

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.195/525/2013-RA,
195/343-344/2014-RA,
195/57/2015-RA

Date of Issue: 01.06.2018

ORDER NO. 162-165 /2018-CX/ASRA/MUMBAI DATED 16.05.2018 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.

Sl.No.	Revision Application No.	Applicant	Respondent
1.	195/525/2013-RA	M/s Heranba Industries Limited, Mumbai 400 092	Commissioner, Central Excise, Raigad
2.	195/343-344/2014-RA	M/s Heranba Industries Limited, Vapi, Gujarat.	Deputy Commissioner, Central Excise, Customs and Service Tax, Division I Vapi, Daman.
3.	195/57/2015-RA	M/s Heranba Industries Limited, Mumbai 400 092	Commissioner, Central Excise, Raigad

Subject :Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders in Appeal No. BC/494/RGD(R)/2011-12 dtd. 31.12.2012 passed by Commissioner, Central Excise (Appeals), Mumbai-III, DMN/EXCUS/000/APP-137&138/14-15 dtd. 01. 08. 2014 passed by Commissioner (Appeals), Central Excise, Customs and Service Tax, Daman and CD/11/RGD/2014 dated 24.10.2014, passed by Commissioner, Central Excise (Appeals), Mumbai- Zone-II respectively.



ORDER

These Revision applications are filed by Heranba Industries Limited Mumbai / Vapi,Gujarat (hereinafter referred to as 'applicant') against the Orders-in-Appeal as detailed in Table below passed by Commissioner (Appeals) of Central Excise Mumbai Zone-II and The Commissioner (Appeals) of Central Excise Custom & Service Tax, Daman.

TABLE

Sl. No.	R.A.File.No	Order-In-Appeal No.	Order- In-Original No.	Remark
1.	195/525/2013-RA	BC/494/RGD(R)/2011-12 dtd. 31.12.2012	1172/12-13/DC (Rebate)/Raigad dated 26.07.2012	On remand, Rebate claim of Rs. 43,66,661/-was rejected by Original Authority and said order was upheld by the Appellate Authority
2.	195/343-344/2014-RA	DMN/EXCUS/000/APP-137 & 138/14-15 dtd. 01. 08. 2014	Vapi-I /Rebate / 03 / 2014-15 dated 02.04. 2014 & Vapi-I /Rebate / 04 / 2014-15 dated 02.04.2014	The Original Authority forfeited the rebate amounting to Rs. 49,72,457/- and Rs. 34,34,525/- from the rebate claimed by the applicant and the said order was upheld by the Appellate Authority
3.	195/57/2015-RA	CD/11/RGD/2014 dated 24.10.2014	Raigad/ADC/26/(SJ) 13-14 dated 30.08.2013	Original Authority confirmed protective demand of erroneously sanctioned rebate claims of Rs. 43,66,661/- and the said order was upheld by the Appellate Authority

2. The brief facts of the case are that the applicant had filed five rebate claims altogether amounting to Rs. 43,66,611/- (Rupees Forty Three Lakhs Sixty Six Thousand Six Hundred and Eleven only) before the Assistant Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority issued deficiency memo dated 12.09.05 to the applicant for certain discrepancies. In reply the applicant informed the Department that they have lost copies of the 5 ARE- ls. The Assistant Commissioner (Rebate), Central Excise, Raigad vide Order in Original No. 367/07-08 dated 08.05.07 rejected the rebate claims on the grounds that submission of original documents were statutory requirement. Aggrieved by the rejection of claims, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Mumbai-II Zone and vide Order in Appeal No. SRK/ 373/ RGD/2007 dated 01.10.2007, the Commissioner (Appeals) allowed the appeal and set



aside the impugned Order in Original. Aggrieved by this Order, the department filed Revision Application before the Joint Secretary (RA) against the said Order in Appeal.

3. Meanwhile, the applicant vide their letter dated 04.04.2008 requested the Department that if the pending rebate claims were sanctioned within 10 days, they would not claim any interest and also gave undertaking that they will refund the amount to the Department only after final decision of the revision application. Therefore, the Assistant Commissioner (Rebate), Central Excise, Raigad vide Order in Original No. 591/08-09 dated 16.04.2008 sanctioned an amount of Rs. 43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred and Eleven) as per directions given in Order in Appeal No. SRK/373/ RGD/2007 dated 01.10.2007. Simultaneously, Protective demand cum Show Cause Notice dated 20.06.2008 was issued to the applicants demanding an amount of Rs. 43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred and Eleven) of erroneously sanctioned rebate claims, along with applicable interest.

4. The Revision Authority vide GOI Order No, 1228/10-CX dated 21.07.2010 set aside the Order in Appeal dated 01.10.2007 and remanded the case back to the Original Adjudicating authority to decide the case afresh after giving proper opportunity to the applicant.

