



**REGISTERED**  
**SPEED POST**

**F.No.198/52-54/2012-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 29/1/16..

**ORDER NO. 17-19/2016-CX DATED 28.01.2016** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 413, 414 & 415/2011-CE dated 26.12.2011 passed by Commissioner of Central Excise (Appeals-I), Bangalore.

APPLICANT : Commissioner of Central Excise, Bangalore.

RESPONDENT : M/s. Globe Technologies, Bangalore.

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## ORDER

These Revision Applications are filed by the Commissioner of Central Excise, Bangalore – II Commissionerate against Order-in-Appeal Nos. 413, 414 & 415 / 2011 – C.C dated 26.12.2011 passed by the Commissioner of Central Excise (Appeals-I), with respect to the Orders-in-Original dated 01.04.2011, 30.06.2011, 21.07.2011 passed by the Assistant Commissioner of Central Excise, "E1" Division, Bangalore. M/s. Globe Technologies is the respondent in these cases.

2. Brief facts of the cases are that the respondents are registered under Central Excise and are manufacturers of excisable goods viz. Machinery parts falling under chapter 84 of the Central Excise Tariff Act, 1985. They had filed three rebate claims with the adjudicating authority claiming the rebate of excise duty paid on their goods exported on payment of duty under Rule 18 of the Central Excise Rules, 1944. The adjudicating authority held that the exporter has not submitted (BRCs) in respect of export clearances for the period 21.12.09, 28.06.2010 to 23.07.2011 & 28.04.2010 on the date of the Order-in-Original viz 01.04.2011, 30.06.2011 & 21.07.2011 when in terms of RBI guidelines the foreign proceeds are to be realized within a period of one year from date of export. He therefore, rejected the rebate of duty for non production of BRCs.
3. Being aggrieved by the impugned Orders-in-Original, the respondent filed appeals before Commissioner (Appeals), who was of the view that the rebate sanctioning authority can very well verify the BRC subsequently also and take necessary action to recover the duty within the time limit if the BRC is not produced within the prescribed time. Therefore the appeals were decided in favour of the respondents by holding that submission of BRCs have not been envisaged as precondition for grant of rebate under Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002.
4. Being aggrieved by the impugned Orders-in-Appeal, the applicant department has filed these Revision Applications under Section 35EE of the Central Excise Act, 1944 on the following grounds :-
  - 4.1 Though BRC is not one of the documents to be filed along with the rebate claim as per Para 8.1 to 8.5 of Chapter 8 of the CBEC Manual of Supplementary Instructions, yet BRC is one of the vital documents to monitor the realization of export proceeds in the case of exports.
  - 4.2 Board vide Circular No. 354/70/97-CX dated 13.11.1997 (relied by the Commissioner (Appeals) in the Order-in-Appeal) has clarified that BRCs can be submitted within 160 days of sanction of the rebate and if the same is not received within the stipulated period necessary action may be initiated within the limitation period for recovery of the rebate.



4.3 Further, the Reserve Bank of India vide its Circular A.P. (DIR Series) No. 50 dated 03.06.2008 has extended the period of realization and repatriation to India of the amount representing the full export value of goods or software exported, from six months to twelve months from the date of export, subject to review after one year.

4.4 The order rejecting the rebate claim was passed by the Assistant Commissioner on 01.04.2011, 30.06.2011 and 21.07.2011 by which time the prescribed time limit of twelve months for realization of the export proceeds as per the RBI's instructions had also elapsed. Even considering the Board's Circular referred to at 4.2 the assessee had time up to 07.09.2012, 07.10.2012 and 28.12.2011 respectively to produce the BRCs, which the assessee failed to do so.

4.5 Further, the Assistant Commissioner of Central Excise, E-1 Division, Bangalore vide letter C.No..IV/3/75/2011 E-1 dated 13.03.2012 has informed that the assessee has not submitted the BRCs so far, which clearly indicates that the export proceeds have not been realized even after one year of the time limit prescribed by the RBI.

4.6 In the instant case, the Commissioner (Appeals) has not caused any verification to know or to ascertain as to whether the export proceeds have been realized by the assessee as per the instructions of the Reserve Bank of India and also as to whether the assessee had complied with the requirements of the above said Board's Circular. Thus, the orders of Commissioner (Appeals) setting aside the order of rebate sanctioning authority, are improper and deserve to be set aside as the same have been passed without proper verification of the documents and without considering whether the assessee had complied with the requirements of the Circular / instructions referred to above.

