

F.No. 195/71/13-RA
F.No. 195/72/13-RA
F.No. 195/73/13-RA

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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. 195/71/13-RA
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Date of Issue:

28/05/21

2832

ORDER NO. 191-193/2021-CX (WZ) /ASRA/MUMBAI DATED 29.04.2021
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 CENTRAL
EXCISE ACT, 1944.

Applicants : M/s. Haworth India Pvt. Ltd. Pune

Respondents : Commissioner of Central Excise (Appeals), Pune

Subject : Revision Applications filed, under Section 35EE of Central
Excise Act, 1944 against Orders-in-Appeal Nos.
P-I/MMD/189/2012, P-I/MMD/187/2012 and
P-I/MMD/190/2012 all dated 28.09.2012 passed by the
Commissioner of Central Excise (Appeals, Pune).

ORDER

The three Revision Applications have been filed by M/s. Haworth India Pvt. Ltd., Rasoni Industrial Park, Site No. 276, Village-Mann, Taluka-Mulshi, Pune-411 046 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. P-I/MMD/189/2012, P-I/MMD/187/2012 and P-I/MMD/190/2012 all dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals, Pune).

2. The case in brief is that the Applicant, manufacturer of Office Chairs had filed rebate claims in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 on the finished goods cleared directly to the SEZ units of M/s IBM India Pvt Ltd at Kolkata and Pune as "deemed export".

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2.1 On scrutiny of the rebate claims, it was observed that the Range Superintendent in his verification report dated 30.04.2012 submitted that the Applicant had failed to furnish original copies (white colour) and Duplicate copies (buff colour) of the ARE-1. Further it was also observed that the Applicant had not submitted 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. The said discrepancy was communicated to the Applicant vide letter dated 28.03.2012 and a reminder letter dated 09.04.2012 stating that natural justice is given to them before disposal of subject rebate claim. The Applicant vide letter dated 16.04.2012 clarified that 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. was not received by them from their customer and would submit the same after wards and submitted Indemnity Bond of Rs. 100/- stamp paper in absence of 'Disclaimer Certificate'. The Department then vide letter dated 03.05.2012 against asked the Applicant to submit the requisite documents for processing of the submit rebate claim. But the same was not submitted by the Applicant. The Deputy Commissioner, Central Excise, Div-Pune-IV vide Order-in-Original No.

P-I/Divn.IV/Reb/147/2012 dated 17.05.2012 rejected the refund claims under Section 11B of Central Excise Act, 1944 on the following grounds:

- (i) Duplicate copies (Buff colour) of ARE-1s Nos. 188,189,190,191,192 and 193 all dated March 2022 were not produced;
- (ii) 'Disclaimer Certificate' that the respective SEZ will not avail any benefit/double benefit in respect of the rebate claim was not produced.
- (iii) The declaration/information regarding the availment of DBK claim, benefits under Advance License and other export benefits was not produced.
- (iv) In all discrepancies/incomplete documents which had been brought to the notice of the Applicant, however they had replied that after receipt/availability of the said documents, they will produce the same to the department which was misleading, distrust work reply as there was not end at all and the provisions under Section 11B of the Act cannot allow the same as there is a time limit provided/prescribed to sanction/ reject of the claim and which is bind upon the sanctioning authority.

Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals), Pune. The Commissioner(Appeals) vide Order-in-Appeal No. P-I/MMD/189/2012 dated 28.09.2012 rejected their appeal and upheld the Order-in-Original dated 17.05.2012.

