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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No.195/01/WZ/18-RA / 145

Date of Issue: 12/01/2023

ORDER NO. 03 /2023-CX (WZ) /ASRA/Mumbai DATED 10/01/2023  
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, Dist. Surat - 394120.

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.  
VAD-EXCUS-004-APP-066/2017-18 dated 01.05.2017  
passed by the Commissioner (Appeals -I), Central Excise,  
Customs & Service Tax, Vadodara.

**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 01.05.2017 passed by the Commissioner (Appeals -I), Central Excise, Customs & Service Tax, Vadodara which decided an appeal filed by the applicant against the Order-in-Original dated 27.01.2016 passed by the original Adjudicating Authority.

2. Brief facts of the case are that the applicant was sanctioned rebate of Rs.90,19,906/- and Rs.52,79,207/- vide Orders-in-Original dtd. 22.03.2010 and 23.02.2010, respectively, for the duty paid on the goods exported by them by the Maritime Commissioner, viz. Deputy Commissioner (Rebate), Central Excise, Raigad. The Department preferred appeals against the said Orders-in-Original before the Commissioner (Appeals) on the grounds that rebate sanctioned should have been limited to the FOB value and hence the amounts of Rs.5,80,434/- and Rs.5,57,973/- which were paid as duty on the value in excess of the FOB value, was erroneously refunded to the applicant. On these appeals being rejected by the Commissioner (Appeals), Department filed Revision Applications leading to Order dated 30.09.2011 by the Revisionary Authority, wherein the case was remanded back to the original authority with directions to re-examine the rebate claims in question. The Deputy Commissioner (Rebate), Central Excise, Raigad, in compliance of the said directions, decided the matter afresh vide Orders-in-Original, both dated 29.03.2013, wherein the rebate claims were reduced by Rs.5,80,434/- and Rs.5,57,973/-, respectively, and the applicant were allowed to approach the jurisdictional AC/DC for taking re-credit of the above amounts, subject to the applicant having paid back the same along with appropriate interest. In the meanwhile, the Additional Commissioner, Central Excise, Raigad vide Order-in-Original dated 27.02.2015 while confirming the demand of the excess rebate sanctioned and appropriating the amount paid by the applicant towards the same, directed the

jurisdictional Assistant/Deputy Commissioner to allow the excess amount of duty paid as re-credit to the Cenvat credit of the applicant.

3. The applicant, thereafter, filed an application dated 16.09.2015 seeking re-credit of the above amounts totaling to Rs.11,38,407/- with the Assistant Commissioner having jurisdiction over their manufacturing unit, where the Central Excise duty was paid in the first place, for such excess amounts to be re-credited to their Cenvat Account. In response to the same, Show Cause Notice dated 30.11.2015 was issued to the applicant seeking to reject the applications filed on the grounds that there was no provision in Rule 18 of the Central Excise Rules, 2004 or notification no.19/2004-CE (NT) dated 06.09.2004 for a rebate claim to be fractionally decided by the Maritime Commissioner and also by the jurisdictional Assistant Commissioner. These Show Cause Notices were decided by the original authority wherein the charges in the Show Cause Notice were upheld and the applications of the applicant for allowing re-credit of the excess duty paid were rejected. The applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal dated 01.05.2017 upheld the order of the original authority and rejected the appeal filed by the applicant.

4.1 Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal dated 01.05.2017 on the following grounds: -

(a) There was no provision in the newly introduced CGST Act, 2017 which allows them to take re-credit of the earlier sanctioned amount and hence the Department should refund the entire amount in cash;

(b) The Commissioner (Appeals) had travelled beyond the scope of the Show Cause Notice inasmuch he found that the applicant had approached the jurisdictional AC/DC for re-credit of the excess amounts allowed by the Deputy Commissioner (Rebate), Raigad in remand proceedings, however, the original rebate claim filed before the DC (Rebate), Raigad was made by a merchant exporter, viz. M/s Piramal Class Limited, Piramal Tower,

