

REGISTERED SPEED POST



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. 198/114-116/16-RA / 6208
198/138/16-RA

Date of issue: 02/11/2022

ORDER NO. ¹⁰⁰²⁻¹⁰⁰⁵ /2022-CX (WZ) /ASRA/MUMBAI DATED 31.10.2022 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 CENTRAL EXCISE
ACT,1944.

Applicant : Commissioner, Central Excise, Raigad

Respondent : M/s. UPL Limited

Subject : Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal No.
CD/86 to 88/RGD/2016 dated 17.12.2015 and
CD/96/RGD/2016 dated 22.01.2016 passed by the
Commissioner (Appeals-II), Central Excise, Mumbai Zone-II.

ORDER

These 4 Revision Applications have been filed by the Department (here-in-after referred to as 'the applicant Department') against the Orders-in-Appeal No. CD/86 to 88/RGD/2016 dated 17.12.2015 and CD/96/RGD/2016 dated 22.01.2016 passed by the Commissioner (Appeals-II), Central Excise, Mumbai Zone-II.

2.1 Brief facts of the case are that M/s. UPL Limited, Ready Money Terrace, 167, Dr. A.B. Road, Worli, Mumbai - 400 018 (hereinafter referred to as 'the respondent'), a manufacturer-exporter of products falling under Ch.38, had filed rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 which were rejected on the grounds that the goods cleared for export have not been exported directly from the factory of manufacturer but have been stored in a godown at Bhiwandi and then exported in contravention of the conditions and limitations laid down under 2(a) of Notification No.19/2004-CE(NT) dated 06.09.2004 and further the procedure prescribed under Circular No.294/10/94-CX dated 30.01.97 has also not been followed. The details of the Orders-in-Original are as follows:

RA No.	OIA No./date	OIO No./date	Claim Amount (in Rs.)
198/114-116/16-RA	CD/86to88/RGD/16 dated 17.12.15	343/15-16/DC(Rebate)/Raigad dated 29/4/15	26,78,247/-
		344/15-16/DC(Rebate)/Raigad dated 29/4/15	44,99,269/-
		1008/15-16/DC(Rebate)/Raigad dated 30/6/15	71,99,787/-
198/138/16-RA	CD/96/RGD/2016 dated 22.01.2016	2162/15-16/DC(Rebate)/Raigad dated 16/10/15	40,37,697/-

2.2 Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Orders-in-Appeal (OIA) on the basis of findings that the substantive condition of the export of goods and payment of duty has been complied with by the respondent.

3.1 Hence, the Applicant-Department has filed the impugned Revision Applications mainly on the grounds that:

- (i) The goods cleared for export have not been exported directly from the factory of manufacturer but have been stored in a godown at Bhiwandi and then exported in contravention of the conditions and limitations laid down under 2(a) of Notification No. 19/2004-CE (NT) dated 06.09.2004 and the appellants have also not followed the procedure prescribed under Circular No. 294/10/97-CX dated 30.01.1997.
- (ii) As per Circular No. 294/10/97-CX dated 30.01.97, an exporter, (including a manufacturer— 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 the factory stored outside the place of manufacturer should make an application in writing to the superintendent of Central Excise in-charge of the Range under whose jurisdiction such goods are stored. This application should be accompanied with form AR4 duly completed in sextuplicate and the invoice on which they have purchased the goods from the manufacturer. On receipt of the above application and particulars, the particulars of the packages / goods lying stored should be verified with the particulars given in the application and the AR-4 form, in such manner and according to such procedure as may be prescribed by the Commissioner. 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 the application and AR-4, he will endorse such forms and permit the export.
- (iii) It is mentioned at condition (a) at paragraph 2 of Notification No. 19/2004-CE(NT) dated 06.09.2004 that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse,

except as otherwise permitted by the Central Board of Excise and Customs by a special or general order. The claimant in their reply has admitted that the goods have not been exported directly from the factory of manufacturer, but stored in a godown at Bhiwandi from where the goods are exported. They have not been permitted by the Central Board of Excise and Customs by a special or general order to store goods cleared for export at Bhiwandi godown as laid down in condition (a) at paragraph 2 of Notification No. 19/2004-CE(NT) dated 06.09.2004. They have failed to follow the procedure for waiver from the condition of direct exports from the factory/ warehouse, as laid down in paragraph 8.1 of circular No.294/10/94-CX dated 30.01.1997 issued by the Central Board of Excise and Customs, New Delhi.