F.No. 195/72/13-RA

2.2 On scrutiny of the rebate claims, it was observed that the Range Superintendent in his verification report dated 21.10.2012 submitted that the Applicant had failed to furnish original copies (white colour) and Duplicate copies (buff colour) of the ARE-1. Further it was also observes that the Applicant had not submitted 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. The said discrepancy was communicated to

the Applicant vide letter dated 28.02.2012. the Applicant vide letter dated 14.02.2012 clarified that ARE-1 copies were inadvertently printed on yellow pages and request to treat the same as original copies. Further, they promised to submit duplicate copies of ARE-1 No. 163 and 164 both dated 12.01.2011 within a week's time. The Applicant vide their letter dated 14.03.2012 requested Division office to return to them Original copies of ARE-1 No. 163 and 164 both dated 12.01.2011 so that they can produce duplicate copies of the same. Accordingly, the same was returned to the Applicant vide the Department's letter dated 20.03.2012 along with the direction to furnish the 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. The Deputy Commissioner, Central Excise, Div-Pune-IV vide Order-in-Original No. P-I/Divn.IV/Reb/95/2012 dated 27.03.2012 dated 09.10.2013 rejected the refund claims under Section 11B of Central Excise Act, 1944 on the following grounds:

- (i) Original copies(white colour) of ARE-1 No. 158, 159, 160, 161 and 165 all of January, 2011 was not produced;
- (ii) Duplicate copies (Buff colour) of ARE-1 No. 183 and 194 both dated 12.01.2011 was not produced;
- (iii) 'Disclaimer Certificate' that the respective SEZ will not avail any benefit/double benefit in respect of the rebate claim was not produced.

Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals, Pune. The Commissioner(Appeals) vide Order-in-Appeal No. P-I/MMD/187/2012 dated 28.09.2012 rejected their appeal and upheld the Order-in-Original dated 27.03.2012.

F.No. 195/73/13-RA

2.3 On scrutiny of the rebate claims, it was observed that the Range Superintendent in his verification report dated 30.04.2012 submitted that the Applicant had failed to furnish original copies (white colour) and Duplicate copies (buff colour) of the ARE-1. Further it was also

observes that the Applicant had not submitted 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. The said discrepancy was communicated to the Applicant vide letter dated 28.03.2012 and a reminder letter dated 09.04.2012 stating that natural justice is given to them before disposal of subject rebate claim. The Applicant vide letter dated 16.04.2012 clarified that 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. was not received by them from their customer and would submit the same after wards and submitted Indemnity Bond of Rs. 100/- stamp paper in absence of 'Disclaimer Certificate'. The Department then vide letter dated 03.05.2012 against asked the Applicant to submit the requisite documents for processing of the submit rebate claim. But the same was not submitted by the Applicant. The Deputy Commissioner, Central Excise, Div-Pune-IV vide Order-in-Original No. P-I/Divn.IV/Reb/148/2012 dated 17.05.2012 rejected the refund claims under Section 11B of Central Excise Act, 1944 on the following grounds:

- (i) Original copy of ARE-1 No. 175 dated 04.02.2011 was not produced;
- (ii) Duplicate copies (Buff colour) of ARE-1s No. 166, 167,169,170,171,172,173,174,175,176,177 and 178 all dated February 2011 was not produced;
- (iii) 'Disclaimer Certificate' that the respective SEZ will not avail any benefit/double benefit in respect of the rebate claim was not produced.
- (iv) The declaration/information regarding the availment of DBK claim, benefits under Advance Licence and other export benefits was not produced.
- (v) In all discrepancies/incomplete documents which had been brought to the notice of the Applicant, however they had replied that after receipt/availability of the said documents, they will produce the same to the department which was misleading, distrust work reply as there was not end at all and the

provisions under Section 11B of the Act cannot allow the same as there is a time limit provided/prescribed to sanction/ reject of the claim and which is bind upon the sanctioning authority.

Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals), Pune. The Commissioner(Appeals) vide Order-in-Appeal No. P-I/MMD/190/2012 dated 28.09.2012 rejected their appeal and upheld the Order-in-Original dated 17.05.2012.

