

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, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/1454-A/12-RA/4797

Date of Issue: 04/11/19

ORDER NO. 129/2019-CEX (WZ) /ASRA/MUMBAI DATED 15.10.2019
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE
CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Prithvi Exports, 206, Neelkanth Commercial
Centre, 122-123, Sahar Road, Andheri (East), Mumbai -
400 099.

Respondent : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
US/613/RGD/2012 dated 28.09.2012 passed by the
Commissioner of Central Excise (Appeals), Mumbai -II.

ORDER

This Revision Application is filed by M/s Prithvi Exports located at 206, Neelkanth Commercial Centre, 122-123, Sahar Road, Andheri(E), Mumbai-400 099(hereinafter referred to as the "applicant") against Order-in-Appeal US/613/RGD/2012 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai -II.

2. The brief facts of the case are that the applicant, a Merchant exporter, exported excisable goods falling under Chapter 52 & 54 of the First Schedule to the Central Excise Tariff Act, 1985 under 4 A.R.E.-1s from the premises of the processors, viz. M/s Jay Industrial Chemicals Pvt. Ltd., Dombivili, Thane, M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar and M/s Swastik Textile Mills, Ichalkaranji. Thereafter, the applicant filed 4 applications for rebate of Central Excise Duty totally amounting to Rs.51,995/- (Rupees Fifty One Thousand Nine Hundred and Ninety Five only) with the Maritime Commissioner, Central Excise, Raigad.

3. The rebate sanctioning authority, i.e. the Deputy Commissioner (rebate) Central Excise, Raigad, rejected the rebate claims of the applicant vide Order in Original No.2259/11-12/Dy.Comm (Rebate)/Raigad dated 27.02.2012 on the grounds that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the applicant could not have paid duty and did not have the option to pay the duty; that the declaration of self sealing/self certification not given on the ARE-1s; the address of Maritime Commissioner was wrongly mentioned; there was difference in the name of the vessel in ARE-1, Shipping Bill and Bill of Lading; the applicant failed to produce the copies of the ARE-1 contained in the combined shipment; Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying; signature of the master of the vessel was not appearing in on

the shipping bill/failed to mention certified true copy on the Xerox copies of the document submitted; the Duty Payment Certificates were not submitted; non-mention of the authorized signatory in respect of the Manufacturer/ Exporter and thus the conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled; the name of M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar, one of the processors appeared in the Alert Circular issued by Assistant Commissioner (Rebate) Central Excise, Raigad regarding bogus Cenvat Credit having been availed on bogus invoices and the applicant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty on the above exports.

4. Being aggrieved with the said Order, the applicant filed appeal before Commissioner (Appeals) Mumbai-II. Vide Order in Appeal No. US/613/RGD/2012 dated 28.09.2012 Commissioner (Appeals) condoned most of the grounds of rejection of rebate claims but upheld the rejection of rebate claims on the grounds that (i) provision of self sealing / self certification is not followed by the applicant and the same is mandatory provision as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 and the applicant has not followed the procedure and (ii) the applicant did not submit any document to prove the genuineness of the Cenvat Credit from which the duty payment had been made and therefore, the rejection of the rebate claim in such a situation could not be faulted.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

5.1 Regarding: (i) Non-fulfillment of para 3(a) (xi) of Notification No.19/2004-CE (NT) dated 06.09.2004 they state that they had been using the printed ARE-1 form. Unfortunately the Printed form did not contain the words "the goods have been sealed in my presence". Kindly note that its only a technical and

procedural lapse which is condonable. The Honorable Supreme Court of India has held that such irregularities are condonable when the "factum of export is not disputed". In the instant case also there has never been a dispute about the export of goods. However, the rebate has been sought to be denied on the basis of condonable procedural irregularities. The Government of India in its revisionary jurisdiction and the Hon'ble Supreme Court has also held that the procedural lapses are condonable in interest of export promotion and rebate claims have been allowed. They seek to place reliance on the following decisions of the Government of India and the Hon'ble Supreme Court.

- a) 2006 (206) ELT 1027 (GOI) IN RE: M/s. COTFAB Exports.
- b) 2001 (131) ELT 726 (GOI) IN RE: M/s. Krishna Filaments Ltd.
- c) 2009-TIOL-79-SC-Misc IN RE: M/s. INN Sambaji & others Vs. Gangabai & others.
- d) 1991 (51) ELT 437 (SC) IN RE: M/s. Mangalore Chemical and Fertilizers Ltd.
- e) 1995 (77) ELT 51 (SC) IN RE: M/s. Formica India.

