

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.195/94/2016-RA/6888 Date of Issue:- 28/11/2022

ORDER NO. 1151 /2022-CEX (WZ) /ASRA/MUMBAI DATED 25.11.2022 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 THE CENTRAL EXCISE ACT, 1944.

Applicant :- M/s. Pharmacrest,
G-80, IRLA, Prime Mall,
Vile Parle(W), Mumbai – 400 056.

[New Adress: M/s. Pharmacrest,
A-305, Krishna Regency, Datta Mandir Road,
Vakola, Santacruz(E), Mumbai – 400 055.]

Respondent :- Commissioner, GST & CX, Raigad.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/649/RGD/2015 dated 25.08.2015 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-II.

ORDER

This Revision Application has been filed by M/s. Pharmacrest, G-80, IRLA, Prime Mall, Vile Parle(W), Mumbai - 400 056 [New Address: M/s. Pharmacrest A-305, Krishna Regency, Datta Mandir Road, Vakola, Santacruz(E), Mumbai - 400 055] (hereinafter referred to as "the applicant") against Order-in-Appeal No. CD/649/RGD/2015 dated 25.08.2015 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-II.

2. The brief facts of the case are that the applicant M/s. Pharmacrest, a merchant Exporter, filed rebate claim on export made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004.

3.1 The applicant filed rebate claim amounting to Rs. 5,25,300/- on the grounds that goods were cleared for export on payment of duty.

3.2 Deputy Commissioner(Rebate), Central Excise, Raigad after following the process of law rejected the rebate claim vide Order-in-Original No. 475/14-15/Dy. Commr(Rebate)/Raigad Dated 23.05.2014 due to non submission of the essential and mandatory corresponding documents.

3.3 Being aggrieved, the applicant preferred appeal against the Order-in-Original No. 475/14-15/Dy. Commr(Rebate) /Raigad Dated 23.05.2014. The Commissioner (Appeals) vide Order-in-Appeal No. CD/649/RGD/2015 dated 25.08.2015 rejected the appeal and upheld the Order-in-Original.

4. Aggrieved by the said Order in Appeal applicant has preferred Revision Applications mainly on the following grounds-

4.1 First & foremost the Applicants neither received the Deficiency-memo-cum P.H. Letter nor the Order in Original through Postal Department. The Applicants did not receive the Adjudication Order also. The said O-i-O was collected by hand delivery on 15.07.2014 from the office of the Maritime Commissioner on receiving the telephonic message from the Office. Since the Applicants did not receive the Deficiency memo they did not submit the required documents. The Applicants submitted the following documents / contentions with appeal filed before the Commissioner(Appeals) -

- i. BRC copy,
- ii. Copy of Central Excise Invoice issued by the manufacturer M/s. D. H. Organics along with tax invoice dated 25.01.2013,
- iii. There is no allegation of corrections in the ARE1 and Mate Receipt has been raised in the deficiency memo. This is raised only in the OIO. Actually there is no such corrections as referred in the OIO & OIA in the documents whatsoever,
- iv. The Triplicate copy of ARE1 was through oversight sent along with other ARE1s bunch to Customs. Hence could not get the certification of Range of Supdt. However, triplicate copy of ARE1 was submitted with Customs endorsement to Maritime Commissioner.
- v. The FOB value in Mate Receipt tally with the S.B and B.L. The Mate receipts and Tax invoice were enclosed with Copy of the S.B. B.L., Mate Receipt and Custom Certified ARE1.

4.2 The difference in value of ARE1 of Rs.61,76,800/- and Central Excise Invoice value of Rs.42,50,000/- is for the reason that the ARE1 is showing the FOB value of the goods, this value can be seen on Shipping Bill, Export Invoice, Bill of Lading and whereas the Central Excise invoice shows the Section -4 value as per Section -4 of Central Excise Act, 1944. Normally the section-4 value needs to be shown on the ARE1 also but it is happened that the Applicant's are exporting for the first time and they were under the impression that they have to show FOB value on the ARE1 and shown that. This is only a clerical mistake happened unknowingly without understanding the procedure of export. They have received the full remittances as per ARE1 value (FOB) & Export Invoice from abroad Applicant's claimed rebate only of C.Ex. duty paid on value of Rs.42,50,000/- ie. @ 12.36% Rs. 5,25,300/-not more. The Range Supdt. Certified the duty payment and it was submitted to the Commissioner (Appeals) during Hearing. The genuine rebate claim has been rejected on procedural lapses.