(iv) Appellate authority has failed to appreciate the fact that the onus of complying with the condition of direct export as laid down in Notification No.19/2004-CE dated 06.09.2004 or the procedure laid down in circular No.294/10/97-Cx dated 30.01.1997 issued by the Central Board of Excise and Customs, New Delhi, lies on the manufacturer exporter who has filed the rebate claim in order to substantiate but there was no facility for manufacture at their godown and the goods exported are in fact the goods on which duty has been paid at the time of clearance from their factory.

(v) They relied on following case laws:

- o M/s. Amaravathi Co-Op. Sugar Mills Ltd. 2016 (331) E.L.T.245 (Mad.)
- o M/s. L'amar Exports Pvt. Ltd. 2014 (311) E.L.T. 941 (G.O.I.)
- o M/s. Philip Electronics India Ltd 2011 (273) E.L.T. 461 (G.O.I.)

Based on the above grounds, the Applicant-Department prayed that the impugned order be set aside.

3.2 The respondent vide letter dated 30.01.2017 have filed their submissions wherein they have inter alia contended as follows:

- i. Warehouse of the company is registered under Rule 9 & hence conditions at paragraph 2(a) of the Notification No. 19/2004-CE (NT) dated 06.09.2004 stands fulfilled.
- ii. There is no dispute of facts that the goods have been exported.
- iii. There is no dispute of facts that duty has been paid on the exported goods.
- iv. One of the conditions laid down under the notification no. 19/2004-CE(NT) dated 06.09.2004 is that the goods shall be directly exported from the factory. It only means that the goods shall be exported in the same packing condition as they were removed from the factory. It does not mean that the goods shall go from the factory and directly to go to port or airport. The same notification provides that goods can be exported within six months from the date of clearance. If the goods were meant to directly go to port or airport, the period of six months permitted in the notification for export would not have been mentioned. The distance between any part of country to any port or airport can be travelled maximum within fifteen days. Therefore, by no stretch of imagination, six months period is required for transportation of goods. This evidences the fact that the goods can be stored at any place after having been cleared under ARE1 for export. Further, such goods cannot be retained without permission for a period of more than six months. It is therefore submitted that the goods in this case have been directly exported.
- v. The procedure laid down under Circular no. 294/10/94-CX dated 30.01.1997 issued under F. No. 209/2/97-CX.6 is not applicable in present case as the same have to be followed in a situation where the

goods are initially cleared for 'home consumption', but subsequently diverted for export. Since in this case, the facts are different, the procedure prescribed in the said circular is not required to be followed.

- vi. Without prejudice to the submission made in above, it is submitted that even if it is held that the proper procedure under notification is not followed as laid down in the circular no.294/10/94-CX dated 30.01.1997 issued under F. No. 209/2/97-CX.6 the refund claim shall not be rejected as substantial condition i.e. export of goods and payment of duty on such goods have been complied. It has been consistently held that the rebate shall not be rejected merely because the procedure has not been followed as long as it cannot be substantiated that the goods have not been exported directly. Therefore, it is submitted that the rebate claim shall not be denied.

4. Several personal hearing opportunities were given to the applicant-Department viz. 14.06.2022, 28.06.2022, 19.07.2022, and 26.07.2022. However, neither the applicant-Department nor the respondent attended on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in the case file, written submission and perused the impugned Orders-in-Original and Order-in-Appeal.