5. The Deputy Commissioner (Rebate), Raigad, decided the case in denovo and rejected the rebate claims of the applicants vide Order in Original No. 1172/12-13 dated 26.07.2012, on the grounds that the applicant had not complied with the requirements of point 134(a) of Board's Letter F. No. 1719-CX-II/51 dated 23.05.1955 in respect of case where original AR 4 is lost and non-submission of statutory documents i.e. ARE-1 is cannot be treated as minor defect for purpose of granting rebate. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals) against vide Order in Original dated 26.07.2012 and vide Order in Appeal No. BC 494/RGD/(R)/2012-13 dated 31.12.2012, the commissioner (Appeals) also rejected the appeal of the applicant.

6. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **No. 195/525/2013-RA (Sr. No. 1 of Table at para 1 above).**

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7. The Additional Commissioner, Central Excise, Raigad then decided the protective demand cum SCN dated 20.06.2008 issued to the applicant wherein he confirmed the demand of Rs. 43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred and Eleven) and ordered for recovery of interest vide Order in Original NO. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013.

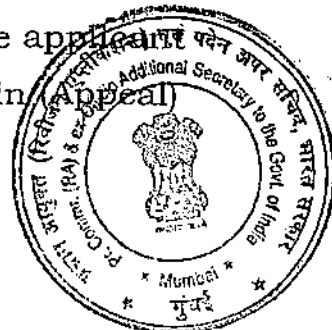
8. The Deputy commissioner of Central Excise, Maritime rebate Raigad, issued Appendix-I dated 30.12.2013 under section 142 (1)(c)(ii) of the Customs act, 1962 for realization of Govt. dues from the applicant for a sum of Rs. 43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred and Eleven) along with applicable interest. The applicant had been asked to produce a stay against realization of Govt. dues, however, no such stay had been produced by them.

9. The Jurisdictional Range office vide his letter dated 02.04.2014 worked out the interest liabilities to Rs. 40,40,371/- (Rupees Forty Lakh Forty Thousand Three Hundred Seventy One) on the amount of Rs. 43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred and Eleven) . Thus, the total amount to be recovered came to Rs. 84,06,982/- (Rupees Eighty Four Lakh Six Thousand Nine Hundred Eighty Two).

10. The applicant had also filed rebate claims for Rs.1,14,01,83/- (Rupees One Crore Fourteen Thousand One Hundred and Eighty Three only) before the Deputy Commissioner Central Excise, Division-I, Vapi of Daman Commissionerate. The Deputy Commissioner Central Excise, Division-I, Vapi sanctioned the entire amount as claimed but deducted altogether amount of Rs. 84,06,982/- (i.e. Rs. 49,72,457/- vide OIO No. VAPI-I/REBATE/03/2014-15 dated 02.04.2014 and Rs. 34,34,525/- vide OIO No.VAPI-I/REBATE/04/2014- 15 dated 02.04.2014) towards recovery of the Government dues from the applicant on the basis of Appendix-I dated 30.12.2013 under section 142 (1)(c)(ii) of the Customs Act, 1962 issued by the Deputy commissioner of Central Excise, Maritime rebate Raigad.

11. Being aggrieved by the aforesaid Orders in Original, the applicant filed appeal before Commissioner (Appeals), who vide Order in

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No. DMN/EXCUS/000/APP-137&138/14-15 dtd. 01.08.2014 rejected the appeal.

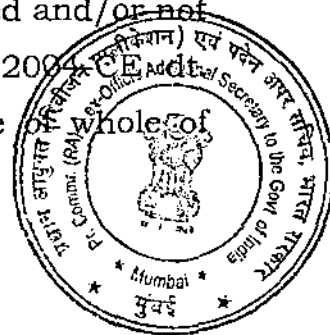
12. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **RA No. 195/343-344/2014-RA (Sr. No. 2 of Table at para 1 above)**.

13. The applicant also filed appeal against the Order in Original NO. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 passed by the Additional Commissioner, Central Excise, Raigad confirming the protective demand of erroneous refund of Rs.43,66,611/- (Rupees Forty Three Lakh Sixty Six Thousand Six Hundred Eleven) alongwith the interest. However, Commissioner (Appeals) vide Order in Appeal No. CD/11/RGD/2014 dated 24.10.2014 rejected the appeal of the applicant.

14. Being aggrieved by the said Order in Appeal, the applicant preferred an appeal before the Joint Secretary (RA), New Delhi vide **RA No. 195/57/2015-RA (Sr. No. 3 of Table at para 1 above)**.

15. Being aggrieved by the impugned Orders in Appeal mentioned in the Table at para 1 above, the applicant have filed these Revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following common grounds:

- that both the lower authorities i.e. Dy. Commissioner of Central Excise (Rebate) & Commissioner of Central Excise (Appeals) Mumbai-II have failed to appreciate the true facts and circumstances of the case and also, the true purport and effect of Scheme of Rebate of duty paid on export as provided under Rule 18 of Central Excise Rules, 2002 as well as procedure prescribed through Notification No.19/2004-CE dt. 06.09.2004 and rejected the appeal of the applicant which is contrary to and inconsistent with the said Rules and the various binding, precedents and guidelines issued thereunder. It is also submits that the impugned order is misconceived as well as cryptic as a result of non-application of mind. Hence, it deserves to be set aside.
- that both the lower authorities have completely ignored and/or not considered the aspect of the Notification No. 19/2004-CE dt. 06.09.2004 which speaks about the grant of rebate



duty paid on exported goods, subject to the conditions that the duty should be paid on goods and goods should be exported out of India, which is a substantial provision to neutralize the taxes levied on the export goods, making our goods more competitive in international market. In the present case, the Applicants filed refund claim of Excise duty paid on the clearance of the goods exported out of India in terms of Rule 18 of CER, 2002.