(ii) Regarding Genuineness of the Cenvat Credit from which the duty payment had been made, they as a Merchant Exporter, had produced Certified True Copy of RG23A Part-II. Copy again enclosed for ready reference as marked as Exhibit "C". The Adjudicating Officers have wrongly observed the above point in their Orders. Hon'ble High Court-Mumbai in the matter of Union of India Vs. Sheetal Exports reported under [2011 (272) ELT 663 (Bom)] has held that even when CENVAT credit on inputs is availed fraudulently by manufacturer the exporter who purchased the final products from the manufacturer & duly exported paying duty should have full & proper opportunity of establishing its case for the grant of rebate:

- 5.2 The relevant records (i.e., RG 23A – Part-II) were submitted on the time of rebate application and again furnished with written submission before the Commissioner (Appeals) however he did not consider this fact while passing the order.
- 5.3 There was no dispute of duty payments on the finished fabrics at the time of export and the Triplicate copies of ARE-I were countersigned by the Central Excise Range officers certifying the payment of duty without raising suspicion / objection about the CENVAT credit availed by their processor.

- 5.4 There is no charge or allegation in the Order-in-Originals of rebate sanctioning authority and Commissioner (Appeals), that the transaction between exporter/Processor and the manufacturer/supplier of inputs was not at arms length or not non-bonafide and influenced by any extra commercial consideration. The only charge or allegation forming the genesis and basis for denial of rebate claim to the exporter is therefore not against him but the insufficient documentations to establish the correctness of Cenvat Credit availed in cases where the duty on export goods was paid through Cenvat Credit by manufacturer. In such cases, sufficient legislative and machinery provisions exist in Central Excise Act/rules to recover such frauds detected if any from the manufacturer/supplier of goods along with interest and penalty. Rule 14 of Cenvat Credit Rules, 2004 provided that where any fraud detected on wrongly availed credit, it has to be recovered from the manufacturer along with interest and provisions of Section 11A (recovery of duties not levied or not paid or short-paid or erroneously refunded) and 11AB (interest on delayed payment of duty) of the Act shall apply mutatis mutandis for effecting such recoveries.
- 5.5 For the fault of the processor, if any, in respect Cenvat availed, the Applicant who is the genuine exporter and who properly paid the duty of finished product should not be punished for none of his fault.
- 5.6 Rebate / drawback etc are export oriented schemes and unduly restricted and technical interpretation of procedure etc is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notifications, circulars etc are to be condoned if export have really taken place, and the law is settled now that substantive benefits can't be denied for procedural laps. They seek to place reliance on the following decisions of the Tribunal/Government of India in a catena of orders, including Birla VXL Ltd. 1998 (99) E.L.T. 387 (Trib.), TI Cycles -1993 (66) ELT 497 (Trib.), Binny Ltd. Madras-1987(31) ELT 722(Tri), Atma Tube Oroducts, 1998(103) E.L.T. 270 (trib), and GTC Exports Ltd.-1994(74) ELT 468 (GOI) upheld that 'if goods have actually been exported then all procedural condition can be waived'. In the present case the said textile

fabrics have actually been exported and this is undisputed fact moreover all substantial requirements have been fulfilled. The impugned Orders are required to be set aside on this ground.

In view of the above fact and circumstances, the applicant respectfully prayed that their Revision Application be allowed and the impugned Order in Appeal and Order in Original be set aside.

6. In response to Personal hearing letter issued in the instant case, the applicant vide his letter dated 29.11.2018 requested that the matter may be decided on merits of the case, as explained in the Revision Application without a personal hearing.

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

8. On perusal of records, Government observes that the applicant, a Merchant exporter, exported excisable goods falling under Chapter 52 & 54 of the First Schedule to the Central Excise Tariff Act, 1985 under 4 A.R.E.-1s from the premises of the processors, viz. M/s Jay Industrial Chemicals Pvt. Ltd., Dombivili, Thane, M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar and M/s Swastik Textile Mills, Ichalkaranji and filed 4 applications for rebate of Central Excise Duty totally amounting to Rs.51,995/- (Rupees Fifty One Lakh Nine Hundred and Ninety Five only) with the Maritime Commissioner, Central Excise, Raigad, as shown below:-

Sr.No.	Rebate Claim No. & Date	ARE-1 No. & Date	Invoice No. & Date	Amount Claimed. (Rs.)
1.	27460/04-05 dated 09.11.2004	368/03-04 dated 24.03.2004	533 dated 24.03.2004	38,260/-
2.	9906/04-05 dated 09.11.2004	299/04-05 dated 31.12.2004	512E dated 30.12.2004	8,825/-
3.	9909/05-06 dated 21.04.2005	215/04-05 dated 13.09.2004	242E dated 13.09.2004	1,405/-
4.	15085/05-06 dated 21.06.2005	15/04-05 dated 28.12.2004	54 dated 28.12.2004	3,505/-
			TOTAL	51,995/-

9. Deputy Commissioner (Rebate), Central Excise Raigad vide Order in Original No.2259/11-12/Dy.Comm (Rebate)/Raigad dated 27.02.2012 rejected all the four rebate claims on the grounds detailed at para 3 supra.

