



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/65 & 66/14-RA / 254

Date of Issue: 28.01.2021

ORDER NO. 01-02/2021-CX (WZ) /ASRA/MUMBAI DATED 08.01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Hindustan Pencils Pvt. Ltd., Umbergaon, Valsad.

Respondent : Commissioner of Central Excise, Vapi.

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 and VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 respectively passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

ORDER

These Revision Applications have been filed by M/s. Hindustan Pencils Pvt. Ltd., Umbergaon, Valsad (hereinafter referred to as "the applicant") against Orders-in-Appeal No. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 and VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 respectively passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. Brief facts of the case are that the applicant are a registered warehouse under Rule 9 of Central Excise Rules, 2002 and are engaged in the export of various excisable goods viz. Pencils, Sharpeners, Scales, Art Materials, Ball pens etc. supplied by their various manufacturing units located at Kharadpad-Naroli, Athal-Silvassa, Pollachi of Tamilnadu as well as their own manufacturing units located at the same premises of the warehouse from the said warehouse. They filed the following rebate claims in respect of said goods cleared for exports from the said warehouse as shown below :

TABLE

Sr. No.	No. of Rebate Claims	Period	Amount of claims Rs.
1.	21	April 2012 to July 2012	14,77,894/-
2.	16	December 2011 to March 2012	4,45,443/-

3 (i) As the 21 rebate claims filed for the period April 2012 to July 2012 were found liable for rejection on several grounds such as "goods were not cleared under 'original packing', goods were exported under Advance License etc. a show cause notice dated 07.08.2013 was issued to the applicant proposing to reject all the 21 claims. After following due process of law, the Original Authority rejected all the 21 rebate claims amounting to Rs. 14,77,894/- vide Order in Original No. 620 to 640/AC/REB/Div-Vapi/2013-14 dated 30.08.2013.

3(ii) Being aggrieved with the said Order in Original, the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi who vide Order in Appeal No. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 upheld the Order in Original and rejected appeal filed by the applicant.

4(i) Also, the 16 rebate claims filed for the period December 2011 to March 2012 were found liable for rejection on several grounds such as "no Central Excise Invoices under Rule 11 of Central Excise Rules, 2002 showing ultimate destination, quantity and duty payment particulars were issued; goods were exported without payment of duty; several other discrepancies noticed in export documents, and goods were exported under Advance License under duty drawback etc., a show

cause notice dated 28.05.2013 was issued to the applicant proposing to reject all the 16 claims. After following due process of law, the Original Authority rejected all the 16 rebate claims amounting to Rs. 4,45,443/-vide Order in Original No. 463 to 478/AC/REB/Div-Vapi/2013-14 dated 30.07.2013.

4(ii) Being aggrieved with the said Order in Original, the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi who vide Order in Appeal No. VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 upheld the Order in Original and rejected appeal filed by the applicant.

5. Being aggrieved by both the Orders in appeal referred to in para 3(ii) & 4(ii) above, the applicant filed Revision Applications bearing Nos. 195/65 /14-RA and 195/ 66/14-RA respectively mainly on the following grounds:-

5.1 Commissioner (Appeals) have failed to appreciate that there was violation of principles of natural justice for the purpose of verification of records and also for the purpose of granting opportunities of personal hearing in terms of Section 33A of the Central Excise 1944 and therefore the said order of the adjudicating authority was not maintainable and was required to be set aside remanding the case back to the original adjudicating authority with proper direction. In view of this, the action of the Ld. Commissioner (Appeals) upholding the order of the adjudicating authority is not sustainable in law.

5.2 The Ld. Commissioner (Appeals) have failed to appreciate that the technical deviations not having revenue implication is required to be condoned for granting rebate claims. In this case, the manufacturer and registered person are one and the same i.e. M/s. Hindustan Pencils Pvt. Ltd. and the duty is discharged under PLA. This can be simply verified from the invoices of the manufacturer M/s. Hindustan Pencils Pvt. Ltd. Thus, keeping in view para 6 of the Circular No. 294/10/97-CX dated 30.01.1997:-

"6. It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and correlatable with the goods cleared from factory on payment of duty, the condition of exports being made directly from the factory/warehouse should be deemed to have been waived. Other technical deviations not having revenue implications, may also be condoned".

