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**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. 195/02/WZ/18-RA

| 619

Date of Issue:

18/02/22

ORDER NO. 179/2022-CX (WZ) /ASRA/Mumbai DATED 16.2.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. PSL International, 147, Mittal Estate No. 6, Andheri-Kurla Road, Andheri East, Mumbai 400 059.

Respondent : Commissioner of CGST, Raigad Commissionerate.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. MKK/280/RGD APP/2017 dated 29.11.2017 passed by the Commissioner (Appeals), Central Excise, Central Tax, Raigad.

ORDER

This revision application is filed by M/s. PSL International, 147, Mittal Estate No. 6, Andheri- Kurla Road, Andheri East, Mumbai 400 059. (hereinafter referred to as "the applicant") against Orders-in-Appeal No. MKK/280/RGD APP/2017 dated 29.11.2017 passed by the Commissioner (Appeals), Central Excise, Central Tax, Raigad.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed rebate claims in respect of the goods exported by them under the provision of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as under:-

Sr. No.	Rebate Claim No.	Rebate Claim Date	ARE-1 No.	Amount Claimed
1.	23993	01.02.2017	01	393750/-
2	23994	01.02.2017	02	393750/-
3	23995	01.02.2017	03	14397/-
4	23996	01.02.2017	04	14397/-
			Total	816294/-

A deficiency memo-cum-show cause notice was issued to the applicant dated 20.04.2017, wherein it has been alleged that applicant had not exported the goods directly from the premises of the manufacturer or registered warehouse as laid down under notification no. 19/2004- C.E.(N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002; that triplicate copy of ARE-1 duly signed by the range officer is not submitted so as to ascertain the veracity of payment of central excise duty by the manufacturer of the said goods; that the said goods have been exported without doing manufacturing activity as it has been procured from registered dealer M/s Aditya Associates.

The Rebate Sanctioning Authority vide Order in Original No. 368/Assistant Commissioner(rebate/Raigad)/17-18 dated 03.05.2017 rejected the aforesaid rebate claims on various grounds as detailed in the impugned Order in Original. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Tax, Central Excise & Service Tax(Appeals) Raigad who vide his Orders-in-Appeal No. MKK/280/RGD APP/2017 dated 29.11.2017 rejected their appeal and upheld the Order-in-Original dated 03.05.2017.

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

(i) the Commissioner of Central Excise (Appeals) erred in law in rejecting the Appeal and confirming the Order-in-Original.

(ii) the findings of the learned Assistant Commissioner (Rebate) and the Commissioner (Appeals) in the impugned orders are only on trivial points or on assumption, which is baseless and not sustainable.

(iii) the adjudicating authority and Commissioner (Appeals) ignores various Orders/ Judgments from the Higher Appellate Authorities and the Honorable Supreme Court of India held that no genuine claim should be denied on procedural laps/Technical grounds.

(iv) the Applicant is a Merchant Exporter and they had paid central excise duty against the purchased finished goods from Central Excise Registered Dealer and they complies with all the customs provisions for exported the same goods. In the present case said goods have actually been exported and this is undisputed fact. If export have really taken place, and the law is settled now that substantive benefits can't be denied for procedural laps. The Impugned orders should be set aside on this ground.

(v) the adjudicating authority points raised in Order in Original that the goods have not been exported directly from the manufactures premises or registered warehouses and the Applicant has submitted the Triplicate copy of all ARE-1 which were not signed by the Range officer. The Applicant clarified that they are merchant exporter and being new to export of capital goods. They are unaware of the procedures and they tried their level best to attest the Triplicate copy of ARE-1. But the department is not ready to attest the same. Further the Applicant state that the higher Appellate forum have confirmed in various order that if the goods have actually been exported then all procedural conditions can be waived off; that no genuine claim should be denied mere on procedural lapses or on technical grounds. Therefore, the Impugned orders is required to be set aside on this ground and Your Honour to exercise the powers vested with your high office may kindly condone the error occurred from the Applicant and issue an order for release the Rebate payment on the strength of already submitted Triplicate copies of Central Excise Invoice No.1771 to 1774, payment details of Form RG 23D, No objection Certificates of M/s. Aditya Associates & Original and Duplicate copies of ARE-Is duly signed by the Custom officers.