5. Show Cause Notices were issued to the respondent under Section 35EE of the Central Excise Act, 1944 to file their counter reply. The respondents vide their written submission dated 23.07.2012, has mainly contested the applicability of Board's Circular No. 354/70/97-CX dated 13.11.1997 apart from reiterating contents of impugned Order-in-Appeal. The respondents further vide written submissions dated 27.10.2014 and 06.07.2015, mainly relied upon Hon'ble Allahabad High Court's Order in case of Polypetex Corporation Ltd. Vs. Joint Secretary, Finance reported in 2014 (306) E.L.T. 24 (All) with respect to Government of India Order No. 1184/2011-CX dated 07.09.2011. They also submitted that they have obtained full realization of export proceeds in respect of the revision application and 50% realization of the remaining two export proceeds. Therefore while the 1<sup>st</sup> revision application becomes infructuous straight away under the changed circumstances, in case of the other two their earlier submission remains effective in view of the Hon'ble High Court order dated 28.04.2014.



6. Personal Hearing was scheduled in these cases on 14.02.2014, 20.03.2014, 29.10.2014, 19.05.2015, 08.06.2015 and 13.07.2015. The department vide letter dated 12.02.2014 reiterated the submission made in the appeal; that the assessee had not realized the export proceeds within the time limit prescribed by RBI vide circular AP (DIR Series) No. 50 dated 30.06.2008 & Board's Circular No. 354/70/97 CX dated 13.11.1997, and that rebate is an export incentive given for earning foreign exchange for the country and no evidence has been produced for the realization of export proceeds. Further vide letter dated 15.05.2015, the Commissioner, Central Excise Bangalore-II, informed that the assessee has not produced any evidence for having realized the export proceeds even after the stipulated time limit. Then again vide letter dated 15.06.2015 the department has informed that even though more than 4 years have lapsed from date of export the assessee till date has not produced relevant BRCs. Shri G.S.Eswarappa, Advocate attended the hearing on behalf of the respondent party and reiterated submissions made in their written replies 23.07.2012, 27.10.2014 and 06.07.2015.
7. Government has gone through the facts of the case and records available in the case filed and has perused the impugned orders.
8. Upon perusal of records, Government observes that the rebate claims were rejected by the original authority on the ground that the respondent failed to produce Bank Remittance Certificates for export clearances for the periods 21.12.2009, 28.06.2010 to 23.07.2011 and 18.04.2010 and till the date of the impugned orders, when in terms of RBI guidelines, the foreign exchange proceeds are to be realized within a period of one year from the date of export. The Commissioner (Appeals) was of the view that as per notification 19/2004-CE(NT) dated 06.09.2004 and CBEC Manual of Supplementary Instructions BRC is not a prescribed document to be submitted with a rebate claim and the rebate sanctioning authority can very well verify the BRC subsequently also and take necessary action to recover the duty if BRCs are not produced within prescribed time limit and decided the cases in favour of respondents. Now, the applicant department has filed these Revision Applications on grounds mentioned in para (4) above.
9. Government observes that the main issue is whether rebate can be denied when at the time of sanction of the claim, the period prescribed for receipt of foreign exchange remittance is over. In this case there is no doubt that the export pertained to the period 21.12.2009, 28.06.2010 to 23.07.2011 and 18.04.2010 and pending the sanction of the rebate, Show Cause Notices were issued on 18.03.2011, 19.05.2011, and 08.07.2011 (for non production of proof of realization of export proceeds) i.e after the BRCs become due.
10. Government observes that rebate claims are submitted along with relevant documents as mentioned in para 8.1 to 8.5 of Chapter 8 of the CBEC Manual of



Supplementary Instructions. This list of documents does not prescribe submission of BRCs as one of the precondition for claiming rebate. As such, a rebate claim under Rule 18 which is required to be filed within one year from date of export is not required to be filed along with BRCs as the period for receipt of remittance is one year or as extended.