Applying the ratio of the Board's Circular, the duty paid on the goods exported were required to be rebated as there is no revenue implication and therefore also the action of the Commissioner (Appeals) upholding the order of the adjudicating authority is absolutely unjust, unfair and against the provisions and guidelines of the Board and therefore also the said orders are required to set aside in the interest of justice.

5.3 The Ld. Commissioner (Appeals) have erred in not applying the ratio of Supreme Court judgment in the case of Baby Marine Exports reported in 2007 (211) ELT 12 (SC) wherein it is clarified that the object of granting incentive to

foreign exchange earners-Object of the act must always be kept in view while interpreting the Section- Legislative intention must be the foundation of judicial interpretation. Thus, without considering the object of incentive for the goods exported, the Ld. Commissioner (Appeals) simply upheld the order of the adjudicating authority which is not sustainable in law.

5.4 The Ld. Commissioner (Appeals) have failed to appreciate that it is not the case of the department that the goods manufactured by HPPL are not exported, further, it is also not the case of the department that the duty is not paid on the goods exported. It is also not case of the department that foreign exchange is not earned. It is also not the case of the department, the remission is not received. It is also not the case of the department, that proof of export is not produced. Thus, applying the ratio of Board's Circular dated 16.07.2013, the appeal is prayed to be allowed after examining the documents produced before the Revision Authority along with consequential relief in the interest of justice.

5.5 The Ld. Commissioner (Appeals) have failed to appreciate that M/s. Hindustan Pencils Pvt. Ltd. is a big organization working since last 30 years in India and law abiding organization and all the records are minutely maintained in computer and hard copy which can very well be verified from any angle and at any point of time. Without doing such exercise, the passing of the order by the adjudicating authority and confirming by the Commissioner (Appeals) had resulted into gross miscarriage of justice and therefore also the said orders are required to be set aside allowing the appeal with consequential relief in the interest of justice.

5.6 The lower authorities have erred in not taking into account various evidences on record based on which the rebate claims have been filed and several judgments cited by them in support of the rebate claims and therefore also the said orders are not sustainable in law and required to set aside in the interest of justice.

6. A Personal hearing in this case was held on 10.12.2020 through video conferencing and Shri Kaushik I Vyas, Advocate appeared online for hearing on behalf of the applicant. He reiterated his earlier submissions dated 08.01.2020 made during the course of previous hearing and also made fresh submissions dated 10.12.2020.

6.1 In his submissions dated 08.01.2020, the applicant mainly contended as under :-

ON VIOLATION OF PRINCIPLES OF NATURAL JUSTICE.

- A show cause notice dated 08.08.2013 was issued proposing rejection of 21 rebate claims amounting to Rs. 14,77,894/-. The said show cause notice was adjudicated ex-parte vide Order dated 30.08.2013 without granting the opportunity of personal hearing in terms of Section 33A of the Central Excise Act, 1944 and without granting 30 days time to file the reply and evidences to defend the case. Thus, there was violation of principles of natural justice and therefore the appellant could not submit the documents and evidences and submissions before the original authority to substantiate that the

appellant is a merchant exporter and the goods are exported in original intact condition and therefore the rebate claims were not deniable. The Commissioner (Appeals) simply upheld the said order. In view of this, it is humbly prayed to remand the case to the original adjudicating authority, so that, it can be established that the goods were exported in original tact condition. The technical deviation if any is to be ignored considering Board, Circular No. 294/10/97-CX dated 30.01.1997. It is therefore requested to comply with the principles of natural justice and the provisions of Section 33A of the Central Excise Act, 1944 and it is is prayed to remand the matter in the interest of justice.

(A) Afloat Textiles (P) Ltd. -2007 (215) ELT 198 (Tri.-Ahmd.)

(B) Imtiyaz Ahme- 2014 (308) ELT 625 (Tri.- Bang.)

(C) Meenakshi Associates (P) Ltd. -2009 (245) ELT 362 (Tri.-Del.)