Peninsula Corporate Park, Ganpatrao Kadam Marg, Mumbai and hence the original applicant and the present applicant were two different entities filing the same refund/rebate claim for partial amounts; they relied upon several judgments of the Higher Courts to submit that the impugned Order-in-Appeal is liable to be dropped on this count. It was further submitted that, in any case, this assumption was wrong as the unit situated at Lower Parel is a corporate office of the applicant and that there is no sale between their factory and the Head office; that they had claimed rebate in the capacity of manufacturer-exporter and not as a merchant exporter. They further submitted that as per guidelines issued by DGFT they had obtained IEC Code at their Head Office and all the purchase orders are entered into from their Head Office and hence the export documents are prepared in the name of the Corporate Office; thus, their Corporate Office and factory are not separate persons and it could not be said that a single rebate claim was being pursued by two different persons;

(c) That the Additional Commissioner, Maritime Commissionerate, Raigad had not transferred part of the rebate claim to another authority; that he had sanctioned the entire claim, part in cash and part by way of re-credit and that the jurisdictional authorities were only required to verify the availment of credit as per the order; thus the allegation in the Show Cause Notice that the Additional Commissioner, Raigad had decided part of the re-credit is baseless and required to be set aside;

(d) That they had made the application for re-credit as a matter of abundant precaution though the same was allowed by the Additional Commissioner in the Order-in-Original dated 27.02.2015 and that the allegations in the Show Cause Notice that the Maritime Commissioner had no jurisdiction to direct jurisdictional authorities to allow re-credit is erroneous;

(e) That in case the Department was aggrieved, they should have filed appeal against the Order-in-Original allowing such re-credit before the Commissioner (A) and in the absence of such appeal, their claim for re-credit should not be denied. They relied upon the following decisions of the Revisionary Authority wherein re-credit of such amounts were allowed: -

- Balkrishna Industries Ltd. [2011 (271) ELT 148 (GOI)]
- Jindal Stainless Limited [2014 (314) ELT 961 (GOI)]
- Narendra Plastic P. Limited [2014 (313) ELT 833 (GOI)]
- Radiall India P. Ltd. [2013 (298) ELT 149 (GOI)]

In view of the above the applicant submitted that the re-credit be allowed to them.

4.2 The applicant has also filed an application for condoning the delay of 16 days in filing the subject application along with the said Revision Application. They have stated that they received the impugned Order-in-Appeal on 03.10.2017 and were hence supposed to file the Revision Application within three months i.e. by 02.01.2018, that however they could file the same only on 22.01.2018. They further submitted that this delay occurred as Shri Sanjay Mishra, AGM-Excise posted at Kosamba factory and responsible for looking after these matters was temporarily posted to their office at Baroda for the purpose of implementation of SAP and also that they were caught up in filing other mandatory returns leading the delay of 16 days in filing the subject Revision Application. They submitted that they have a strong case on merits and hence requested that the delay of 16 days be condoned and the case be decided on merits.

5. 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 sanctioned on FOB value and balance was ordered to be credited in Cenvat account. He further submitted that Cenvat credit had been denied by jurisdictional authority. He requested to allow credit.

6. Government has gone through the relevant case records available, the written and oral submissions and also perused the impugned Orders-in-Original and Order-in-Appeal. Government finds that there is a delay of 20 days in the filing of the subject application. However, given the reasons cited by the applicant and the quantum of delay being within the

condonable limits in terms of the proviso to Section 35EE(2) of the Central Excise Act, 1944, Government condones the said delay and proceeds to decide the case on merits.

7. Government notes that the genesis of the instant case lies in the Orders dated 29.03.2013 passed by the Maritime Commissioner, Central Excise, Mumbai – I, wherein, as found by the original Adjudicating Authority and also the Commissioner (Appeals), the Maritime Commissioner had sanctioned the rebate claimed by the applicant to the extent of the FOB value and had held that the applicant was at liberty to claim the amount paid in excess as re-credit to the Cenvat account with the jurisdictional AC/DC. Government finds that the original authority in the Order-in-Original dated 27.01.2016 has at para 6.2 recorded that –

