



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. 195/414/13-RA / 576

Date of Issue: 28/05/2018

ORDER NO. 160/2018-CX (WZ) /ASRA/Mumbai DATED 21-05-2018 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. TRISTAR INTERNATIONAL, 206, Sahakar Bhavan, Narayan Nagar, L.B.S. Marg, Ghatkopar (West), Mumbai-400 086.

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 / 896/RGD/2012 dated 13.12.2012 passed by the Commissioner of Central Excise (Appeals-II) Mumbai.



## ORDER

This revision application is filed by M/s. Tristar International, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. No.US/896/RGD/2012 dated 13.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant, a Merchant-Exporter, had cleared finished excisable goods, from the Factory of a Manufacturer, namely, M/s. Moflex Suspensions Pvt. Ltd., Vadodara, on payment of Central Excise Duty of Rs.1,67,684/- (Rupees One Lakh Sixty Seven Thousand Six Hundred Eighty Four only) vide ARE- 1 No., 199 dated 21.2.2011. After having exported the duty-paid Consignment of finished excisable goods, the applicant filed their Rebate Claim, enclosing all necessary documents, as required under the provisions of Rule 18 of the Central Excise Rules, 2002, read with, Notification, 19/2004-C.E. (N.T.), dated 6.9.2004, except Duplicate copy of ARE-1 No.,199, dated 21.2.2011, which was lost or mis-placed and in lieu of the said copy of ARE-1, they had filed Duplicate copy of ARE-1, duly reconstructed by the concerned Customs / Excise Authority. The Deputy Commissioner , Central Excise, Rebate, Raigad vide Order-in-Original No., 786/11-12/ Asstt. Commr. (Rebate)/Raigad, dated 4.6.2012 rejected the said rebate claim on the ground that the duplicate copies of ARE-1 as required under paragraph 8.3 of the Chapter 8 of CBEC Manual of Supplementary Instructions were not submitted.

3. Being aggrieved by the said Order-in-Original the applicant file appeal before Commissioner (Appeals), who vide his Order-in-Appeal No., US/896/RGD12012, dated 13.12.2012, dismissed the Appeal of the applicant, by upholding the Order-in-Original and accordingly, rejected the Rebate Claim of the applicant. While dismissing the Appeal of the applicant, the Commissioner (Appeals) observed that submission of Duplicate copy of ARE-1, is mandatory requirement, as held by the Divisional Authority, in case of BAJAJ ELECTRICALS [2012 (281) E.L.T. 146 (G.O.I.)] and failure of



the applicant to produce the same, before the Rebate Sanctioning Authority, would result into denial of Rebate Claim of duty, paid on export goods.

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

- 4.1 nowhere the Excise Authorities, have alleged that the export goods, were non-duty-paid goods;
- 4.2 nowhere the Excise Authorities, have raised any apprehension about physical export of the said duty-paid goods, to a Foreign Country, on account of the fact that the Documents submitted, clearly establish that whatever goods, were cleared from the Factory premises of the Manufacturer, the same, were exported from the concerned Port of Exportation, as attested by the concerned Preventive Customs Officer;
- 4.3 it is also a question of fact that the Duplicate copy of ARE-1, in question, was lost or mis-placed. However, being very diligent and Law abiding, the applicants, had filed F.I.R. and also obtained Duplicate copy of ARE-I, in question, duly reconstructed by the concerned Excise/Customs Authority;
- 4.4 The applicant also furnished Indemnity Bond, to the concerned Excise Authority;
- 4.5 all other Documents, clearly reveal that the excisable goods, which were cleared from the Factory premises of the Manufacturer, namely, M/s. Moflex Suspensions Pvt. Ltd., on payment of Central Excise Duty, with a Claim for Rebate, were duly exported to the Foreign Country and this being the position, when the factum of export, is not denied, the Rebate Claim, cannot be denied.
- 4.6 In this connection, the Applicants, rely upon the judgement of the Honourable Madras High Court, in case of TABLETS INDIA PVT. LTD., VERSUS, JOINT SECRETARY, MINISTRY OF FINANCE AND COMM., OF C. EX., & CUS., CHENNAI-I, [2010-TIOL-652-HC-MAD-CX]

By now it is settled question of Law that export means ~~to Duty~~ of Excise and therefore, if, any Duty of Excise, is paid on such



export goods, the same is not to be retained by the Central Government and to be returned back to the Exporter, so long as the factual position of duty-paid goods, has not been denied. Export means no duty, is supported by / / the following decisions:

2007 (219) E.L.T. 917 (Tri.Bang.)  
C.C.E., CALICUT VERSUS AMBADI ENTERPRISES LTD.

2006 (205) E.L.T. 619 (Tri.-Del.)  
EVES FASHIONS VERSUS C.C.E., DELHI-II.

2007 (216) E.L.T. 379 (Tri.-Kolkata)  
C.C.E., KOLKATA-I VERSUS KRISHNA TRADERS.

2008 (226) E.L.T. 734 (Tri.Kolkata)  
KRISHNA TRADER VSERSUS C.C.E., KOLKATA-III.

2007 (208) E.L.T. 296 (Tri.- Kolkata)  
C.C.E., KOLKATA-I VERSUS RAHUL COMPUTEX PVT. LTD.

4.7 attention, is invited to the decision, IN RE:GARG TEX-0-FAB PVT. LTD., reported in [2011 (271) E.L.T. 449 (G.O.I)], wherein, the Government has observed that merely because ARE-1 is lost, the Rebate Claim of duty, paid on export goods, cannot be denied, so long as other Export Documents, clearly establish that the finished goods, have been duly exported, on payment of Central Excise Duty, with a Claim for Rebate and this over-rules the contention of the Authorities, below.