- They are merchant exporter operating a warehouse of excisable goods situated at Survey No. 90(P), PO Tumb, Sanjan Railway Station, Tumb, Umbergaon, Valsad, Gujarat and exporting the goods therefrom after following the procedure prescribed for merchant exporter.
- They are receiving duty paid goods from various manufacturers and sister concerns of Hindustan Pencils Pvt. Ltd. group. The goods received under the respective duty paid invoices and the records are maintained under ERP (Enterprise resource Planning). Thus, the entire records can be verified from all over India from the location of M/s. Hindustan Pencils Pvt. Ltd. and their sister concerns. Thus, all records of goods, invoices, duty payment details, vehicle numbers, transporters name etc. are readily available under ERP system.
- They are having their head office at Mumbai and depot at Tumb, Gujarat where the Central Excise registration for operating as warehouse is obtained.
- All duty paid goods in intact condition are received and exported from the said premises. Being merchant exporter fresh export invoice for export is prepared along with ARE-1 and a separate statement of the goods along with invoice of goods in tact position of the said goods is obtained and mentioned. This can very well be verified from the duty paid excise invoice and export invoice and statement. This clearly establishes that the goods in tact condition have been exported. For example in respect of ARE-1No. HPPL/Tumb/009/2012-13 dated 19.04.2012, the description of goods is shown "Pencil" and quantity of goods is shown "20000 GRS" and description of goods for "sharpener" the quantity is shown "4200". All these quantities are in original tact condition are withdrawn from original duty paid invoices of the manufacturer. No part of the quantity has been withdrawn from the respective invoices. Copy of the said invoices and separate statement was submitted before the rebate sanctioning authority along with all other material documents. However, the rebate sanctioning authority has not bothered to understand the documents in depth when the entire amount on pencil was paid from PLA and no Cenvat Credit was eligible to pencil. All minute records are maintained which can be very well verified by the Range

Superintendent. During stuffing of the goods the Range Superintendent/Inspector have remained present and in their presence only the goods are stuffed. Since, the goods were exported from merchant manufacturer premises/warehouse, separate export invoice was prepared and since there was collection from different invoices in original intact condition, no indication was available on ARE-1 which can be verified from the ARE-1, quantity mentioned and invoice statement enclosed therewith. In view of this, various technical discrepancies noted is not in the spirit of earning of foreign exchange to the country. There is no question of non-payment of duty on the goods in question like pencil, sharpener etc. manufactured by them and exported as merchant exporter.

- In view of above, it is requested to remand the case to the original authority to examine that whether the goods are exported in original intact condition as merchant exporter and duty is paid by the original manufacturer or not and also to waive all technical deviations in terms of the various circulars issued by the Board.

6.2 In his submissions dated 10.12.2020, the applicant mainly submitted that

- the issue is squarely covered by the Order of the Revisional Authority in the case of Pidilite Industries Ltd. reported in 2014(311) ELT 965 (GOI) (Relevant paras : para 9,9.1 & 10 of Order No. 934-937/2013-CX dated 15.07.2013,
- that the original adjudicating authority has passed ex-parte order without granting three opportunities of personal hearing. In this case, the show cause notice was issued on 08.08.2013 and the personal hearing was fixed on 23.08.2013 & 26.08.2013 and therefore the advocate of the applicant has made request vide letter dated 22.08.2013 for adjournment. However, the adjudicating authority decided the rebate applications rejecting the same by passing adjudication order on 30.08.2013. Such haste was not required by the adjudicating authority and proper opportunity was required to be given for filing all details which are already on the record of the rebate sanctioning authority and at least 30 (thirty days) time was required to be granted for filing reply to the show cause notice and thereafter to attend the personal hearing. In this case, the adjudicating authority issued show cause notice dated 08.08.2013 fixed hearing on 23.08.2013 & 26.08.2013 and passed ex-parte order on 30.08.2013, meaning thereby that within a span of 22 (twenty two) days, the adjudicating authority finished the issue in total violation of principles of natural justice. This can be seen from para 15 of the Order-in-Original No. 620 - 640/AC/Reb/Div-VapiI2013-14 dated 30.08.2013 and the said para reads as under -

"15. The exporter has not filed any defence reply hearing in this case was fixed on 23.08.2013 and 26.08.2013. Shri Kaushik Vyas, Advocate on behalf of the exporter unit vide letter dated 22.08.2013 (received on 27.08.2013) requested for adjournment of personal hearing."

In spite of recording above facts in the adjudication order, the adjudicating authority without granting the opportunity of personal hearing

and filing reply to show cause notice rejected the rebate claims by passing adjudication order in total violation of principles of natural justice.