*“The Deputy Commissioner (Rebate), Central Excise, Raigad has adjudicated the matter afresh and vide OIO No.3311/09-10 dated 29.03.2013 & OIO No.3312/12-13 dated 29.03.2013 had reduced the rebate claim by Rs.5,57,973/- and Rs.5,80,434/- allowed the manufacturer to approach the jurisdictional AC/DC for taking re-credit of the said reduced amount subject to payment of amount of Rs.5,57,973/- and Rs.5,80,434/- erroneously paid to the claimant along with appropriate interest, in the manner in which it was paid to them as rebate.”*

Government finds that a reading of the above portion of the Order of the original authority indicates that the Maritime Commissioner had clearly held that the excess duty paid is to be re-credited to the Cenvat account of the applicant subject to re-payment of the same by the applicant along with interest, as it had been erroneously sanctioned to them earlier. Similar views were expressed by the Additional Commissioner, Central Excise, Raigad vide Orders-in-Original, both dated 27.02.2015, the extract of which has been reproduced by the original authority at para 6.3 of the impugned Order-in-Original dated 27.01.2016. This Order of the Additional Commissioner confirms that the applicant had paid back the excess amounts sanctioned to them as he has appropriated the same vide this Order. The Additional Commissioner further ordered that -

*“Further, I direct the jurisdictional Assistant / Deputy Commissioner to allow the excess amount of duty paid as re-credit in their Cenvat credit amount, if not already done.”*

A harmonious reading of the above Orders clearly indicates that the claim for rebate filed by the applicant before the Maritime Commissioner was decided by him in toto vide Order-in-Original dated 29.03.2013 and the only aspect left before allowing re-credit of these amounts was to verify whether the applicant had paid back the amount refunded to them earlier. The Order of the Additional Commissioner makes it clear that the same has been paid back by the applicant. Government notes that at no point during these proceedings has it been alleged that the amount or the interest thereon has not been paid back by the applicant. Given these set of facts, Government notes that there was no aspect of the case which was open for the jurisdictional Assistant Commissioner, before whom the applicant filed the application seeking re-credit of the amounts in question, to decide. Government finds that the jurisdictional Assistant Commissioner erred in interpreting the Order of the Maritime Commissioner to mean that he was supposed to decide on the eligibility of the applicant to take re-credit of the excess duty paid by them on the exported goods. In this case, it is clear that as the Central Excise duty was paid by the manufacturing unit of the applicant which is situated in Bharuch, Gujarat, the Maritime Commissioner, Mumbai, with a view to ensure that the applicant avails re-credit of the correct amount at their manufacturing unit, had required them to claim the same from the jurisdictional Assistant Commissioner. Government finds that the jurisdictional Assistant Commissioner, in this case, on receipt of the letters from the applicant seeking re-credit of the excess duty, should have merely treated the same as intimations and ensured that the re-credit taken by the applicant was restricted to the amounts specified in the Orders of the Maritime Commissioner. Government finds that the Show Cause Notices issued to the applicant seeking to deny the re-credit was unwarranted, giving rise to needless litigation which has reached this stage.

8. In view of the above, Government finds that the impugned Order-in-Appeal, is not proper and legal inasmuch as it has upheld the view of the original Adjudicating Authority that a portion of the rebate claims filed by the applicant was required to be decided by the jurisdictional Assistant Commissioner. As discussed earlier, this view of the jurisdictional Assistant Commissioner is flawed and hence the impugned Order-in-Appeal deserves to be set aside. Further, Government finds that the Commissioner (Appeals) has erred in finding that the exporter and the manufacturer are two different

entities; merely because the rebate was claimed by the Corporate office of the manufacturer, the Corporate office and the manufacturing unit cannot be termed as two different entities. Further, Government notes that this issue was neither raised by the Show Cause Notice and nor was it raised by the original authority in the Order-in-Original. Thus, Government finds this apprehension expressed by the Commissioner (Appeals) to be baseless and uncalled for and sets aside the same.

9. In view of the above, Government annuls the impugned Order-in-Appeal and holds that the applicant should be refunded the amount paid by them which was found to be in excess to the tax payable, as determined by the Maritime Commissioner, by either allowing them re-credit of the same in their Cenvat Credit account or in any other manner as provided for by the Central Goods & Service Tax Act, 2017.

  
10/11/23  
(SHRAWAN KUMAR)

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

ORDER No. 03/2023-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, 3<sup>rd</sup> 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), Mumbai - 400 104.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.