 19 of Rules, 2002, there is a provision under Chapter 7, Central Board of Excise and Customs Manual of Supplementary Instructions, for accepting proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-I are lost. But in case of exports on payment of duty under rebate claim in terms of Rule 18 of Rules, 2002, there is no such provision under relevant Chapter8 of Central Board of Excise and Customs Manual of Supplementary Instructions.

21. In other words, from Chapter 8 read with procedure in the notification and the Rules, it is clear that the competent authority has chosen not to relax the condition of submission of original and duplicate ARE-I alongwith rebate claim in any exigency and that is why, no such provision as is available in Chapter 7 read with Rule 19 of Rules, 2002 has been made.

22. It is not in dispute that the procedure laid down with regard to filing of ARE-I before export of goods has not been followed inthe present case by petitioner. The petitioner, however, claim that it should be treated a mere technical error so as not to affect substantially his rebate claim while respondents case is that itis mandatory procedure whereupon the entire rebate claim shall be founded.

23. From a bare reading of Rule 18 of Rules, 2002 it is evident that in order to entitle a persons to claim rebate, it is open to Government of India by notification to provide a procedure for claiming rebate benefit. It is in purported exercise of power thereunder that the notification dated 06.09.2004 has been issued which specifically contemplates filing of ARE-I, verification of goods sought to be exported and sealing of goods after such verification by authorities

on the spot, i.e., factory premises etc. In case the procedure of filing ARE-I is given a go-bye, the authorities available on spot shall not be able to verify that the goods sought to be exported are same, the description whereof has been mentioned in the vouchers or not. The objective is very clear. It is to avoid surreptitious and bogus export and also to mitigate any paper transaction.

24. It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by lawina particular manner. It is well established that when lawrequires something to be done in a particular manner, any other procedure adopted or the procedure deviated or not followed would be illegal inasmuch as, one has to proceed only in the manner prescribed under law. The principle was recognized in Nazir Ahmad Vs. King Emperor AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgements, which we do not propose to refer all but would like to refer a few recent one.

25. In Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9 in para 23 of the judgment the Court held:

"It is a settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all."

26. In Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala2002 (1) SCC 633, it was held :

"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself."

27. The judgments in Anjum M.H. Ghaswala (supra) and Dhananjaya Reddy (supra) laying down the aforesaid principle have been followed in Captain Sube Singh & others Vs. Lt. Governor of Delhi & others 2004 (6) SCC 440.

28. In Competent Authority Vs. Barangore Jute Factory & others 2005 (13) SCC 477, it was held :

"It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning."

29. In State of Jharkhand & others Vs. Ambay Cements & another 2005 (1) SCC 368 in para 26 of the judgment, the Court held :

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way."

30. A Division Bench of this Court [in which I was also a member with Hon'ble S.R. Alam, J., (as His Lordship then was)] in Daya Shankar Singh Vs. State of U.P. and others, 2008(2) ESC 1220 has observed:

"*A modification, amendment etc., therefore, is permissible by exercising the power in the like manner and subject to like sanction and conditions in which the main provision was made initially. Since, Staff Regulations were framed admittedly with the previous sanction of the State Government and by publication in the official Gazette, same can be amended only following the same procedure and not otherwise. Therefore, the proposal/resolution passed by the Board of Directors, UPSWC by no stretch of imagination can be said to have the effect of either amending Regulation 12 of Staff Regulations or to bind UPSWC and its employees to be governed by such resolution/proposal which are inconsistent with the existing provisions contained in Staff Regulations.*"

31. It is no doubt true that the provision has been made for the benefit of exporter but simultaneously, it also cannot be overlooked that the Government of India has also to lay down the procedure which will discourage mischievous and scrupulous persons in indulging in any mischief. At every stage, officials of respondents-authorities would come into picture to verify the exact commodity etc. which is sought to be exported in respect whereof rebate is being claimed. This is to verify that the goods actually exported are same of description, value etc., as claimed.

32. The notification dated 06.09.2004 very clearly has said that rebate can be claimed in the manner the procedure has been laid down therein. It is difficult to hold that detail procedure regarding filing of ARE-I, which is the foundation in respect of verification of commodity sought to be exported and its exportability etc. is not mandatory but directory or condonable. I find no hesitation in confirming the view taken by respondent no. 1 that the procedure laid down in notification dated 06.09.2004 with respect to filing of ARE-I is mandatory.

33. Coming to the authorities referred, I find that the Home Care (I) Pvt. Ltd. (supra) was not a case relating to export rebate and the provisions of Rule 18 of Rules, 2002 and the notification issued thereunder was not in consideration thereat. That was a case with regard to refund of CENVAT Credit governed by different provisions.

34. Moreover, the explanation offered by petitioner that due to ignorance of law he could not follow the procedure of filing ARE-I, also does not appear to be genuine and creditworthy. It is not the case of the petitioner that the export in question is his first transaction of export. He himself claimed to be a "Merchant Exporter" and dealing in

export transactions. Such a person, if claim that he was not aware of the procedure, is very dubious statement and it is difficult to belief it.

35. In any case, ignorance of law is no excuse. Since this Court has also taken the view that procedure with respect filing of ARE-I, looking from the view of straight and simple principle of interpretation, as also looking from the angle of its objective, purpose etc, in my view, is obligatory, the order impugned in the writ petition, cannot held faulty in any manner.

36. The writ petition, therefore, is devoid of merit. Dismissed.