- As against the said order of the adjudicating authority, appeal was preferred to Commissioner (Appeals) who also did not consider the plea of violation of principles of natural justice and instead of remanding the case to the original adjudicating authority be upheld the order of the adjudicating authority. All these exercises are in violation of principles of natural justice and therefore for the verification of the documents and applicability of Board's Circular No. 294/10/07 dated 31.01.1997 which is squarely applicable to the facts of the case of the present exporter and settled law by provisional authority on the subject circular, the revision applications either prayed to be allowed in toto or to remand the case to the adjudicating authority to decide the issue afresh in light of documentary evidences produced and submissions made .

7. In their further submissions dated 11.02.2020 copy of which was submitted to this office on 14.12.2020, the applicant submitted as under:

- Ample documents are on record to show that M/s. Hindustan Pencils Pvt. Ltd. is situated at Umbergaon, Tumb, Silvassa and Polachi and are having their export depot at Tumb and all duty paid goods under original invoices are collected at Depot and from there the export is made under proper documents and transportation. All these transactions are recorded in ERP (Enterprise resource planning) system installed. From this system, the revenue officer can verify all India records of the company which will indicate the receipt of the goods, details of payment, invoices etc. and export there to. The authority without verifying this very important programme, abruptly came to the conclusion on technical basis that rebate cannot be sanctioned and paid though the payment have been made from PLA etc. The export was made after examination by the concerned officer of Central Excise in the factory and proof of export is submitted. Separate statement was submitted claiming the rebate for the goods exported indicating invoice number, box number etc. etc. considering that the export goods were received from different location under different invoices and therefore one consolidated export/ custom invoice was prepared and goods were exported. The very intention is to see that duty paid goods have been exported. Thus, the matters required verification afresh in light of above submissions.
- At the outset, it was submitted before your kind authority that they have complied with all conditions of the circular no. 294/10/97-CX dated 30.01.1997 and also have stated that the duty has been paid from PLA and the goods received from Polachi to Tumb were received under proper transportation and therefore as claimed in the appeal memo itself, the request was made to remand the case for proper verification of documents and compliance of the said circular and your kind authority permitted to produce the relevant documents to establish that the goods were transferred from HPPL, Polachi, Tamilnadu to HPPL, Tumb, Gujarat. Considering the said documents, it is submitted that findings made in para 6, in Order-in-Appeal No. VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 are contrary

to facts and evidences on record as at the time of filing of the rebate claims, all the documents are submitted for the said purpose. Accordingly, following documents are enclosed herewith for consideration.

- In respect of 16 rebate claims of Rs. 4,45,443/-, in respect of ARE-1 No. HPPL/TUMB/236/2011-12 dated 31.03.2012, Invoice No. 281 dated 07.09.2011 is stated in column no. 10 of ARE-1. The said invoice pertains to Umesh Pencils Pvt. Ltd., Polachi to Hindustan Pencils Pvt. Ltd., Polachi who have cleared the goods on payment of duty from PLA. Thereafter, the said goods are transferred to Hindustan Pencils Pvt. Ltd., Export House, Tumb under BRL Logistics India Pvt. Ltd. vide their Special Contract Receipt No.422629 dated 07.09.2011 vehicle No. TN-30-L-8379. The stock was transferred from Polachi to Tumb under Stock Transfer basis.
- In respect of 21 claims of Rs.14,77,894/- in respect of ARE-1 No. HPPL/TUMB/016/2012-13 dated 09.05.2012, Invoice No. 482 dated 27.01.2012 is stated in column 10 of ARE-1. The said invoice pertains to Umesh Pencils Pvt. Ltd., Polachi to Hindustan Pencils Pvt. Ltd. Polachi who have cleared the goods on payment of duty from PLA. Thereafter, the said goods are transferred to Hindustan Pencils Pvt. Ltd., Export House, Tumb under BLR Logistics India Pvt. Ltd. vide their Special Contral Receipt No. 434912 dated 27.01.2012, vehicle No. MH-06-AQ-4608. The stock was transferred from Polachi to Tumb under Stock transfer basis.

They have enclosed all the relevant documents stated and discussed hereinabove (bearing Nos 1 to 86) with their submission.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. As the issues involved these two Revision Applications being common, they are taken up together and are disposed of vide this common order.