(vi) the Applicants states that the Honorable Supreme Court of India have confirmed repeatedly that no genuine claim should be denied on Procedural lapses / Technical grounds, under the following judgments:

a. Union of India Vs. A V Narasimhalu 1983 (13) ELT 1534 (SC).

b. Mangalore Chemical and Fertilizers Ltd.Vs.Dy.Commissioner 1991(51)ELT 437(SC)

c. Suksha International Vs. Union of India 1993 (39) ELT 503 (SC).

d. Formica India Vs. Collector of Central Excise 1995 (77) ELT 51 (SC).

The impugned orders should be set aside on this ground alone.

(vii) the Rebate / drawback etc are export oriented schemes and unduly restricted and technical interpretation of procedure etc is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars etc are to be condoned if export have really taken place, and the law is settled now that substantive benefits can't be denied for procedural laps.

viii) the Applicants seeks to place reliance on the following decisions of the Government of India/ Tribunal in a catena of orders, including Sanket Industries Ltd 2011 (268) E.L.T.125(GOI), Barot Exports 2006(203) E.L.T.321(GOI), Modern Process Printers-2006 (204) ELT 632 (GOD), Krishna Filaments Ltd 2001(131) ELT 726 (GOI), Creative Mobus 2003(58) R.L.T. 111 (GOI), Ikea Trading India Ltd 2003(169) E.L.T.359 (GOI), GTC Exports Ltd.- 1994(74) ELT 468 (GOI), Birla VXL Ltd.,1998 (99) E.L.T. 387 (Tri.), Alfa Garments 1996(86) E.L.T.600 (Tri.), T.I Cycles -1993 (66) ELT 497 (Tri.) and Atma Tube Products, 1998 (103) E.L.T.270 (Tri) upheld that if the goods have actually been exported then all procedural conditions can be waived'. In the present case said goods have actually been exported and this is undisputed fact moreover all substantial requirements have been fulfilled. The Impugned orders should be set aside on this ground.

ix) The Applicant prayed that the Order-in-Appeal dated 29.11.2017 be set aside with suitable instructions for release of due amount of pending rebate claims.

4. Personal hearing in this case was fixed for 16.11.2021, Shri Prabhakar Shetty, Advocate appeared online on behalf of the applicant and submitted that additional submissions made on 29.10.2021 clearly established the duty paid nature of goods, linked to debit entries of manufacturer. He further submitted that once duty paid goods have been exported, minor procedural lapses should not disentitle them of admissible rebate.

5. They further made additional submissions to incorporate additional grounds and export documents vide their letter dated 29.10.2021. The additional grounds are :

- i) that there is no dispute to the fact of "payment of duty" on the goods and the "actual export" on the said goods. This is confirmed by Commissioner (Appeals) in his order at Para 8.1 which says 'In the instant case there is no dispute that the goods have been exported'. Similarly the payment of duty has been done by the registered dealer and the same is evident from the RG-23 D register shown vide E. No. 1310, 1311 dated 30.3.2016 & 1317 dated 31.3.2016. The statutory return filed by the said registered dealer has been verified and accepted by the Jurisdictional Central Excise Officers and there is no dispute raised on the same. Therefore the fact of payment of duty & the actual export of the said goods are not in dispute as confirmed in the finding of the Commissioner (Appeals), the lower Appellate authority.
- ii) that the fact of export' and the 'payment of duty' are not in dispute. The goods are left from the premises of the registered dealer as evident from the ARE-1 which shows the address of the suppliers with the name of the Bhilwara Commissionrate. Invoices issued by the registered dealers is one of the prescribed documents under the Central Excise Rules and the cenvat credit is made eligible under the said invoice. The registered dealer has maintained the duty debit registered known as RG-23 D register and the said debit are shown in the invoice issued with the entry No. and date.. It is a duty paying document and therefore cannot be rejected merely on the ground that the same is not verified by the Central Excise officers. Registered dealer has filled his statutory returns and the same are accepted by the department without any dispute. It is settle law that once the fact of export' and the payment of duty' are not in dispute, rebate should not be rejected merely on the ground of non-compliance of the procedural aspects.
- iii) that they rely upon the judgment of Bombay High Court in the case of UM Cables Ltd v/s Union of India-2013 (290) ELT 641 (HC-Bom). In the said case, the exporter has failed to submit original and duplicate copy of ARE-1 while other export documents evidencing the "facts of exports" has been submitted under rebate under Notification No. 19/2004 CE (NT). However, the lower authorities rejected the rebate claim for non-submission of Original and Duplicate copy of ARE-1 duly signed by the Central Excise officers for verification of goods exported. It is held by the Hon'ble Bombay High court that:

'non production of original and duplicate ARE-I ipso facto cannot invalidate the rebate claim. In such a case the exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying the requirement of Notification No. 19/2004 CE (NT). On facts claim directed be considered on the basis of bill of lading, bankers certificate and inward remittance of export proceeds and certification from Customs authorities on ARE-I'

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. The Government observes that the impugned rebate claims were rejected on the basis of following two grounds:-

- i) the goods exported are not cleared directly from the factory or warehouse.
- ii) the triplicate copy of ARE-1 is not submitted for verification and thus 'duty-paid' character of the goods is not established.