11. Government observes that Commissioner (Appeals) has mainly relied upon CBEC's Circular No. 354/70/97-CX dated 13.11.1997 which reads as under :

*"It has been brought to the notice of the Board that there are inordinate delays in acceptance of proof of export where goods are exported through an Inland Container Depot/ Customs Freight Stations (ICDs/CFSS) because of delayed receipt/ non-receipt of the Transference Copies from the Customs formations at the port of exit. This causes delay in getting rebate claims or in fulfillment of conditions of bonds executed for exports without payment of duty. In many cases, rebate claims are rejected or the demands are raised for non-submission of proof of exports within the stipulated period of six months from the date of export.*

2. *It has been decided by the Board that for exports through ICDs/CFSSs, a revised procedure should be followed in respect of the acceptance of proof of exports which is as follows:-*

2.1 *The Appraiser/Superintendent (Shed) will give a certificate in part-B of the Original, Duplicate and Sixtuplicate copies of AR-4/ AR-5 simultaneously when he gives the Let Export Order on the Shipping Bills in terms of Section 51 of the Customs Act, 1962. This Certificate shall be in the following form in lieu of the format given in Part-B of the AR-4/AR-5:-*

*Certified that the consignment was stuffed in Container No(s) \_\_\_\_\_  
under Shipping Bill No. \_\_\_\_\_ dated \_\_\_\_\_ for which the Let Export  
Order was given on \_\_\_\_\_ the day of \_\_\_\_\_.*

*The Customs at the ICD/CFSS will send the duplicate copy of AR-4/AR-5 to the address given at Sl. No. 1 of the AR-4/AR-5 (the concerned Jurisdictional Assistant Commissioner or the Maritime Commissioner) and hand over the Original and Sixtuplicate copies to the exporter. A provision has already been made under the instructions of the Board that the duplicate AR-4/AR-5 can be presented to the rebate sanctioning authority or the authority before whom the bond is executed.*

2.2 *Under the present procedure the Transference Copies of the Shipping Bill (TR-I & TR-II) move along with the goods from ICD/CFSS to the port of shipment and are endorsed with the details of Mate Receipt No. name of the issuing person, details of the cases/cartons/packages/containers, name of the ship, date of sailing and the port of sailing by the officer of Customs (Preventive Officer) who supervises the shipment. One copy of TR is received back in ICD/CFSS on the basis of which the officers of Customs at ICD/CFSS complete the Part-B of AR-4 AR-4/AR-5. This TR copy is required at ICDs/CFSSs for logging the DEEC Book, in the cases where the exports are effected under the Duty Exemption Scheme.*



2.3 Where the TR copy is not received from the port of Shipment within 30 days of the Let Export Order, the exporter may present the relevant Mates Receipt issued by the shipping line at the time of loading of container (s) on board the ships and bill of lading, to the jurisdictional Assistant Commissioner of Central Excise or the Maritime Commissioner, as the case may be. These should be accepted for the purpose of verifying the shipment of the goods at the Gateway port. After verification, that goods have actually been exported, the rebate claims should be sanctioned or the bond should be discharged, as the case may be.

2.3.1 A post facto verification shall be done by the Central Excise Division. The file for acceptance of proof of export shall be closed, once TR copy is received from ICD/CFS within 120 days of the LET Export Order containing details of actual export. In case TR copy is not received within 120 days, the exporter may submit the Bank Realisation Certificate of export receipts in Original along with certified copy of this certificate. The Original will be returned to exporter after verification, and the certified copy will be retained in the Central Excise Division. If found in order, file regarding acceptance of proof of export will be closed.

2.3.2 If TR copy or Bank Realisation Certificate is not received within 160 days of the date of sanction of rebate, action for recovery of rebate shall be initiated well within the limitation period.

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....."

Government notes that this Circular deals with speedy acceptance of proof of exports in respect of goods exported through Inland Container Depots/ Customs Freight Stations. It merely prescribes for furnishing of BRC in lieu of transference copy of Shipping Bill for purpose of proof of export in case of clearance for export from ICDs and if the TR copy or BRC is not received within 160 days from the date of sanction of rebate claim action for recovery is to be initiated. In this case rebate was not sanctioned in the first instance while the provision of said Circular would be applicable to cases where rebate had already been sanctioned and subsequently recovery for non submission of BRC or TR copy is to be made.

12. The department on the other hand has mainly placed reliance on Reserve Bank of India's Circular AP (DIR Series) No. 50 dated 03.06.2008 by virtue of which the period of realization and repatriation to India of the amount representing the full export value of goods has been laid down as twelve months from the date of export. Therefore, for any export made exchange proceeds are to be received within 06 months/one year or extended period as permitted by RBI.