6. Government observes that the main issue in the instant case is whether the rebate claims filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004, can be rejected on the grounds that conditions and limitations laid down under 2(a) of Notification No.19/2004-CE(NT) dated 06.09.2004 had been contravened and the

procedure prescribed under Circular No.294/10/94-CX dated 30.01.97 had not been followed.

7.1 In this regard, the Government observes that the relevant portion of the said Notification No. 19/2004- C.E. (NT) dated 06.09.2004 reads as under:

(2) Conditions and limitations:-

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Custom by a general or special order,

Government observes that the applicant-Department found that the goods cleared for export had not been exported directly from the factory of the respondent but had been stored in a godown at Bhiwandi and then exported. In response, the respondent has contended that their godown was registered under Rule 9 of the Central Excise Rules, 2002 and has submitted a copy of registration certificate. Government observes from the said certificate that it bears registration number AABCS1698GEM019 and the premises, situated at Bhiwandi, is registered for '*operating as a manufacturer's depot of excisable goods*'. The certificate is issued on 02.07.2014 by the jurisdictional Assistant Commissioner of Central Excise. Government observes that the impugned exports were carried out between Jul-14 to Jan-15. Thus, Government observes that the respondent has rightly contended that they had effected the exports from their registered warehouse and thereby had complied the said condition 2(a) of Notification No. 19/2004- C.E. (NT) dated 06.09.2004.

7.2 As regards the second ground for rejecting the rebate claims, viz. the procedure prescribed under Circular No.294/10/94-CX dated 30.01.97 had not been followed, Government observes that in this respect the Appellate authority has discussed and interpreted the issue in detail in the impugned OIA. Government concurs with the decision arrived at by the Appellate

authority. The relevant paras 5.2. and 5.3. of the impugned OIA are reproduced hereunder:

5.2. *In respect of the rejection of the rebate claims by the rebate sanctioning authority on the ground that the appellants failed to follow the procedure of direct exports from the factory/warehouse as laid down in paragraph 8.1 of the Circular No.294/10/94-CX dt.30.01.1997, I find that in para 6 of the said Board Circular No. 294/10/94-CX dated 30.01.1997 it was clarified that such condition can be condoned provided the proof that goods have been actually exported is produced. The said para is as under:-*

"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 co-relatable 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."

5.3 *In the instant case, the clearances of the goods from the factory of the manufacturer on payment of duty and under ARE-1 are not in doubt. The endorsement by Customs Superintendent on the Shipping Bills and part B of ARE-1s substantiate that the goods have been exported. Hence, keeping in view the contents of the above para in the said circular the condition to export goods directly from the factory should be deemed to have been waived. Here it is not the case that the goods are initially cleared for Home Consumption and thereafter diverted for export. Here the goods are cleared for export only under ARE-1. I also find that when the fact of export of goods cleared on payment of duty under claim of rebate is conclusively established failure to export the goods directly from the factory would be a mere procedure. Failure to comply with such procedure*

would not have any bearing on the rebate claims of the appellant. In view of that the rejection of the rebate claims on this ground by the rebate sanctioning authority is not justifiable and liable to be set aside. I find that the Revisionary Authority of the Government of India in the case of M/s. Agio Pharmaceutical Ltd. reported in 2014(312) ELT 854 (GOI) had held as under:

"9. The said provision stipulates that the goods should be exported on payment of duty from factory or warehouse. In this case, neither payment of duty nor export of such duty-paid goods is disputed. The applicant having cleared the goods from M/s. Bagmane on Loan License basis does not cease to be manufacture. Further, the goods were stored in warehouse at Bhiwandi, Mumbai which is a registered warehouse of the applicant under Rule 9 of the Central Excise Rules, 2002. Hence, the goods were exported from registered warehouse. Further, there is no dispute regarding export of duty-paid goods. Hence, substantial condition of the notification stands complied with. Commissioner (Appeals) has also taken another ground to reject this rebate claim that applicant did not submit copy of Mate Receipt and BRC. Government notes that applicant has submitted copies of both the documents. The copy of BRC is for Shipping Bill No. 724498, dated 9-4-2009 and ILJV No. AGIO/Exp/002/09-10, dated 3-4-2009. Under such circumstance, Government is of opinion that the substantial condition of Rule 18 has been complied with and, rebate claim cannot be rejected. The goods were cleared from the factory under Central Excise supervision and ARE-1 is signed by the both the partner. There is endorsement of Central Excise as well as Customs on reverse of ARE-I stating that goods have been exported vide said Shipping Bill. There are catena of court's judgments wherein it has been held that if substantial condition is fulfilled, rebate claim should not be denied

