



**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, Cuff Parade,  
Mumbai- 400 005

F. NO. 195/792/13-RA / 140

Date of Issue: 20.04.2018.

ORDER NO. 132/2018-CX (WZ) /ASRA/Mumbai DATED 20.04.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

**Applicant** : M/s. Pidilite Industries Ltd.,  
Plot No. A-21 & 22/1, MIDC,  
Mahad - 402 309, Dist. Raigad

**Respondent** : Commissioner of Central Excise (Appeals-II), Mumbai,  
Mumbai-400051.

**Subject** : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/122/RGD/2013 dated 30.04.2013 passed by the Commissioner of Central Excise (Appeals-II) Mumbai.



**ORDER**

This revision application is filed by M/s. Pidilite Industries Ltd. Mahad, Raigad (hereinafter referred to as "the applicant") against the Order-in-Appeal No.US/122/ RGD/2013 dated 30.04.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The applicant is holding Central Excise Registration No. AACP4156BXM002 engaged in the manufacture of excisable goods falling under Chapter No. 29, 32 and 39 at factory located at Plot No. A 21 & A 22/1, MIDC, Mahad, Dist. Raigad, Maharashtra. The applicant had exported consignments of their products on payment of duty under ARE-1 and filed rebate claim under Rule 18 of Central Excise Rules 2002. Applicant filed the rebate claim of Rs. 50,51,187/- along with documents as per the requirement of Notification No.19/2001-CE (NT) dated 06.09.2004 as amended, under Rule 18 of Central Excise Rule, 2002, before the Assistant Commissioner of Central Excise, Mahad Division, on 22.10.2012. The Deputy Commissioner, Central Excise, Mahad vide Order No. 2356-2385/12-13(MHD) dated 02.01.2013 sanctioned rebate refund amounting to Rs.43,60,796/- and rejected the rebate claim of Rs.6,90,391/- (Rs 2,03,812/- for non production of the duplicate copy of invoices issued under Rule 11 of Central Excise Rules, 2002 which was in violation to the procedure prescribed under para 8 of chapter 8 of CBEC Central Excise Manual on supplementary instructions and Rs. 4,86,579/- on account of non submission of original copy of the ARE-1 ).

3. Being aggrieved, the applicant filed appeal before before Commissioner, Central Excise (Appeals-II), Mumbai. The Commissioner (Appeals) vide Order in Appeal No. US/122/RGD/2013 dtd.30.04.2013 partly allowed the appeal Rs. 2,03,812/- and rejected the rebate claims amounting to Rs.4,86,579/- holding that submission of original and duplicate copies of the ARE 1 is a mandatory requirement



4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds :

4.1. The issue involved in the present case is rejection of rebate claim No. 1968 for Rs. 4,86,579/- on the ground that they failed to submit original copy of ARE-1 No. 128 dated 27.6.2012 along with the rebate claim. The Ld. Commissioner (Appeals) while rejecting the claim, has heavily relied upon the decision of the Revisionary Authority in the case of Bajaj Electricals - 2012 (281) ELT 146 (GOI) and held that submission of original and duplicate copies of ARE-1 is a mandatory requirement. The appellants herein contend that as a quasi-judicial authority, the Commissioner (Appeals) ought to have considered the circumstances which led to non-submission of original copy of the ARE-1 before rejecting the rebate claim. It has been vehemently submitted that the original copy of the ARE-1 was lost by the CHA. Therefore, a photocopy of the same was got certified by the customs authority. Other than this document, all other documents were in order (and not disputed by the department). It was brought to the notice of the Ld. Commissioner (Appeals) that the corresponding shipping bill, mate receipt, bill of lading and the bank realization certificate conclusively established that the export had factually taken place. In spite of this, the rebate claim was rejected on the sole ground that submission of original copy of ARE-1 was a mandatory requirement. We strongly feel that the Ld. Commissioner (Appeals) has taken a narrow view by rejecting the legitimate claim of the applicants.