8.1 Government observes that the rebate claims for Rs.14,77,894/- & Rs.4,45,443/- filed by the applicant were rejected by the Original Authority as the exporter failed to fulfill the conditions prescribed under the basic Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 -CE(NT) dated 06.09.2004 and also Board's instruction in respect of Export Warehousing procedures (discussed at Para 27 & 26 of the Order in Original No. 620 to 640/AC/REB/Div-Vapi/2013-14 dated 30.08.2013 & 463 to 478 /AC/REB/Div-Vapi/2013-14 dated 30.07.2013), they failed to furnish the certificate confirming the payment of CE duty in respect of the clearances made to warehouse premises at Tumb-Umbergaon issued by the jurisdictional Range officer of the supplier unit at the destination in any of the case, failed to furnish the required documents / records in warehoused goods, failed to issue Central Excise Invoices under Rule 11 of Central Excise Rules, 2002 showing the quantity/description/marks & Nos.

Assessable value of the goods exported and also particulars of the Central Excise duty paid thereon in support of their rebate claim.

8.2 Commissioner (Appeals) at para 8 & 9 of Order in Appeal No. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 has interalia observed that the entire consignment of goods received from the manufacturers were never exported under the ARE-1s but only part consignments were exported; that RO has nowhere certified that the consignment were in original packing as cleared from the manufacturer's premises; that the marks and number of the packing received from the various supporting manufacturers are not indicated in the ARE-1s which establishes that the goods were not exported in original packing as received for export from the manufacturer; that the identity of the goods exported vis-à-vis those cleared by the manufacturers and the duty paid nature of the goods cannot be verified; that the duty paid nature has not been certified by the RO in the relevant portion of the ARE-1s, which otherwise also does not show any duty particulars at all; that the applicant has not indicated any intention of claiming rebate of duty paid by their manufacturer at the time of clearance from the warehouse which is evident from the column 11 of the ARE-1s, show no figure of rebate claimed; that central excise officer has not verified the identity of the goods and more particularly duty paid nature of the goods at the time of clearance from the warehouse. Similarly, Commissioner (Appeals) at para 8 of Order in Appeal No. VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 has also observed that regarding duty payment on the export goods, the appellant has not been able to justify through documentary evidence that the export was made on payment of duty, as they failed to correlate the goods cleared from the manufacturing units to those cleared from the warehouse. He also observed in this order that the officer supervising the export had stated in his report dated 21.05.2013 that the appellant had not intimated about the receipt of goods from various units and thus were not verified physically for the marks and numbers and identity of the exports goods for establishing duty paid nature of the goods; that the goods were exported in the original packing has not been established by the appellant at all by cogent evidences and on this ground alone it is sufficient to reject the claim of rebate in the instant case.

8.3 In view of his aforesaid findings Commissioner (Appeals) has arrived at a conclusion that the exporter has not followed the procedure set out in many of the paras of the Circular No. 294/10/1997-CX dated 30.01.1997 and has further observed that on these grounds, the rebate claims filed by the appellant have been rightly rejected by the jurisdictional authority.

9. Government observes that in both the Orders in Appeal the Commissioner (Appeals) has confirmed existence of discrepancies (already observed by the original Adjudicating authority in detail in the respective Orders in Original) in the rebate claims filed by the applicant. There are 11 similar discrepancies found by the adjudicating authority in the respective Orders in Original (Para 22 & 23 of the Orders in Original) . However, the applicant neither in Revision Applications nor in written submissions has given any satisfactory explanation alongwith documents/evidences. Except for the copies of invoices of the manufacturer purportedly transferring the goods to their warehouse at Tumb alongwith copies of lorry receipts enclosed to Written submissions dated 11.02.2020 (re-submitted on 14.12.2020) the applicant has not submitted any other document refuting the alleged discrepancies in their rebate claims.