for minor procedural lapses. Hence, in this case also the rebate claim should not be denied for procedural infraction."

7.3. The applicant-Department has relied upon certain case laws; however, Government finds them inapplicable in the instant matter.

In the case of M/s. Amaravathi Co-Op. Sugar Mills Ltd., repacking of goods which were stored at warehouse was done before exporting them and further no satisfactory documentary evidence to show that the export-goods actually suffered duty were produced, hence the Hon'ble Madras High Court refrained from interfering the Order of lower authorities rejecting the rebate claim. However, in the instant case duty paid character of export goods is not under challenge.

In the case of M/s. L'amar Exports Pvt. Ltd., Government had upheld the Order of lower authorities for various reasons such as - the applicant neither exported the goods directly from factory or warehouse in terms of condition 2(a) of the Notification No. 19/2004-C.E. (N.T.) nor followed the relaxed procedure as prescribed Board's Circular dated 30-1-1997; in some claims the export was stated to be done under bond without payment of duty; in one of the rebate claims the applicant exported the goods after six months from the date of clearance from the factory; and non-submission at triplicate copies of ARE-1 which is required to verify duty paid nature of the goods. However, none of these factors applies in the instant case.

In the case of M/s. Phillips Electronics India Ltd., the Government after thorough analysis of the issue involved had concluded as under:

12. Government agrees with the submissions of the applicant that CBEC in terms of para 6 of the said circular dated 30-1-97 has waived the condition of export of goods directly from the factor on payment of duty if the goods are clearly identifiable and corelated with the goods cleared from the factory on payment of duty. In the instant case, from the perusal

of records, Government observes that the goods exported were not having any marking/identification no. etc. by which it could be established that the same goods which have suffered duty at the time of clearance from the factory have actually been exported. Hence, the applicant has failed to meet out the basic mandatory requirement for claiming rebate of duty that the same goods which have been cleared from the factory of manufacturer have actually been exported. This is mandatory requirement and not procedural lapse which is condonable.

However, in the instant case, as detailed at aforementioned paras, the payment of duty under claim of rebate has been conclusively established.

7.4 Government finds support in the judgments passed by the Hon'ble Bombay High Court in the case of M/s. Indian Oil Corporation Ltd. [2015 (316) E.L.T. 618 (Bom.)] and M/s. Jubilant Organosys Ltd. [2015 (322) E.L.T. 50 (Bom.)] wherein an identical decision was taken.

8. In view of above discussions and findings Government holds that the Orders-in-Appeal No. CD/86 to 88/RGD/2016 dated 17.12.2015 and CD/96/RGD/2016 dated 22.01.2016 passed by the Commissioner (Appeals-II), Central Excise, Mumbai Zone-II are legal and proper and are hence upheld.

9. The Revision Applications are disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 1002-1005 /2022-CX (WZ)/ASRA/Mumbai dated 31.10.2022

To,
M/s. UPL Limited,
Ready Money Terrace,
167, Dr. A.B. Road,
Worli, Mumbai - 400 018.

Copy to:

1. Pr. Commissioner of CGST & Central Excise,
Gr. Floor, Kendriya Utpad Shulk Bhavan,
Sector-17, Plot No.1, Khandeshwar,
Navi Mumbai - 410 206.
2. ~~Sr. P.S.~~ to AS (RA).
3. ~~Guard file~~
4. Notice Board