- that both the lower authorities have rejected the claim of the applicant, beyond the scope of the guidelines provided vide Govt. of India Order No.1228/10-CX dt. 21.07.2010 vide which the Hon'ble Joint Secretary has remanded the case to the lower authority to scrutinize the aspect of Board letter F. No.17/19-CX-II/51 dt. 23.05.1955, whether the applicant has complied the same or not. The Hon'ble Joint Secretary has also directed to the lower authority to check whether the applicant can able to satisfy the export of the duty paid goods on the basis of collateral documents available with them as per the provision of Notification No.19/2004-CE(NT) dt. 06.09.2004 or not.
- That they had initially filed the above documents to the department alongwith rebate claim application dt.07.06.2005 as evident from the rebate claim application attached with the Revision Application. However, the said documents were also scrutinized by the department which is evident from the deficiency memo issued by the department on 12.09.2005 to the applicant under which submission of Original copy of Original, Duplicate & Triplicate ARE-1 were not in dispute. However, the documents listed above were lost by the employee of the applicant while travelling in the local train on 18.11.2005 when he was going to re-submit the rebate claim to the department. After searching the said documents in the trains, platforms and station masters, the applicant filed a complaint with the Railway Police Station Churchgate, Mumbai on 30.11.2015 in this regard. However, upon the request of the applicant the concerned Police station made an enquiry and had issued a certificate/FIR for the loss of the aforesaid documents vide FIR dt. 05.12.2015. That after loss of the aforesaid original documents, the applicant approached to the concerned officer to take certified copy of ARE-1s from the Excise

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as well as Customs department and after receipt of the certified copy of the said documents the applicant submitted the same with the rebate sanctioning authority

- that they had additionally submitted following document to corroborate that the goods in question has been duty paid and same has been exported out of India.

a) Bank Realization Certificate: (Additional documents) Self attested BRC submitted vide letter dt. 05.03.2012.

b) Copy of RG23A Part-II evidencing payment of Central Excise duty on removal of the goods submitted vide letter dt. 07.04.2006

c) Original indemnity bond for five ARE-1s duly signed and notarized by the Notary public for the lost of the documents. submitted vide letter dt. 07.04.2006

d) Copy of letter issued by the Customs department under their letter File No. SG/MISC./2006/verification/SIIB(X)3NCH to the rebate sanctioning authority verifying the genuineness of the export. Submitted vide letter dt. 05.03.2012.

e) Rebate sanctioning authority has also verified the genuineness of the duty payment on the exported goods from the Range Superintendent of Central Excise who has jurisdiction over the factory of manufacture from where the goods were removed/cleared for export.

f) Additionally self attested Xerox copy of Commercial Invoice, packing List, Mate Receipt were also submitted by the applicant vide their letter dt. 08.12.2005.

- that while rejecting the rebate claim rebate sanctioning authority in their impugned Order-In-Original dt. 26.07.2012, stated that the applicant has not complied with the requirement of procedure proscribed under Board F. No. 17/19-CX-II/51 dt. 23.05.1955, as the board has set out the uniform procedure for construction of ARE-1 Form. When the original AR-4 is lost by the exporter, he should obtain a certified copy of the Original from the Central Excise officer concerned on payment of a fee of Rs. 1074 as prescribed under Rule 224B and resent it to the customs collector



as usual. In this regard, they submit that the aforesaid circular dt. 23.05.1955 provides that the exporter can take certified copy of the ARE-1 from the concerned department on payment of Rs.30 prescribed Fee under Rule 224 B in case of loss of Original AR-4 (Now ARE-1). However, in the present case the applicant has obtained the certified copy of the concerned Central Excise as well as Customs department without paying applicable fee which is not required to pay, as Rule 224B is repealed at the relevant time. It is very important to note that the basic purpose of the aforesaid Circular is to sanction the rebate claim on the basis of certified copy issued by the concerned department, which, the applicant has followed and taken certified copy from the concerned authorities.