10. Government notes that in this case, goods are not exported directly from factory of manufacture as required under Condition 2(a) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. C.B.E. & C. vide Circular No. 294/10/97-CX, dated 30-1-1997 has relaxed the condition of direct export of goods from factory of manufacturer subject to the condition that procedure prescribed in the said circular is followed. As per said circular, the exporter desiring to export duty paid excisable goods (capable of being clearly identified) which are in original factory packed condition/not processed in any manner after being cleared from factory; stored outside the place of manufacture should make an application to the Superintendent of Central Excise in-charge of Range under whose jurisdiction such goods are stored. On receipt of such application the particulars of goods lying stored should be verified with particulars given in application and ARE-1 form. If the Central Excise Officer deputed for verification of goods for export is satisfied about the identity of goods, its duty paid character and all other particulars given by exporter, he will endorse such form and permit export. The detailed procedure is given in Para 8.1 to 8.6 of said circular. In this case, no such procedure is followed as discussed at para 8.2 above. Neither the goods were examined by the concerned Superintendent, Central Excise nor there are any identifiable marks/numbers on the goods to correlate them with the goods cleared from factory of manufacture on payment of duty. Applicant himself has stated the said requirement of C.B.E. & C. Circular but failed to give any explanation about compliance of same. Therefore the essential condition of export of duty paid goods for claiming rebate of duty under Rule 18 of Central Excise Rules, 2002 is not fulfilled.

11. With regard to the assertion made by the applicant that the ARE-1 bears the signature of the Range Officer, Government notes that the Range Officer could not have halted the export. The applicant had not followed the procedures prescribed under Circular No. 294/10/97-CX dated 30.01.1997 and therefore the non-negotiable requirement of co-relating the goods cleared from the manufacturer with the exported goods could not be authenticated. The fact whether the goods were duty paid could not have been ascertained by the Range Officer. It must be borne in mind that the circular dated 30.01.1997 issued by the Board was issued in exercise of the powers vested in it to set out a procedure which was consistent with the provisions of the Act and the rules and therefore it carries statutory force. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India[2018(362)ELT 404(Mad)] would be relevant here. The relevant text is reproduced.

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise."

Moreover, since some notifications issued for the benefit of Advance Licence holders to import inputs duty free barred the benefit of rebate under Rule 18, the fact that the applicant was operating under Advance Licence scheme also casts a shadow on their eligibility to the benefit of rebate under Rule 18 of the CER, 2002. Government observes that the applicant has made no attempt to clarify on this aspect. Therefore, the apprehension of the lower authorities in this regard cannot be brushed aside.

12. Government observes that the reliance placed by the applicant on In Re:- Pidilite Industries Ltd. [1024(311)ELT.965(GOI)] is misplaced in as much as the applicant in that case had substantially complied with the provisions of Circular No. 294/10/97-CX, dated 30-1-1997 whereas in the instant case the applicant has failed to follow the provisions as held by Commissioner (Appeals) in his Orders. The applicant has also relied upon Hon'ble Gujarat High Court Order in Shakti Shipping International Vs UOI 2017 (354) E.L.T. 167 (Guj.) wherein Hon'ble High Court observed that

11. On a bare reading of the above referred provisions, it is apparent that in case where goods are exported otherwise than by way of direct exports from factory/warehouse, the exporters are required to follow the procedure as laid down under paragraph 8 of the above Circular. Paragraph 8.4 of the said Circular lays down that if the Central Excise officer deputed for verification of the goods for export is satisfied about the identity of the goods, its duty paid character and all other particulars given by the exporter in his application and AR-4, he should endorse such

forms and permit the export. Thus, it is apparent that the stage for verification of identity of the goods and its duty paid character and all other particulars is at the stage prior to the export of the goods. This presumably is because the identity of the goods which are exported can be established only prior to the export. Once the goods have been exported, it would be well-nigh impossible to subsequently establish the identity of the goods. Hence, insofar as verification of the nature specified in paragraph 8.4 of the Circular is concerned, the same has to be carried out by the Central Excise officer prior to the export of the goods. In the present case, the Superintendent of Central Excise Range having jurisdiction over the storage premises of the petitioner had after examining the goods in question, endorsed the triplicate copies of ARE-1s and certified that the goods as shown in ARE-1 are clearly identifiable and as per the invoice number date and that all the packages are in originally factory packed and sealed condition.

The facts of the instant case are also distinguishable from the aforesaid Order in as much as in the case of the applicant the officer supervising the export had stated in his report dated 21.05.2013 that the applicant had not intimated about the receipt of goods from various units and thus goods received from various units were not verified physically for the marks and numbers and identity of the exports goods for establishing duty paid nature of the goods. Therefore, in the instant case, the export of the goods in the original packing has not been established by the applicant at all by cogent evidences. Hence the reliance placed on this case law is also misplaced.