4.3 Applicants rely on the Order of Hon. CESTAT in the case of Commissioner vs. Suncity Aloys Pvt. Ltd., 2007(218) E.L.T. 174 (Raj.) Rebate Exempted goods cleared for export on payment of duty - Union of India not, in any event, entitled to retain the amount in question - If no duty was leviable and the assessee was not required to pay the duty still if he has paid the duty which has been received by the Commissioner, they can not retain the same on

any ground and must refund the amount received from assessee as on their own showing -Assessee entitled to remove goods on payment of duty in ordinary course and he is entitled to claim rebate thereon because the goods were exported out of country on payment of excise duty-Rule 18 of Central Excise Rules, 2002.

4.4 The Applicants further submits that all the conditions except the time limit for filing the Rebate claim as per Section 11B of the Central Excise Act, 1944 can be condoned by the Commissioner. This is as per para 11.1 of CBEC Circular No.81/81/94-CX, dated 25.11.1994. As per Government of India Order in the case of G.T.C. Export Ltd. - 1994 (74) E.L.T. 468 (G.O.I) - Export Rebate - Rule 12 of Central Excise Rules, 1944 Power vested in Collector to grant a part or whole of the rebate claim by condoning non-observant of some condition(s) of notification issued under the Rule exercisable by Collector (Appeals) as well. In this case of Appellants even there is mistake, same requires to be condoned in the interest of export as per Circular No. 81/81/94-CX dated 25.11.1994 and the GOI order of GTC Export Ltd.

4.5 The Applicants rely on the Order of the Hon. CESTAT in the case of Sterlite Industries (1) Ltd. VS Commissioner of C. Ex. Tirunelveli 2009 (236) E.L.T.143(Tri. Chennai) In an identical issue Hon. Tribunal passed the Order in favour of the Assessee. - Rebate - Exporters entitled to rebate of entire duty of excise paid by it on clearance of goods for export Central Excise Rules, 2002. Rule 18 of Central Excise Rules, 2002.

4.6 The Applicants rely on following Government of India orders passed for condoning non- mandatory Procedural provisions relying on Hon. Tribunal Order in respect of

- i. M/s. Birla VXL 1998(99)ELT 387, T.I. Cycles 1993(66)ELT497.
- ii. M/s Banner International Order No. 255/07 dated 27.04.2007.
- iii. M/s. Vipul Dye Chem Ltd. Order No.873/2006 dated 29.9.2006.
- iv. M/s. Britannia Industries Ltd, Mumbai Order No. 380-382/07 dated 29.06.2007.

4.7 Applicants have followed all the procedures as laid down vide Notification No. 19/2004-CE(NT) dtd.06.09.2004 as amended, issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944, by way of preparing of ARE1 and onward export upto the Customs JNPT port following the procedure as laid down for export of consignment. The physical export is certified by the Customs, P.O. as well as Superintendent of Customs. The same goods purchased from the manufacturer are exported under each ARE-1 directly from the place of manufacturer to the Port. The ARE 1 shows the Central Excise Invoice number of manufacturer along with the markings and description of goods. The Description, Quantity duty paid, Markings and Central Excise number has been shown on ARE-I. All these particulars are

tallying with the Shipping Bill and Bill of lading, mate Receipt and Export Invoice and Packing slip. All the Documents pertaining to these exports along with the ARE1, Central Excise Invoice, Shipping Bill, Bill of Lading, Export Invoice and Packing slip, Mate Receipt and Form-C submitted for claiming rebate shows that whatever goods cleared for export has been physically exported.