- that the rebate sanctioning authority while rejecting the rebate claim the remand back proceeding, stated that the reliance placed by applicant on Para 13.7 of Chapter 7 of the CBEC manual of instruction, 2005 is not tenable because the said Para is applicable to goods exported under Bond. In this regard, the applicant state that it is provided under the Para 13.7 of Chapter 7 of the CBEC manual of instruction, 2005 as well as 2015-16 also that in case of any loss of documents, the Divisional officer or the bond accepting authority may get the matter verified from the customs authority at the place of export or may call for collateral evidences such as remittance certificate, Mate's receipt etc to satisfy himself that the goods have actually been exported. However, the said Para is provided for the satisfaction of the officer accepting the proof of export towards goods exported/cleared under bond, which prescribed same procedure like export goods cleared on payment of duty. The difference between both the procedures is only that in rebate claim the applicant pays duty on removal and claim refund of the same on receipt of the export documents and in export of goods under Bond, the applicant clears the export goods under bond without payment of duty and release the bond after receipt of the export documents. For both the procedures Rule 18 and Rule 19 of Central Excise Rules, 2002 is prescribed by the Govt. It is submitted that both the Rules, i.e. Rule 18 and Rule 19 is para-materia to each other. Hence, the provisions of Para 13.7 of Chapter 7 of the CBEC manual of instruction, 2005 as well as



2015-16 is applicable to Rule 18 of Central Excise Rules, 2002 and this case also.

- the view taken by both the lower authority i.e. non availability of - al and Duplicate copy of ARE-1 for rejection of the legitimate of the applicant is technical one and on the basis of technical s, the export incentive like refund and rebate of export goods should not be denied. However, both the lower authority has not denied the fact of export or not produced any single evidence towards the diversion of impugned goods in domestic market. Hence in absence of allegation that export not taken place, rebate be refunded to the applicant. The applicant relied upon the following judgment in their support of view taken above:

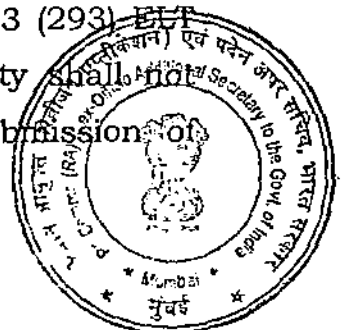
Shreeji Colours Chemicals Industries Vs. Commissioner of Central, Vadodara [2009(233) ELT 367 (Tri.-Ahmedabad)].

M/s Model Buckets and Attachments (P) Ltd. Vs. Commissioner of Central Excise, Belgaum [2007 (217) ELT 264(Tri.-Bang)].

Collector of Central Excise Chandigarh Vs. Kanwal Engineers [1996 (87) ELT 141 (Tri.)],

Wonderseal Packing Vs. Commissioner of Central Excise, Nagpur [2002(147) ELT 626 (Tri.-Del)]

- that the Hon'ble Joint Secretary has allowed various Rebate cases on the basis of certified copy of the Original & Duplicate ARE-1. Hence, the present case should also be allowed by applying the aforesaid decision which are as under:
 - a) GOI Order No.358/14-CX dt. 26.11.2014 in the matter of M/s United Phosphorus Ltd., Mumbai Vs. CCE, Raigad.
 - b) GOI Order No.1243/10-CX dt. 26.07.2010 in the matter of M/s Union Quality Plastics, Mumbai Vs. CCE, Mumbai.
 - c) in view of above, the applicant prayed for setting aside the impugned Order in Appeal passed by the Commissioner (Appeals) of Central Excise, Mumbai Zone-II and Commissioner (Appeals) of Central Excise, Daman.
- that the Hon'ble Mumbai High Court in the matter of M/s U. M. Cables, Mumbai Vs. Union of India, reported as [2013 (293) ELT 641(Bom)] has held that rebate sanctioning authority shall not reject the rebate claim on the ground on non-submission of



Original and Duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled.

- that in the matter of M/s Zandu Chemicals Ltd. Vs. Union of India [2015(315)ELT 520 (Born)], the Hon'ble Mumbai High court has held that even if these originals and duplicate copies are not submitted, then, there were other documents like shipping bill dated 31st October, 2005 on which ARE-1 No. 57, dated 29th October, 2005 was mentioned. The details of shipping bill, rotation number, sailing date were got verified by the adjudicating authority from the concerned range office and they were found to be correct. Hence the rejection of the rebate claim only due to non-submission of original and photocopy of ARE-1 was not upheld by the Commissioner of Central Excise (Appeals).
- that both the lower authority has not denied the fact of clearance of goods from factory, duty paid nature of export goods and subsequent its exports. Hence, when the core aspect of Rule 18 of Central Excise Rules, 2002 is completed by the applicant, the duty paid on the exported goods should be refunded. The applicant relied upon the following judgment in support of the view taken above:
 - a. UNION OF INDIA vs. SUKSHA INTERNATIONAL & NUTAN GEMS & ANR. Reputed under 1989 (39) E.L.T. 503 (S.C.) Interpretation of Statute - Beneficial provision - Interpretation unduly restricting the scope of a beneficial provision to be avoided so that it may not take away with on hand what the policy gives with the other.
 - b. Govt. Of India Order No. 267/05 dated 30.06.2005 passed by your honor in the matter of M/s Bhagirath Textile Ltd., Nagpur vide the above judgment it has been decided that Rebate/drawback etc. Are exported-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 schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given is case of any technical breaches.



c. In the matter of Revision Application filed by M/s Tricon Enterprises Pvt. Ltd. {2015(320)ELT 667(GOI)}, the Hon'ble Joint Secretary has held that when substantial condition of export of duty paid goods established, rebate claim cannot be disallowed. Merely technical interpretation of procedures to be avoided in export-oriented schemes if substantive fact of export evidenced.

d. In the matter of Union of India Vs. A. V. Narasimhalu [1983(13)ELT 1534 (SC)1, the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

e. In the matter of Formica India Vs. Collector of Central Excise [1995 (77) ELT 51(SC)], the Apex Court has observed that once a view is taken that the party would have been entitled to the benefit of the notification has they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical ground that the time when they could have done so, had elapsed.

