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**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.195/441/WZ/16-RA / 108

Date of Issue: 12.01.2023

ORDER NO. 02-/2023-CX (WZ) /ASRA/Mumbai DATED 01.01.2023
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 Piramal Glass Limited,
ONGC Road, Tarsadi Village,
Kosamba (R.S.), Dist. Surat - 394120, Gujarat.

Respondent : Commissioner of CGST & Central Excise, Surat
Commissionerate, New Central Excise Building, Chowk
Bazar, Surat - 395001.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-VAD (APP-II)/PJ-87/15-16 dated 17.02.2016
passed by the Commissioner (Appeals-II), Central Excise,
Customs & Service Tax, Surat.

ORDER

The subject Revision Application has been filed by M/s Piramal Glass Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 17.02.2016 passed by the Commissioner (Appeals -II), Central Excise, Customs & Service Tax, Surat which decided an appeal filed by the applicant against the Order-in-Original dated 22.09.2015 passed by the original Adjudicating Authority.

2. Brief facts of the case are that the applicant who held Central Excise registration filed a rebate claim for Rs.1,19,364/- in respect of the duty paid by them on goods manufactured and exported by them under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-NT dated 06.09.2004. The goods were cleared under the cover of ARE-1 No.3377 dated 08.01.2015. The original rebate sanctioning authority rejected the said claim as it was found that the applicant had not fulfilled the conditions specified by notification no.19/2004-CE(NT) dated 06.09.2004 inasmuch as they had failed to submit the Original and Duplicate copies of the ARE-1. Aggrieved, the applicant preferred an appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal dated 17.02.2016 upheld the order of original authority rejecting the rebate claim, as he found that submission of the original copy of the ARE-1 was an essential requirement under notification no.19/2004-NT dated 06.09.2004.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal dated 16.03.2015 on the following grounds:-

(a) The original and duplicate copies of the ARE-1 was lost in transit by the CHA person; that sufficient documentary evidences such as Triplicate copy of ARE-1 duly endorsed by the Excise officer, copy of Exchange Control copy of Shipping Bill duly endorsed by the Customs officer, Bill of Lading, Mate Receipt, Bank Realization certificate showing export realization etc., were furnished by them which would establish that the goods were exported and had a duty paid character; that production of original and duplicate copies of the ARE-1 was a matter of procedure and should not deprive them of the statutory right to claim rebate; that the proof of export has to be

established by collateral evidence; that they had submitted copy of FIR issued by Police Station along with "Indemnity Bond" for misplacement of documents; they relied upon the decision of the Revisionary Authority in the case of United Phosphorus Limited [2015 (321) ELT 148 (GOI)] in support of their case; they also relied upon several other decisions to submit that the law is settled that substantial benefits granted by law cannot be denied on technical grounds; that the loss of documents cannot extinguish their statutory right to claim rebate;

(b) They placed reliance upon the decision of the Hon'ble High Court of Bombay in the case of UM Cables Limited [2013 (293) ELT 641 (Bom.)] wherein it was held that rebate of excise duty granted under Rule 18 of the Central Excise Rules, 2002 cannot be denied merely on the ground of non-production of Original and Duplicate copies of ARE-1 Forms, provided it is otherwise satisfied that the conditions for grant of rebate have been fulfilled; that procedures specified in the CBEC's Manual of Supplementary Instructions should not be raised to the level of mandatory requirement;

(c) There was no dispute with regard to the duty paid nature and export of goods; and that rebate should not be denied in such case; that the documents submitted by them mentioned above along with Invoice issued under Rule 11, Custom Invoice and Packing List when co-related indicated that the goods have been exported; they placed reliance on the order of the Revisionary Authority in the case of Cotfab Exports [2006 (205) ELT 1027 (GOI)] in support of their case.

In light of the above, the applicant submitted that the rebate claim filed by them should be allowed.

4. Personal hearing in the matter was granted to the applicant and the respondent. Shri Mehul Jivani, C.A., from M/s S.S. Gupta, Chartered Accountant, appeared online on 09.11.2022 on behalf of the applicant and submitted that rebate was denied merely on non-submission of original and duplicate copies of ARE-1. He requested that their claim be allowed.