13. Government notes that as per condition at para 2(g) of Notification No. 19/2004-CE(NT) dated 06.09.2004, rebate of duty paid on those excisable goods export of which is prohibited under any law for the time being in force, shall not be made. Regulation 3 of Foreign Exchange Management Act ( Goods & Services )



Regulations, 2000 requires that a declaration in form GR/SDF is to be submitted to the Customs, inter alia, affirming that the full export value of the goods or software has been or will within the specified period (under Regulation 9, *ibid*) be paid in specified manner. As per Section 8 of Foreign Exchange Management Act, 1999, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all steps to realize and repatriate to India, such foreign exchange within time period prescribed by RBI. Further, Section 13 of Foreign Exchange Management Act stipulates penalty provision for non-realization of foreign exchange. The provisions of Foreign Exchange Management Act make it clear that the export of goods without realization of export proceeds is not permitted. So in such cases, the rebate cannot be granted in terms of para 2(g) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and condition of Notification No. 19/2004-CE(NT) dated 06.09.2004 cannot be said to be complied with and rebate can therefore not be allowed under Rule 18 *ibid*.

14. It is a fact on record that the stipulated period of one year for the realization of export proceeds had been exceeded much before issue of the show cause notices. The question of submission of BRC would not arise when rebate is filed and sanctioned within one year of the date of export. However, in a scenario as in the present case were pending the sanction of rebate, the Bank Remittance Certificate had become due, it cannot be held that rebate ought to be sanctioned as it is not a prescribed document at the time of filing of rebate. It is also a fact on record that till date the respondent has failed to submit the BRCs to the department. Though it is claimed by them before the Revisionary Authority that remittance has been received by them partially, no evidence has been produced to that effect.

15. It is a universally known principle that one of the main reasons any export incentive including rebate is allowed is to encourage export-generated foreign exchange earnings for the country. From a harmonious reading of Rule 18 of Central Excise Rules, Notification No. 19/2004-CE(NT) dated 06.09.2004, relevant provisions of Foreign Exchange Management Act, Foreign Trade Policy and RBI guidelines as applicable, it can be concluded that exports are entitled for rebate benefit only if export realization is received, which has not happened in the present case.

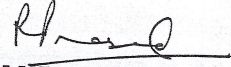
16. Government further notes that the respondent has placed reliance upon Hon'ble Allahabad High Court's Order dated 28.04.2014 with respect to Writ Tax No.1165 of 2012 in case of M/s. Polyplex Corporation Ltd. vs. Joint Secretary, Finance, against Government of India Order No. 1184/2011-CX dated 07.09.2011 in F. No. 198 /134 / 2009 – R.A. In the said Revision Order, the main issue was whether settlement in rupees term by ECGC would qualify for rebate benefit. As such, the facts of the case contained in above Revision Order are different from the facts of present cases.



17. In view of above, Government finds order of Commissioner (Appeals) is not just and proper and hence, sets aside the same and restores the order of the original authority rejecting the rebate claim.

18. The Revision Applications thus succeeds as above.

19. So, ordered.



( RIMJHIM PRASAD )

Joint Secretary to the Government of India

Commissioner of Central Excise,  
Bengaluru-II,  
C.R.Building,  
Queen's Road,  
P.B.No.5400,  
Bengaluru-560001.

Attested.

(Signature)  
Commissioner  
C.E.  
Ministry of Revenue  
New Delhi




**ORDER NO. 17-19/2016-CX DATED 28.01.2016**

Copy to:

1. M/s. Globe Technologies, A-193,4<sup>th</sup> Cross, Peenya Industrial Area, 1<sup>st</sup> Stage  
Bangaluru-560058.
2. Commissioner of Central Excise (Appeals-I), No.16/1, 5<sup>th</sup> floor, SP Complex,  
Lal Bagh Road, Bangalore-560027.
3. The Assistant Commissioner of Central Excise, E-1 Divison, No.161/1, 1<sup>st</sup> Main  
Road, Seshadripuram, Bangalore-560020.
4. Shri G.B. Eswarappa, Advocate 1711/1712, 5<sup>th</sup> Main Road, Judicial Layout,  
Opp. Jakkur aerodrome, Adjacent: G.K.V.K (UAS), Bangaluru-560065
5. PA to JS(RA)
6.  Guard File.
7. Spare Copy

Attested

  
(B.P.Sharma)  
OSD(RA)  
Ministry of Health & Family Welfare  
Government of Karnataka  
New Delhi