- Similarly, in RA No.195/343-344/2014, the applicant contended that the deduction and appropriation of the present sanctioned rebate claims would amount to ex-parte, unilateral recovery of dues, which shall not be in conformity with the legal position as they had challenged the OIO No. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 passed by Additional Commissioner, Central Excise Raigad before Revisionary authority New Delhi , which had not yet attained finality.
- As regards RA No. 195/57/2015, the applicant submitted that their first Appeal against Order in Appeal No. BC/494/RGD(R) 2012-13 dated 15.01.2013 (RA No.195/525/2013) and the said appeal is pending for final decision before the Joint Secretary (R.A.) and subsequently 2 more appeals have been filed against the OIA passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vapi (RA No.195/343-344/2014), hence the applicant prayed that all these appeals be clubbed at the time of personal hearing.



16. The issue involved in all these four Revision Applications being common and interconnected, they are taken up together and are disposed of vide this common order.

17. A Personal hearing was held in this case on 22.02.2018 and Shri M.V. Godbole, G.M. Finance, and Shri D.K. Singh, Advocate, duly authorized by the applicant appeared for hearing. None appeared on behalf of the respondent department. Out of the above Revision Applications there was a delay of 28 days in filing Revision Application No. 195/57/2015-RA by the applicant for which they had filed the Misc. Application for Condonation of delay (COD). Government first proceeds to take up the application for condonation of delay in filing the revision application by the applicant. The Government has observed that the applicant sought condonation on the ground that applicant Advocate's mother aged 89 was sick and admitted in Hospital and Advocate was out of station to take care of his mother. He handed over the appeal petitions only on 06.02.2015 to the company's staff members for signature. The authorized signatory was on business tour and factory visit hence formality was not completed within stipulated time limit. In such circumstances there was delay in submission of this appeal petition to the Revisionary Authority. The applicant filed this revision application in 9 days after initial 90 days period, which falls within condonable limit of 90 days. Applicant in his COD application further submitted that the delay of 28 days in filing appeal before Revision Authority was unintentional and that they have a strong arguable case in their favour. Government observes that there was a delay of 28 days on the part of the applicant in filing this revision application. Considering the reasons advanced by the applicant in his COD application and since the revision application is filed within extended condonable period of three months, in the interest of justice and in exercise of powers vested in it under Section 35EE of Central Excise Act, 1944, Government condones the delay of 28 days in filing the instant application and proceeds to adjudicate the case on merits.

The applicant in the personal hearing has reiterated the written submission filed through Revision Applications and also reiterated the written submissions made in their 4 Revision Applications with written brief and case laws. It was pleaded that in view of the same Orders in Appeal be set aside and Revisions Applications be allowed.

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

19. Government first takes up Revision Applications at **Sl. No. 1 of Table at para 1**, viz. bearing No. **195/525/13-RA** (arising out of Order in Appeal No. BC/494/RGD(R)/2012-13 dated 31.12.2012).

20. Government in the instant case notes that the applicant had filed five rebate claims altogether amounting to Rs.43,66,611/- before the Assistant Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority rejected the rebate claims on the grounds that submission of original documents were statutory requirement. Aggrieved by the rejection of claims, the applicant filed an appeal before the Commissioner (Appeals), who allowed the appeal and set aside the impugned Order in Original. Aggrieved by this Order, the department filed Revision Application before the Joint Secretary (RA) against the said Order in Appeal. The Revision Authority vide GOI Order No, 1228/10-CX dated 21.07.2010 remanded the case back to the Original Adjudicating authority to decide the rebate claims filed by the applicant after giving proper opportunity to them. The Deputy Commissioner (Rebate), Raigad, decided the case in denovo and rejected the rebate claims of the applicants vide Order in Original No. 1172/12-13 dated 26.07.2012, on the grounds that the applicant had not complied with the requirements of point 134(a) of Board's Letter F. No. 1719-CX-II/51 dated 23.05.1955 in respect of case where original AR 4 is lost and non-submission of statutory documents i.e. ARE-1 is cannot be treated as minor defect for purpose of granting rebate. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals) against vide Order in Original dated 26.07.2012 and vide Order in Appeal No. BC/494/RGD/(R)/2012-13 dated 31.12.2012, the commissioner (Appeals) also rejected the appeal of the applicant.