In the said decision, the Government has observed that the Exporter, under such circumstances, should have re-constructed ARE-1s but in this connection, the Applicants, would like to disclose a vital fact, which is a real truth that the Excise Authorities and the Customs Authorities, never co-operate in such matters and therefore, re-construction of such Documents, is almost impossible for an Exporter.

4.8 attention, is further invited to the decision No., 15-16/99, dated 26.2.1999, passed by the Government of India STEELCO GUJARAT LTD. (ANNEXURE:13, hereto) wherein



also, when a copy of ARE-1/ARE-4, was lost, Rebate was allowed.

- 4.9 In case of C.C.E., CHANDIGARH, VERSUS, KANWAL ENGINEERS, [1996 (87) E.L.T. 141 (Tribunal)], annexed hereto, as ANNEXURE:14, the Honourable Tribunal, has maintained that even Shipping Bill alone, is a sufficient Proof of Export, when other Export Documents are unfortunately not available and where Shipping Bill itself establishes that the excisable goods have been duly exported and this clearly overrules the Orders of the Authorities, below.
- 4.10 in the premises, it is respectfully, requested to direct the Original Authority, to grant Rebate in question, with Interest.
- 4.11 The Decision, relied upon by the Respondent, IN RE: BAJAJ ELECTRICALS, is over-ruled by the Judgement of the Honourable Madras High Court, in case of TABLETS INDIA PVT. LTD., cited hereinabove.

5. A Personal hearing was held in this case on 14.03.2018 and Shri Avinash Singh Budhiraja, Director, and Shri Prasad Badle, Export Manager, appeared for hearing. As regards the delay of 7 days in filing the revision application, the applicant informed that O-I-A was received on 19.12.2012 by them and they had sent the revision application to Joint Secretary (R.A.) office which was received on 08.03.2013 and produced a copy of Postal Tracking slip. Hence the revision application has been filed within 3 months. Accordingly Government holds that that revision application has been filed within stipulated time and there is no need of COD. The applicant reiterated the submissions made in revision application and pleaded that FIR for the loss of ARE-1 has been filed; indemnity bond furnished; foreign remittances received; and in view of the case law of M/s. Tablet India by the High Court of Madras, substantive benefit of rebate may not denied due to mere procedural anomalies where proof of export and foreign remittances have been obtained. It was 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 on the ground that the duplicate copies of ARE-1 as required under paragraph 8.3 of the Chapter 8 of CBEC Manual of Supplementary Instructions were not submitted by the applicant. Commissioner (Appeals) vide impugned Order in Appeal while dismissing the appeal observed that observed that submission of Duplicate copy of ARE-1, is mandatory requirement, as held by the Revisional Authority, in case of BAJAJ ELECTRICALS [2012 (281) E.L.T. 146 (G.O.I.)] and failure of the applicant to produce the same, before the Rebate Sanctioning Authority, would result into denial of Rebate Claim of duty, paid on export goods.

8. Government in the instant case notes that the Duplicate copy of ARE-1 No. 199/10-11 dated 21.02.2011 was lost and in lieu of the same the applicant had filed duplicate copy of ARE-1, duly attested by the Customs Authority. The applicant also filed an FIR dated 23.06.2011 with Mata Ramabai Ambedkar Marg police Station, Mumbai(West) for the loss of the said ARE-1. Further, the applicant had also executed an Indemnity Bond on 09.08.2011, indemnifying the Government for the loss, if any suffered on account of grant of rebate despite the Duplicate copy of ARE-1 being lost.

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 :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy*



*form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and 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*





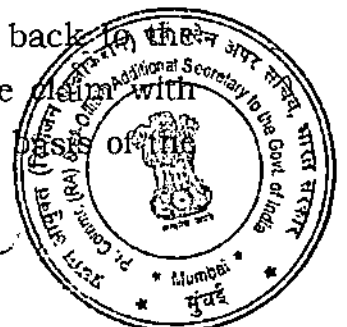
*submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable 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 are squarely applicable to this case also. Further, from the Order-in-Original No.786/11-12/DC(Rebate)/Raigad dated 04.06.2012, Government observes that applicant has submitted the following documents to the rebate sanctioning authority along with his claims:

1. Original ARE-1 duly endorsed by the officer of Customs,
2. Triplicate copy of ARE-1 (received in sealed envelope) duly endorsed by the Supdt in-charge of the manufacturing unit,
3. Excise Invoices under which the export goods were removed from the factory of manufacturer,
4. Self attested copies of Shipping Bills /Bills of Lading and Mate Receipt,
5. Declaration/undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same,
6. Bank Realisation Certificate,
7. Disclaimer Certificate,

Moreover, during the personal hearing, the applicant has also submitted duplicate copy of Bank Realization Certificate (BRC). Therefore, Government holds that as the bonafides of export are proved and BRC has been received, the rebate claim should not be withheld for non-production of Duplicate 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



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 Duplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. 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/896/RGD/2012 dated 13.12.2012.

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

15. So ordered.

*(Handwritten Signature)*  
21.5.2018

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

ORDER No. 160 /2018-CX (WZ) /ASRA/Mumbai DATED 21.05.2018.

**True Copy Attested**

To,  
M/s. Tristar International.,  
Unit # 1, Bombay Co-op. Ind. Estate,  
Narayan Nagar, NSS Road,  
Ghatkopar (W), Mumbai 400086, India

*(Handwritten Signature)*  
25/5/18

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

Copy to:

1. The Commissioner of GST & CX, Belapur 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 (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