5. Government has carefully gone through the relevant records, the written and oral submissions and also perused the impugned Order-in-Original and the impugned Order-in-Appeal.

6. Government finds that the issue involved in the present case lies in a narrow compass and is limited to deciding whether the impugned Order-in-Appeal was proper in upholding the rejection of the rebate claim of the applicant as they failed to file the original and duplicate copies of the ARE-1. Government finds that the primary ground on which the Commissioner (Appeals) has rejected the rebate claim was that the original copy of the ARE-1 was an essential requirement in terms of notification no.19/2004-CE(NT) dated 06.09.2004.

7. On examination of the impugned order of the original authority, Government finds that the Deficiency Memo / Show Cause Notice issued to the applicant in response to their claim for rebate seeks to reject same for the limited reason of non-submission of Original and Duplicate copies of ARE-1. Government notes that neither of the lower authorities have found any deficiency with the rebate claim in question other than the non-submission of the original and duplicate copies of the ARE-1s. Government notes that the applicant has submitted that the said documents have been misplaced by the CHA. Government notes that the applicant has submitted that they had furnished all the other documents necessary along with the claim for rebate viz., Triplicate copy of ARE-1s duly endorsed by the Excise officer, copy of Exchange Control copy of Shipping Bill duly endorsed by the Customs officer, Bill of Lading, Mate Receipt, Bank Realization certificate showing export realization, Invoice issued under Rule 11, Custom Invoice and the corresponding Packing List. Given the above, Government finds that there was enough contemporaneous documentary evidence before the original authority to determine whether the duty was paid and the goods on which such duty was paid had been actually exported.

8. Government notes that the applicant is a registered manufacturer in the jurisdiction of the original authority and hence it is not the case it was beyond the original authority to verify the duty paid nature of the goods, as indicated by the Invoice. Further, the aspect of the goods cleared for export having been actually exported could be verified by co-relating the details on the Invoice/Triplicate copy of the ARE-1 vis-à-vis the Shipping Bill/Bill of Lading presented by the applicant. Government finds that the neither of the lower authorities have raised any doubt on the duty paid nature of the goods cleared or the actual export of the goods; in fact, the Commissioner

(Appeals) has recorded that the goods in question have been exported. Given these facts, Government finds that the documents submitted were good enough to establish that the goods cleared from the factory for export on payment of duty were actually exported. Government finds that the decision of the lower authorities, to reject the rebate claim of the applicant merely on the grounds of non-submission of the original and duplicate copies of the ARE-1, to be incorrect. There is no gainsaying the fact that it is a well settled principle that substantial benefit like rebate should not be denied on procedural grounds.

9. Government finds that the Hon'ble High Court of Madras in the case of Shree Ambika Sugars Limited vs Jt. Secretary Ministry of Finance, Department of Revenue, New Delhi [2019 (368) ELT 334 (Mad)] had held that rebate claimed cannot be rejected on the ground of procedural infractions. Government finds the non-submission of the original and duplicate copies of the ARE-1s in this case is a merely procedural lapse and rebate cannot be denied when other documents establishing the export of the goods and its duty paid nature are available on record.

10. In view of the above, Government sets aside the impugned Order-in-Appeal dated 17.02.2016 and holds that the respondent is eligible to the rebate claimed by them. The Revision Application is allowed with consequential relief.

Shrawan
10/1/23
(SHRAWAN KUMAR)

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

ORDER No. 02-/2023-CX (WZ) /ASRA/Mumbai dated 10.01.2023

To,

M/s Piramal Glass Private Limited,
ONGC Road, Tarsadi Village,
Kosamba, Dist. Surat - 394120.

Copy to:

1. Commissioner of CGST & Central Excise, Surat Commissionerate,
New Central Excise Building, Chowk Bazar, Surat - 395001.

2. Commissioner, Central Excise & CGST Appeals, Surat, 3rd floor, Magnus Mall, Althan Bhimrad Canal Road, Near Atlanta Shopping Mall, Althan, Surat - 395 017.
3. M/s S.S. Gupta, Chartered Accountant, 1009-1015, Topiwala Centre, Topiwala theatre Compound, Near Railway Station, Goregaon (W),
4. Mumbai - 400 104.
5. Sr. P.S. to AS (RA), Mumbai.
6. Notice Board.