21. While rejecting the appeal of the applicant the Commissioner (Appeals) at paras 8 and 9 of the impugned order observed that

" Both the Original Adjudicating Authorities vide Orders dt. 8.5.2007 and 26.7.2012 rejected the rebate claims for non-submissions of original ARE-1s. The ARE1 involved in the instant case are (i) 276 dt. 28.3.2005 (ii)04 dt. 04.04.2005,(iii) 08 dt. 05.04.2005,(iv) 19 dt.17.4.2005 and (v) 31

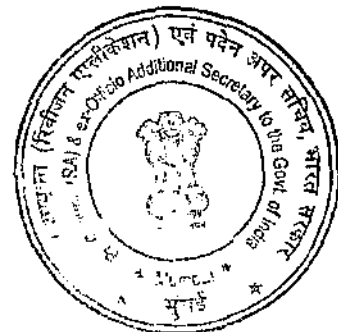


dt. 2.5.2005. I have perused the appellants letter dt. 30.11.2005 written to Inspector, Railway Police Station, Churchgate, Mumbai, wherein the details of the lost documents were written. The details of lost documents are as follows:

1. VAPI/II/04/05-06 Central Excise Invoice No.6 dt. 4.4.2005
2. VAPI/II/ 19/05-06 Central Excise Invoice No.30 dt. 17.4.2005
3. VAPI/11/276/04-05 Central Excise Invoice No.579 dt. 28.3.2005
4. VAPI/11/08/05-06 Central Excise Invoice No.10 dt. 5.4.2005
5. VAPI/11/31/05-06 Central Excise Invoice No.44 dt. 2.5.2005

This complaint letter dt. 30.11.2005, is about loss of the above documents i.e. loss of Central Excise Invoices. The complaint is not about loss of Original or Duplicate ARE 1s. The appellants have not given details of any ARE 1 in the above complaint letter. Even the Certificate issued by, the CCG Railway Police Station, Mumbai dt. 5.12.2005 certifies report of loss of (1) VAPI/11/04/19/08/031 and VAPI/II/276/04-05 Original and Duplicate and Original gate pass No. 6, 30, 579, 10 and 44. It does not certify the loss of any Original / Duplicate ARE1. Hence, the basic question arises whether the appellants have lost the Original and Duplicate ARE 1 s and whether their claim is correct or otherwise. Further, it appears that the complaint was lodged after a lapse of 6 months. These major discrepancies show the casual approach of the appellants.

8. It can be questioned that when the GOI vide order dt. 23.7.2010 remanded the case with the observations that "original Adjudicating Authority to decide the case afresh after giving proper opportunity to the respondent who may submit all the requisite collateral documents to prove the export of the duty paid goods as per provision of Notification No.19/2004-CE(NT) read with Rule 18 of the Central Excise Rules, 2002, whether the issue of appellant claim of loss of Original and Duplicate copies of ARE 1 is proper at this stage". Here I observe that facts of the case cannot be changed and the fact is that there is nothing on record which shows that the appellants have lost Original and Duplicate subject ARE 1 s. When the claim of loss of documents itself is doubtful and no proof to that effect has been submitted, no rights accrue to the appellants for non-submission of original and duplicate ARE 1 s.



22. Government has perused the copy of applicant's letter dated 30.11.2005 addressed to the Inspector Railway Police Station, Churchgate, Mumbai regarding 'Loss of Office Bag' and also the certificate issued by Churchgate Railway Police Thane, Mumbai. The said letter clearly mentions "We lost as follows original & duplicate ARE-1 forms & Original Central Invoice Pink copy". Below this the applicant has clearly mentioned the Nos. of ARE-1s lost along with Central Excise invoices which are incidentally matching with the ARE-1 Nos appearing in the Order in Original No. 1172/12-13/DC (Rebate)/Raigad dated 26.07.2012. The aforesaid letter dated 30.11.2005 clearly indicates that the concerned documents were lost on 18.11.2005 for which F.I.R had been registered on 30.11.2005. Thus Government does not find any force in the Commissioner (Appeals) observation that 'there is nothing on record which shows that the appellants have lost Original and Duplicate subject ARE 1 s' and that 'the complaint (for the loss of documents) was lodged after a lapse of 6 months' are unfounded.

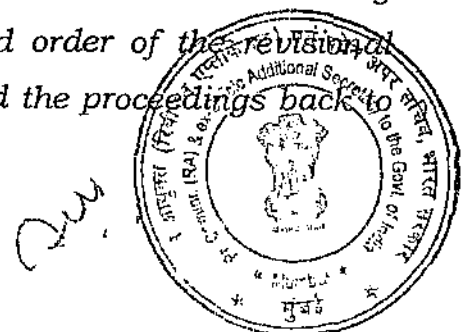
23. In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order 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 of the ARE-1 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.

24. 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".*

25. Government finds that rationale of aforesaid Hon'ble High Court orders are squarely applicable to this case. Government also observes that after the loss of Original and duplicate copies of 5 ARE-1s, the applicant had duly filed an FIR dated 30.11.2005 with Railway Police Station, Churchgate. The applicant had also executed an Indemnity Bond for 5 ARE-1s. Further, from Order in Original No. 1172/12-13/DC (Rebate)/Raigad dated 26.07.2012 it is observed that the applicant had submitted following documents vide their letter dated 05.03.2012 to the rebate sanctioning authority:

- Certified copies of all 5 (five) ARE-1s
- Copy of letter F.No. SG/Misc/2006/Verification/SIIB(X)JNCH to the Deputy/Assistant Commissioner of Central Excise, Raigad. Commissionerate verifying genuineness of shipping bills in respect of M/s Heranba Industries Ltd.
- Copies of invoices issued by M/s Heranba Industries Ltd., Vapi under Central Excise Rules, evidencing payment of duty manufactured and exporter under five ARE1s



- Five (5) Bank realization certificate of realization of export proceeds of the goods exported under ARE-1s/Shipping Bills issued in form Appendix-22 by Corporation Bank, Mumbai 400 003.