8. In this regard, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs. The second is that the goods are of a 'duty-paid' character. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

9. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty have been paid on the goods.

10. Government finds that the ARE-1 is endorsed by the customs official on the back side indicating the Vessel's name and the Mate receipt number confirming the proof of export certifying the consignment is shipped indicating

the Shipping Bill No. and the Vessel's Name. The export proceeds were also realized which is evident from the Bank realization certificate submitted by the Applicant. The lower appellate authority in their order also observed that there is no dispute that goods have been exported. The Government thus observes that there is no dispute to the factual details on record for the completion of exports and filing of claims of rebate in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CD(NT) dated 06.09.2004.

10.1 The Government notes that the applicant has filed self attested photocopies of the following documents along with revision application in respect of export clearances:-

- a) RG-23-D register abstract of the registered dealer
- b) Customs invoices, ARE-1 and Shipping bill along with mate receipt duly signed by customs.
- c) No objection certificate from the registered dealer to claim the refund.
- d) Returns filed by the Dealer/Importer M/s. Aditya Associates

10.2 The documents filed as above along with revision application show that the duty has been duly discharged and debited by the registered dealer. The same is evident from the RG-23 D register shown vide E. No. 1310, 1311 dated 30.3.2016 & 1317 dated 31.3.2016. This implies that the goods are of 'duty-paid' character. The 'duty-paid' character of the goods is further corroborated from the fact that duty paid against the goods were reflected in their statutory returns filed by the registered dealer to the Department.

11. The Government, therefore, holds that sealing at the place of dispatch by a Central Excise Officer as specified in the said notification and non-submission of verified triplicate copy of ARE-1 form by the applicant should not result in the deprivation of the statutory right to claim a rebate subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

12. Further, as a matter of fact, in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the

CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a form would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. It is also observed that, in the present case, no doubt has been expressed whatsoever that the goods were exported goods.

13. Also, it is observed that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows :

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance"

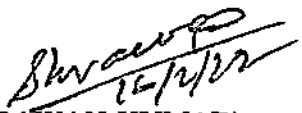
14. In their judgment of Bombay High Court in case of UM Cables Ltd v/s Union of India-2013 (290) ELT 641 (HC-Bom) as relied upon by the applicant held that:

'non production of original and duplicate ARE-I ipso facto cannot invalidate the rebate claim. In such a case the exporter can demonstrate by cogent evidence that goods were exported and duty paid, satisfying the requirement of Notification No. 19/2004 CE (NT). On facts claim directed be considered on the basis of bill of lading, bankers certificate and inward remittance of export proceeds and certification from Customs authorities on ARE-I'

In the above said case, the exporter had failed to submit original and duplicate copy of ARE-1 while other export documents evidencing the "facts of exports" were submitted under rebate under Notification No. 19/2004 CE (NT). However, the lower authorities rejected the rebate claim for non-submission of Original and Duplicate copy of ARE-1 duly signed by the Central Excise officers for verification of goods exported. The ratio of the said judgment is squarely applicable in the instant case.

15. In view of above discussion, the Government holds that since the export of duty paid goods is not in dispute, the rebate claim in question cannot be denied merely on technical/procedural lapses. As such, Government holds that in the instant case the rebate claim is admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Government therefore sets aside the impugned Orders-in-Appeal No. MKK/280/RGD APP/2017 dated 29.11.2017 passed by the Commissioner (Appeals), Central Excise, Central Tax, Raigad, sanctioning the rebate claim.

16. Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 79/2022-CX (WZ) /ASRA/Mumbai DATED 16.02.2022 2022

To,

M/s. PSL International, 147,
Mittal Estate No. 6, Andheri- Kurla Road,
Andheri East, Mumbai 400 059.

Copy to:

1. The Commissioner of CGST, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410 206.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.

3. The Assistant Commissioner(Rebate) CGST, Plot No. 1, Sector-17,
Khandeshwar,Navi Mumbai-410 206.
4. Sr. P.S. to AS (RA), Mumbai
5. ~~Guard file~~