10. On appeal being filed against this Order by the applicant, Commissioner (Appeals) vide impugned order upheld the rejection in respect of three rebate claims out of four rebate claims holding that the provision of self sealing / self certification as laid down in para 3(a) (xi) of the Notification No.19/2004- CE (NT) dated 06.09.2004 is a mandatory provision and the applicant has not followed the procedure. The Commissioner (Appeals) also upheld the rejection of the rebate claims as the applicant did not submit any document to prove the genuineness of the Cenvat Credit from which the duty payment had been made (detailed at para 4 supra). However, Commissioner (Appeals) on presentation of proof by the applicant that the payment of Rs.3,505/- in respect of Invoice No.54 dated 28.12.2004 was made through account current, held that the rebate claim to the extent of Rs.3,505/- cannot be rejected and allowed the same. Aggrieved with the aforesaid impugned order, the applicant has filed the present Revision Application on the grounds mentioned at para 5 supra.

11. Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides that where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent

or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods. Government notes that in the instant case the impugned goods were cleared from the factory without sealing by Central Excise officers and without certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed.

12. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. If the correlation is established between export documents and Excise document, then export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The contention of the department had been inclined towards procedural infractions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 on the part of applicant. Export oriented schemes like rebate/drawback are not deniable by merely technical interpretation of procedures, etc.

13. Government observes that the applicant has not enclosed any export documents to the Revision Application, so also there are no finding of original authority in Order in original No.2259/11-12/Dy. Comm (Rebate)/Raigad dated 27.02.2012 regarding correlation between Excise documents and export documents submitted by applicant in respect of Rebate claims 9906/04-05 dated 09.11.2004, 9909/05-06


dated 21.04.2005 and 15085/05-06 dated 21.06.2005. This verification from the original authority is also necessary to establish that the goods cleared for export under the aforesaid ARE-I applications were actually exported. Government further holds that if the documentary evidences submitted by the applicant could establish co-relation between goods cleared from the factory for export and goods exported then the substantial benefit of rebate cannot be denied for such procedural lapse, if other conditions of notification are complied with.

14. As regards rejection of rebate claim of Rs.38,260/- (Rupees Thirty Eight Thousand Two Hundred and Sixty only) on account of failure on the part of the applicant to produce documents to prove the genuineness of the Cenvat credit from which duty payment had been made, Government observes the goods exported by the applicant in the instant case were procured from M/s Jay Industrial Chemicals Pvt. Ltd., Dombivili, Thane, M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar and M/s Swastik Textile Mills, Ichalkaranji. One of the processors, M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar was figuring in the Alert notices issued by the Assistant Commissioner (Rebate) Raigad. Government further observes that the rebate claims were rejected mainly as the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors; that the goods had been cleared on payment of duty by debit of Cenvat Credit; that during the material time a number of processors fraudulently availed Cenvat Credit on the basis of 'invoices' issued by bogus non-existent grey manufacturers; that the applicant may also be a party in the said fraudulent availment of Cenvat Credit; that the rebate sanctioning authority was apparently not satisfied about the bona fide / duty-paid' character of the exported goods from the certificate given on the triplicate copy of A.R.E. 1 received from the Jurisdictional Superintendent of Central Excise (Range Office) and that the Commissioner, Central Excise Raigad had also issued departmental instruction No. 1/2006; 2/2006 and 1/2008 No.1/2006; for proper verification of the rebate claims.

15. Government, in this case notes that there is nothing on record to show that there was any further investigation / issuance of show cause notices, confirmation of demand of irregular Cenvat Credit etc. by the concerned Commissionerate against M/s Valiant Glass Works Pvt. Ltd. Tarapore, Boisar. This verification from the original authority was also necessary, to establish whether the the Cenvat credit availed & subsequently utilized by the processor/manufacturer for payment of duty towards the above exports was genuine or otherwise. Government therefore, is of considered opinion that the Order in Original No.2259/11-12/Dy.Comm (Rebate)/Raigad dated 27.02.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate lacks appreciation of evidence and hence is not legal and proper.

16. In view of above discussion, Government modifies impugned Order-in-Appeal to the extent discussed above and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRC, duty paying documents etc. for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the principles of natural justice.

17. Revision application is disposed off in above terms.


 (SEEMA PARORA)
 Principal Commissioner & Ex-Officio
 Additional Secretary to Government of India

ORDER No. 129/2019-CEX (WZ) /ASRA/Mumbai Dated 15.10.2019

To,
 M/s. Prithvi Exports ,
 206, Neelkanth Commercial Centre,
 122-123, Sahar Road, Andheri(E), Mumbai-400 099.

Copy to:

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. The Commissioner of CGST & CX (Appeals) Raigad, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
3. The Deputy / Assistant Commissioner(Rebate), CGST & CX Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.