Therefore, Government holds that as the bonafides of export are not in dispute and BRC has also been received and presented, the rebate claim may not be withheld for non-production of original and duplicate copy of ARE-1.

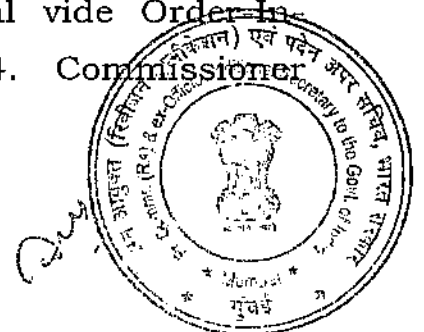
26. In view of the above, Government remands the matter back to the original authority for the purpose of verification of the claim with directions that the proper officer shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself 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 and duplicate copy of the ARE-1 forms, 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.

27. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/543/RGD (R)/2012-13 dated 28.01.2013.

28. The revision application **No.195/525/2013-RA** is disposed off in terms of above.

29. Now, Government takes up Revision Application at **Sl.No. 3 of Table** at para 1 viz. **No. 195/57/2015** (arising out of Order in Appeal No.CD/11/RGD/2014 dated 24.10.2014) for decision.

30. Government observes that a protective demand cum Show Cause Notice dated 20.06.2008 was issued to the applicants (as detailed at para 3 supra) demanding an amount of Rs. 43,66,611/- of erroneously sanctioned rebate claims, along with applicable interest. The Additional Commissioner, Central Excise, Raigad then decided the protective demand cum SCN dated 20.06.2008 issued to the applicant wherein he confirmed the demand of Rs. 43,66,611/- and ordered for recovery of interest vide Order in Original NO. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013. The applicant challenged the same before the Commissioner (Appeals) of Central Excise, Mumbai Zone II. The Commissioner (Appeals) rejected applicant's appeal vide Order in Appeal No. CD/11/RGD/2014 dated 24.10.2014. Commissioner



(Appeals) upheld Order in Original NO. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013, on the basis of Commissioner Central Excise (Appeals), Mumbai-III's, Order in Appeal No. BC/494/RGD(R)/2011-12 dtd. 31.12.2012 which had upheld Order in Original No.1172/12-13/DC(Rebate)/Raigad dated 26.07.2012. However, Government has already set aside the Order in Appeal No. BC/494/RGD(R)/2011-12 dtd. 31.12.2012 and as a consequence Order-In-Appeal No. CD/11/RGD/2014 dated 24.10.2014 which is also based on Order in Appeal No. BC/494/RGD(R)/2011-12 dtd. 31.12.2012 has become infructuous and hence impugned Order in Original No. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 confirming protective demand of Rs. 43,66,611/- which does not legally sustain at this stage. Accordingly, Government sets aside impugned Order in appeal No. CD/11/RGD/2014 dated 24.10.2014 as well as Order in Original NO. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 confirming the demand of Rs. 43,66,611/- passed by the Additional Commissioner, Central Excise, Raigad.

31. However, as the Government has remanded the original matter relating to sanction of rebate claims of Rs. 43,66,611/- to adjudicating authority for fresh adjudication which is pending, the adjudication/outcome of the protective demand issued vide Show cause notice F.No. V(15) Reb/ RC.Hernaba /Rgd/2005/6093 dated 20.06.2008 to the applicant would also depend upon the outcome of the remand proceedings and further appeals, if any, and as such the issue relating to protective show cause cum demand notice is kept open.

32. The revision application No. **195/57/2015-RA** is disposed of in terms of above.

33. Now, Government takes up Revision Applications at **Sl.No. 2 of Table at para 1 viz. Nos. 195/343-344/2014-RA** (arising out of Order in Appeal No. DMN/EXCUS/000/APP-137 & 138/14-15 dtd. 01. 08. 2014) for decision.

34. Government from the para 6 & 7 of the impugned Order in Appeal observes that the rebate sanctioning authority viz. Deputy Commissioner, Central Excise, Division-Vapi-I of Commissionerate had sanctioned Rebate claims filed by the applicant

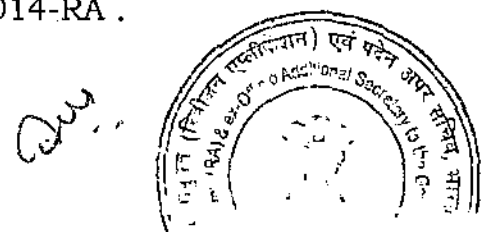


amounting to Rs.1,14,01,831/- (Rupees One Crore Fourteen Lakhs One Thousand Eight Hundred Thirty One only) but deducted amount of Rs.84,06,982/- towards recovery of the Government dues from the appellants on the basis of Appendix - I dated 30.12.2013 issued under Section 142 (1) (c) (ii) of the Customs Act, 1962, by the DCCE (Maritime Rebate), Raigad.