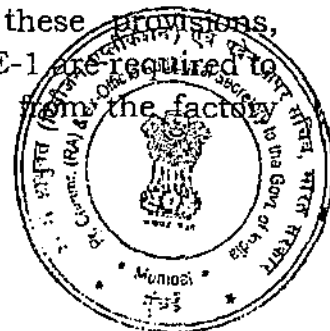
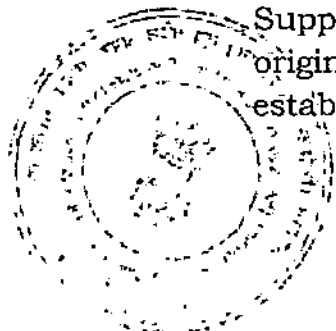
4.2 The loss of document is purely unintentional and beyond human control. While all other rebate claims were submitted along with original copies of the ARE-1s and other related documents, it was only the instant rebate claim which was filed with photocopy of the ARE-1. However, while filing the photocopy of the ARE-1, a due care was taken to get the same certified by the customs authorities which proves bonafides of the case beyond doubt. It is seen that the Ld. Commissioner has relied upon the decision of the Hon'ble Revisionary Authority in the case of Bajaj Electricals — 2012 (218) ELT 146 (GOI). The applicants with due respect differ with the decision of the Hon'ble Revisionary Authority in the case of Bajaj Electricals (supra) in as much as in that case the applicant had submitted



non-endorsed (by the Central excise and Customs authorities) photocopies of ARE-1. In the present case, they submitted photocopy of the ARE-1 which was not only duly endorsed by both, the Excise as well as Customs authorities, but the said photocopy has been certified by the Customs authorities. Thus, there is a vast difference in the facts of both the cases and therefore, the decision of the Hon'ble Revisionary Authority in the case of Bajaj Electricals (supra) cannot be made applicable to the present case.

- 4.3. The Ld. Commissioner (Appeals) has further opined that in case of loss of original/duplicate copies of the ARE-1s is established by the FIR, rebate claim can be processed and sanctioned on the basis of reconstructed copies of ARE-1s duly certified by the Central Excise Superintendent and Customs Superintendent. The applicants, in this context, most respectfully submit that mere filing of FIR with the local police department does not conclusively establish the loss. Admittedly, loss of important document entails some kind of an obligation upon the person to file an FIR. However, merely filing of FIR does not remove or repair the damage that has already taken place. They have not admittedly filed any FIR for the loss of ARE-1. This is due to the sheer ignorance of the person handling the said ARE-1. By the time it was realized that the original copy of the ARE-1 was lost/misplaced, it was too late to file the FIR. In fact, filing of FIR under such circumstances would have tantamounted to camouflaging the facts. Therefore non filing of FIR, on the contrary, proves bonafides on their part and non filing thereof *per se* does not vitiate the rebate claim of the applicant in totality. The Ld. Commissioner (Appeals) has not disputed the fact of payment of duty on the exported goods, the fact of export has been conclusively established by the other collateral evidences like corresponding shipping bills, mate receipts, bank realization certificate and bill of lading. Therefore, the rebate claim is liable to be sanctioned by the department considering the genuineness of the claim.

- 4.4 In the case of Bajaj Electricals (supra), the Hon'ble Revisionary Authority has referred to the provisions of Rule 18 of Central Excise Rules, 2002, notification No. 19/2004 CE(NT) dated 6.9.2004 and para 2.1 to 8.4 of the CBEC Manual of Supplementary Instructions. According to these provisions, original, duplicate and triplicate copies of ARE-1 are required to establish that the goods which were cleared from the factory



were actually exported. However, in the absence of the original copy of ARE-1, they have succeeded in establishing the fact of export of goods. The Ld. Commitssioner (Appeals) should have considered this aspect before rejecting the legitimate claim of the assessee keeping in view the object of the scheme of rebate of duty in its entirety. The said scheme postulates no central excise levy on the exported goods, and if any such duty has been paid, the same to be refunded in cash. Therefore, once the fact of export is established, the rebate should have been sanctioned to the applicants. This has been observed by the Hon'ble High Court of Gujarat in the case of Cosmonaut Chemicals Vs. UOI 2009 (233) ELT 46 Guj).

- 4.5. In an identical case of GSL (India) Ltd. - 2012 (276) ELT 116 (GOI), the Government allowed the rebate claim in the absence of original copy of ARE-1 and held that purpose of para 3 (b) (ii) of the Notification 19/2004 CE(NT) dated 6.9.2004 is to set the procedure by comparing the original, duplicate and triplicate copies of the ARE-1 to verify that the duty paid goods are actually exported. The fact of export of duty-paid goods has well been established by furnishing all the collateral evidences and which have been duly accepted by both the original as well as appellate authorities. Therefore, denial of rebate claim is not justified in the facts and circumstances of the case.
- 4.6 The Learned Commissioner (Appeals) has raised a doubt that such a rebate can be doubly claimed by the merchant exporter also. It is submitted that there is not an iota of such scope of claiming the rebate by any merchant exporter since the export had been done by the applicant only who have signed all the related documents.
- 4.7. There are catena of decisions wherein the Rebate claims are allowed by Hon'ble Tribunal in the absence of ARE1/Excise Invoice on the basis of supporting documents such as Shipping bills, Central Excise Invoices, Mate Receipt, Bill of Lading, Bank Realization Certificate etc. Few of them are cited below:

- a. Kamud Drugs Pvt.Ltd. -2010(262) E.L.T 1177(Commr. Appeal),
- b. Shreeji Colour Chem Industries Vis Commissioner of Central Excise, Vadodara 2009(233)E.L.T.(Tribunal Ahmedabad),

Model Buckets & Atachnients (P)Ltd V/s Commissioner of C.Excise, Belgam 207(217)E.L.T 264 (Tri.Belga)



- d. Home Care (I) Pvt.Ltd. Vis Commissioner of Central Excise, Delhi 2006(197) E.L.T. 110 (Tri.Del),
- e. Commissioner of Central Excise, Jamshedpur V/s Tisco (Tube Division) 2003(156) ELT 777 (Tri.Kolkata).

In view of the averments made herein above, the impugned order rejecting the rebate claim is legally not tenable and bad in law. The applicants therefore prayed that the impugned order may kindly be quashed and set aside and sanction the rebate claims.

5. A Personal hearing was held in this case on 17.01.2018 and Shri J.F. Pereira, Head, Indirect Taxes duly authorized by the applicant, appeared for hearing and reiterated the submission filed through the Revision Application and pleaded that genuineness of export is not in doubt and it is just procedural infraction. He placed reliance on series of case laws to support his case. He pleaded that Order in Appeal be set aside and Revision Application be allowed.

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

7. Government observes that rebate claim was rejected by the original authority for the reason of non-submission of original copy of ARE-1 by the applicant. Commissioner (Appeals) vides Order in Appeal No. US/122/RGD/2013 dated 30.04.2013 while rejecting the appeal filed by the applicant held that submission of original copy of ARE-1 being mandatory, the adjudicating authority had rightly rejected rebate claim on this ground.

8. Government in the instant case notes that the Original copy of ARE-1 No. 128 dated 27.06.2012 was lost by the CHA. Therefore, the applicant got the photocopy of the same certified by the Customs Authority.

9. In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

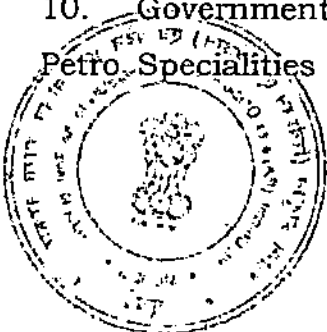




*Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.*

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.*

10. Government also observes that Hon'ble High Court, Gujarat in *Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)]* also while





deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under :

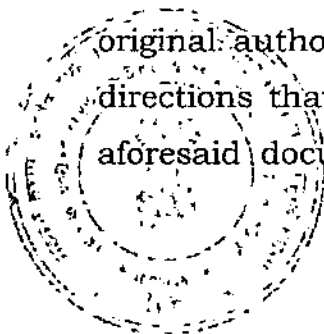
7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

11. Government finds that rationale of aforesaid Hon'ble High Court orders which are incidentally relied upon by the applicant, are squarely applicable to this case. Further, from the Order-in-Original No.2356 to 2385/12-13/DC(Rebate)/Raigad dated 02.01.2012, Government observes that the applicant has submitted the following documents to the rebate sanctioning authority along with his claims :

- Self attested copy of Shipping Bill / Bill of Lading / Mate Receipt / Invoice Packing List,
- Self attested copy of duty debit certificate issued by Range Supdt,
- Declaration under Rule 18,
- Undertaking for submission of Bank Realization Certificate.

Government holds that as the bonafides of export are proved the rebate claim should not be withheld for non production of original copy of ARE-1.

12. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in



regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand, reject the claim on the ground of the non-production of the original copy of the ARE-1 form. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

13. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/122/RGD /2012-13 dated 30.04.2013.

14. The revision application is disposed off in terms of above.

15. So ordered.

*(Signature)*  
29/4/18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 132/2018-CX (WZ) /ASRA/Mumbai DATED 20.04.2018.

To,  
M/s. Pidilite Industries Ltd.  
Plot No. A-21 & 22/1, MIDC,  
Mahad-402 309, Dist. Raigad.

**True Copy Attested**

*(Signature)*

एस. आर. हिरुलकर  
S. R. HIRULKAR  
(C.A.-C)

Copy to:

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