The details are as given below:

Sr. No.	Rebate Amount (Rs) and dated	ARE-1 No. & date	O-in-O No. & date	O-in-A No. & date	Revision Application No.
1	11,62,570 dt 29.2.12	179,180,182,184,186, 188 to 193 all of March 2011 (12 nos)	P-I/Divn.IV/Reb/147/2012 dt. 17.05.2012	P-I/MMD/189/2012 dt 28.9.12	195/71/13-RA
2	9,30,618 dt 28.12.11	158 to 161 & 163 to 165 all of Jan. 2011	P-I/Divn.IV/Reb/95/2012 dt. 27.3.2012	P-I/MMD/187/2012 dt 28.9.12	195/72/13-RA
3	19,49,103 dt 31.1.12	166 to 178 (13 nos)	P-I/Divn.IV/Reb/148/2012 dt. 17.05.2012	P-I/MMD/190/2012 dt 28.9.12	195/73/13-RA

3. Aggrieved, the Applicant filed the three Revision Applications on the following grounds:

- (i) The Applicant submitted that they had satisfied all the conditions and followed the procedures specified in the Notification No. 19/2004. Further all the documents required under the Notification No. 19/2004The Applicant submitted that they had satisfied all the conditions and followed the procedures specified in the Notification No. 19/2004. Further all the documents required under the Notification No. 19/2004 and the Chapter 8 of the CBEC manual such as Original and Duplicate copies of ARE-1s, copies of purchase order, Central Excise Invoice, proof of duty payment through Cenvat credit and Lorry receipt have been submitted along with the rebate claim as proof of exports.
- (ii) The rejection of the rebate claim was merely on the basis of procedural lapses which should not be sole ground for rejection as it would lead to denial of substantial benefit which is available to the Applicant as

an exporter. The procedural lapses based on which the claims had been rejected are as under:

- (a) F.No. 195/71/13-RA – Duplicate copies of ARE-1 Nos 179, 180, 182, 184 & 186 are not provided in buff colour page.
 - (b) F.No. 195/72/13-RA - The original ARE-1s are printed on yellow paper instead of white paper and the duplicate copies (buff colour) of ARE-1s of No. 163 and 164 were not made available to the department.
 - (c) F.No. 195/73/13-RA - Duplicate copy of ARE-1 Nos. 176, 177 and 178 are printed on yellow paper instead of buff colour.
- (iii) The Applicant had submitted the original copies of the ARE-1 to prove that there was manufacture of excisable goods and the original copies of ARE-1s had been duly certified by the authorized officer of SEZ, hence it is established beyond any doubt that the goods were exported to SEZ on payment of duty. Further,
- (a) F.No. 195/71/13-RA - the Applicant submitted that merely printing the duplicate copy on yellow colour instead of buff paper should not lead to reject of substantial benefit
 - (b) F.No. 195/72/13-RA - the duplicate copies(buff colour) ARE-1s had also been submitted and the duplicate copies of ARE-1s Nos. 163 and 164 were made available to the Department.
 - (b) F.No. 195/73/13-RA – The Applicant had received original copies of all the ARE-1s except ARE-1 No. 175. In respect of duplicate ARE-1s printed in yellow, the Applicant submitted that merely printing the duplicate copy on yellow colour instead of buff paper should not lead to reject of substantial benefit.
- (iv) In order to claim rebate of excise duty paid on finished goods exported, the evidences related to export of goods and payment of duty in cash or through Cenvat credit are sufficient to enable the sanctioning authority to establish that duty paid goods had been exported and this can be proved with the original ARE-1s which had been submitted along with the rebate claim.