13. Government observes that the applicant has not followed the procedure laid down in terms of Board Circular No. 294/10/97-CX dated 30.01.1997. Their failure to adhere to the procedure under Circular dated 30.01.1997 is the admitted position. They have not made any assertions to the contrary. Needless to say, following the procedure contained in the circular would have established their bonafides and ensured that goods purportedly received from other manufacturers are co-relatable with the exported goods. However, far from being contrite about their failure the applicant has contended that all transactions are recorded in ERP (Enterprise Resource Planning) and that the revenue officer can verify all India records of the company which will indicate receipt of the goods, details of payment, invoices etc. Acceptance of such contention would set an unhealthy precedent. The circular dated 30.01.1997 which has been issued precisely to take care of situations like the one in the present case would be rendered redundant. Government places reliance upon the following decisions :

- (a) In Re : L'amar Exports Pvt. Ltd.[2014(311)ELT 941(GOI)]
- (b) In Re : Herbalife International India Pvt. Ltd.[2015(328)ELT 698(GOI)]
- (c) Amaravathi Co-op. Sugar Mills Ltd. vs. Jt. Secretary, M.F.(D.R.), New Delhi[2016(331)ELT 245(Mad)]

(d) In Re : DSM Sinochem Pharmaceuticals India Pvt. Ltd.[2018(15)GSTL 476(GOI)].

14. As regards the applicant's contention about violation of principles of natural justice by the adjudicating authority, Government observes that the applicant had submitted copies of 21 ARE-1s, before Commissioner (Appeals) which according to them (applicant) showed that the goods had been exported as indicated in the said ARE-1s which had been physically verified and stuffed in the presence of Central Excise officers who had signed the said ARE-1s, duty amount was indicated in the ARE-1s. Export of goods was not in dispute and that they had followed CBEC Circular for export from warehouse/godown and hence the rebate sanctioning authority had wrongly rejected the rebate claims. The Commissioner (Appeals) thereafter, not only granted personal hearing to the applicant but also examined the documents submitted before him by the applicant. Moreover, Commissioner (Appeals) upon verification of documents did notice discrepancies that existed in the rebate claims and mentioned the same in tabulated form at para 13.1 of Order in Appeal and thereafter has given his assessment of the same to arrive at a specific conclusion. CBEC vide its Instructions issued under F.No. 275/34/2006-CX.8A dated 18.02.2020 has informed that Hon'ble Supreme Court in the case of MIL India Ltd.[2007(210)ELT.188(SC)], while noting that the powers of remand had been taken away, has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner (A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment. Both the Orders in Appeal in the present case have to be treated as just and fair Order passed in accordance with the provisions of the Act and therefore, the applicant's claim regarding violation of principles of natural justice by the adjudicating authority is rendered baseless.

15. In view of above position, Government holds that the lower authorities have rightly concluded that export of duty paid goods is not established in this case. As such, the rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

16. Government, therefore, does not find any reason to modify Orders in Appeal No. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 and VAP-EXCUS-000-APP-368-13-14 dated 01.11.2013 respectively passed by the Commissioner (Appeals),

Central Excise, Customs & Service Tax, Vapi and therefore refrains from exercising its revisionary powers in these Revision Applications.

17. The revision applications are disposed off in the above terms.

Shrawan
8/1/2021

(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. ⁰¹⁻⁰² /2020-CX (WZ) /ASRA/Mumbai DATED 08.01.2021

To,

M/s Hindustan Pencils Pvt. Ltd.,
Survey No. 90(P). P.O.-Tumb,
Umbergaon, Dist. Valsad-396 150

Copy to:

1. The Commissioner of GST & CX, Surat, New Central Excise Building, Chowk Bazaar, Surat-395001,
- 2 The Commissioner of GST &CX, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Center, Althan, Surat-395007.
- 3 Assistant Commissioner, Division XII (Umbergaon), Pooja Park, First floor, Opp Bank of Baroda, Bhilad, Distt Valsad-396105.
- 4 Sr. P.S. to AS (RA), Mumbai
- ✓ 5 Guard file
- 6 Spare Copy.