35. The reason for issue of the said Appendix-I for recovery of government dues of Rs.43,66,611/-(Rupees Forty Three Lakh Sixty Six Thousand Six Hundred Eleven). against the applicant confirmed by the Additional Commissioner of Central Excise, Raigad vide OIO No. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 and ordered for its recovery along with interest. The jurisdictional Range Officer vide his letter dated 02.04.2014 worked out the interest liabilities to Rs. 40,40,371/-(Rupees Forty Lakh Forty Thousand Three Hundred Seventy One) on the amount of Rs.43,66,611/-(Rupees Forty Three Lakh Sixty Six Thousand Six Hundred Eleven). Thus the total amount recoverable was Rs. Rs.84,06,982/-(Rupees Eighty Four Lakh Six Thousand Nine Hundred Eighty Two) which was recovered i.e. Rs.49,72,457/-(Rupees Forty Nine Lakh Seventy Two Thousand Four Hundred Fifty Seven) vide OIO No. VAPI-I/ REBATE/ 03/2014-15 dated 02.04.2014 and Rs. 34,34,525/- (Rupees Thirty Four Lakh Thirty Four Thousand Five Hundred and Twenty Five) vide OIO No. VAPI-I/REBATE/04/2014-15 dated 02.04.2014.

36. The Commissioner (Appeals) in his impugned Order observed that the applicant has not submitted any documentary evidence in support of their contention that they have challenged the OIO No. Raigad/ADC/26(SJ)/13-14 dated 30.08.2013 passed by the the Additional Commissioner of Central Excise, Raigad (on the basis of which the Appendix -I dated 30.12.2013 issued) before Revisionary Authority, New Delhi and has obtained stay order against the recovery. Accordingly, Commissioner (Appeals) vide impugned Order in Appeal No. DMN/EXCUS/000/APP-137 & 138/14-15 dtd. 01. 08. 2014 upheld both the impugned OIOs passed by the Deputy Commissioner, Central Excise, Division-Vapi-I and rejected the appeals filed by the applicant.

37. Being aggrieved the applicant filed two Revision Applications before Government bearing Nos. 195/343-344/2014-RA .



38. Government has already held at para 30 supra, that Order-In-Appeal No. CD/11/RGD/2014 dated 24.10.2014 which has upheld Order in Original NO. Raigad/ADC/26 (SJ)/13-14 dated 30.08.2013, passed by Additional Commissioner, Raigad confirming demand do not legally sustain. As a consequence, further recovery proceedings initiated vide Order in Original Nos. VAPI-I/ REBATE/ 03/2014-15 dated 02.04.2014 and OIO No. VAPI-I/REBATE/04/2014-15 dated 02.04.2014 by appropriating the sanctioned rebate amount against Government dues and upholding of the same vide Order in Appeal No. DMN/EXCUS/000/APP-137 & 138/14-15 dtd. 01.08.2014 also do not legally sustain.


39. Accordingly, Government sets aside impugned Order in Appeal No. DMN/EXCUS/000/APP-137 & 138/14-15 dtd. 01.08.2014. Needless to say that the recovery in this case would be subject to the outcome of the order passed by original authority on remand as ordered by the Government at para 26 supra, in respect of the rebate claims filed by the applicant, and further appeals, if any, and after following due process of law.

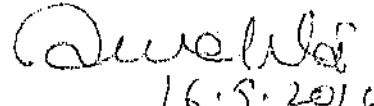
40. Revision Application No. **195/343-344/2014-RA** (Sl. No. 2 of Table at para 1) is disposed of in terms of above.

41. Accordingly, all the three Revision Applications viz. RA Nos. 195/525/2013-RA, 195/343-344/2014-RA and 195/57/2015-RA are disposed of in terms of above.

42. So, ordered.

True Copy Attested


21/5/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(CA-C)


16.5.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 162-/2018-CX (WZ) /ASRA/Mumbai Dated 16/5/2018
165

To,

1. M/s Heranba Industries Limited, 101,102, Kanchanganga, Factory Lane, Borivali (West) Mumbai 400 092.
2. M/s Heranba Industries Limited, Unit-I, Plot No.1504/1505/1506/1 3rd Phase GIDC Vapi, Gujrat- 396 191.



Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. Commissioner CGST & CX, Daman, Vapi Daman Road, Vapi, Gujarat.
4. Commissioner (Appeals) CGST & CX, Daman, Vapi, Gujrat
5. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
6. The Deputy / Assistant Commissioner GST & CX, Daman, South Daman Division
7. Sr. P.S. to AS (RA), Mumbai.
- ✓ 8. Guard file
9. Spare Copy.



काकाजी ज. ११
RAKJURIA