4.8 The Applicants state and submit that they have received all the foreign remittances in this case and it is the proof that they have exported the goods Applicants further rely on G.O.I. ORDER No. 7 to 9/2001 dtd. 19.01 2001 in case of Krishna Filaments Ltd. reported in 2001(131)ELT 726 (GOI), Hon. Tribunal Order in respect of Commissioner of Central Excise vs. Tisco (Tube Division) 2003 (156) ELT 777 (Tri. Kolkata) and Hon. Tribunal Order in case of M/s. Kansal Knitwears vs. Commissioner, C.Ex (2001 (136) ELT 467 in respect of technical minor discrepancy to be allowed

5. Personal hearing in this case was held on 14.06.2022. Shri R.V.Shetty, Advocate duly authorized, appeared on behalf of the applicant. He reiterated the earlier submissions. He referred to duty payment verification submitted by in-charge Range Officer confirming the duty payment. He contended since duty paid goods have been exported, his substantive claim should not be rejected on minor procedural grounds.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA.

7. Government observes that the applicants exported goods vide ARE-1 and filed rebate claim under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority rejected their claim mainly on the ground that the applicants failed to produce the Copy of Central Excise Invoice, BRC copy, Triplicate copy of ARE1 etc. On appeal being filed by the applicant, Commissioner (Appeals) vide impugned Order rejected the appeal(Para 3.3 supra).

8. Government observes that in an identical case, M/s. Kaizen Plastomould Pvt. Ltd., Bhayander (E), the applicant in that case, had exported their goods under Bond without payment of duty. Show cause notices were issued to said M/s Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time. The Original Authority subsequently confirmed the duty and imposed penalty on M/s Kaizen Plastomould Pvt. Ltd. The appeal filed by M/s Kaizen Plastomould Pvt. Ltd. against the Order in Original confirming the duty and imposing penalty were rejected by the Appellate Authority. Revision Applications filed against such Order in Appeal were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide judgment dated 03.03.2014 [2015(330) E.L.T.40 (Bom)] observed as under :-

11. While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.

12. We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and

without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited v. Union of India*. In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :

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13. In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited v. Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom.)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.

14. As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 is quashed and set aside. The Revision Application is restored to the file of respondent No. 2 for a decision afresh on merits and in accordance with law.

15. The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court.

9. GOI while deciding the said Revision Applications in remand vide Order No. 274-277/14-CX dated 20.06.2014 (para 9.2 of the Order) observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of

original documents either available with M/s Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s Kaizen Plastomould Pvt. Ltd.

10. On perusal of Order in original, Order-in-Appeal and as also claimed by the applicant, they have complied with the deficiencies and have provided copies of BRC copy, Copy of Central Excise Invoice issued by the manufacturer M/s. D. H. Organics along with tax invoice dated 25.01.2013, the Triplicate copy of ARE1 was submitted with Customs endorsement to Maritime Commissioner, Copy of the S.B. B.L., Mate Receipt and Custom Certified ARE1 etc. evidencing the actual export have taken place to substantiate the factum of the goods being exported and cleared outside country. There is no case that the goods cleared have not been exported. Substantive benefit cannot be denied for procedural lapses.

11. Respectfully following the aforesaid Orders/Judgements (discussed at para 8 & 9 supra) Government directs the original authority to examine the aspect of proof of export in all these cases on the basis of collateral evidences available on records or submitted by the applicant.

12. In view of above position, Government sets aside Order-in-Appeal No. CD/649/RGD/2015 dated 25.08.2015 passed by the Commissioner (Appeals) which has upheld the rejection of the rebate claims.

13. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is

also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be accorded to the applicant to present their case.

14. The Revision applications are disposed off on the above terms.

Shrawan Kumar
25/11/22
(SHRAWAN KUMAR)

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

ORDER No. 1151 /2022-CEX (WZ) /ASRA/Mumbai Dated 25.11.2022

To,

M/s. Pharmacrest,
G-80, IRLA,
Prime Mall,
Vile Parle(W),
Mumbai - 400 056.

New Adress:

M/s. Pharmacrest,
A-305, Krishna Regency,
Datta Mandir Road,
Vakola, Santacruz(E),
Mumbai - 400 055.

Copy to:

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Raigad Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.