- (v) The Department without verifying the original documents which were provided with the rebate claim which proves export of goods to the SEZ, had rejected the rebate claim in toto.
- (vi) The Department had alleged that the certified copies of the original copies of ARE-1 which were submitted to the Division while processing the claim were not made available to the Department and has hence rejected the claim in toto. In response to the said allegation, the Applicant submitted that :
- (a) All the original ARE-1's had already been made available by the Applicant to the Department along with the refund claim.
- (b) The ARE-1s had also been verified by the Deputy Commissioner. It is not for the Department to again verify its correctness.
- (c) However, if the Department had any doubt of the authenticity of the original ARE-1s and required to verify it, then the Respondent should call for the documents from the Department which is a party to the present case by issuing a request notice. It is not for the Applicant to again make available the Original ARE-1s which have been submitted with the Division.
- In this the Applicant relied on case laws of Punjab Beverages Pvt Ltd Vs Collector of C.Ex. Chandigarh [2000 (118) ELT 506 (Tri.) wherein all the documents of the refund claim were available with the Department, it was held that no production of the same by the assessee cannot hold the refund claim inadmissible.
- (vii) On merit, they had adduced all the documents evidencing export of goods and therefore rejection on account of minor inconsistency in printing the few of original ARE-1s on yellow colour page instead of white colour was completely an arbitrary rejection of the rebate claim. Since all the conditions had been fulfilled and the original ARE-1 in relation to the refund claim had been submitted, rebate claim ought to be sanctioned to the Applicant.
- (viii) The Department had further alleged that the duplicate copies of ARE-1s Nos. 163 and 164 had not been submitted. The Applicant

submitted that the duplicate ARE-1s Nos. 163 and 164 were not available to be filed with the rebate claim. The authorities required them to submit the duplicate copies of the same to process the claim. The Applicant had vide letter dated 14.03.2012 requested the authorities to provide the original copies of ARE-1s Nos. 163 and 164 to enable them to get the duplicate copies attested from the SEZ Officer. The authorities provided them the original copies of the said ARE-1s on 20.03.2012 and they had initiated the process of obtaining the authenticated copies, however before they could submit the copies, the authorities rejected their rebate claim vide its Order-in-Original dated 27.03.2012.

- (ix) There was no sufficient time provided to obtain the duplicate ARE-1s. However, the appellant has made available the xerox copy attested copy of the same ARE-1s along with the appeal and during the personal hearing also informed that they had obtained attested copy of the duplicate buff colour copy. However, the Commissioner(Appeals) had completely ignored the fact that not enough time was provided by the authorities to obtain the duplicate ARE-1s and although the documents were provided in record along with the appeal, the Commissioner(Appeals) did not peruse it or required the Applicant to produce the attested copy of the duplicate (buff) copy for verification and has simply rejected the rebate claim in toto. Further, even during the personal hearing before the Commissioner(Appeals), the Commissioner(Appeals) only required original ARE-1 and did not ask for the attested copy of the duplicate (buff) copy which was available with the Applicant for verification.
- (x) The rejection of the rebate claim in toto without considering the facts of the case or verifying the documents that was available on record is incorrect. Further, the impugned Order-in-Appeal rejected the rebate claim for want of documents which was already made available. Hence the order be set aside and their rebate claim be sanctioned based on all the documents provided on records.

- (xi) The main conditions to be fulfilled for the purpose of rebate are manufacture and export. Notification No. 19/2004 merely provides for procedures to verify whether export of goods have taken place. The Applicant had submitted ARE-1s which were duly certified by the authorized officer of SEZ and they had clearly established beyond any doubt that the goods were exported to SEZ on payment of duty. It is amply clear from the above that despite of clear evidence of export of goods the excise authorities have rejected the rebate claim on insignificant procedural issue that the original ARE-1 form is in yellow paper instead of white paper.
- (xii) In support of their submissions, they relied on the below judicial precedents of Hon'ble Tribunals wherein the Tribunals have held that rebates claims should not be denied in the absence of ARE-1s when other documents such as shipping bills/bill of lading etc. available on record, proving the duty paid nature of the goods and actual export of the said goods:
- (a) CCE v. Kanwal Engg. [1996 (87) ELT 141];
 - (b) Wonderseal Packing Vs. CCE [2002 (147) ELT 626];
 - (c) Horne Care (I) P. Ltd. Vs. CCE [2006 (197) ELT 110];
 - (d) Model Buckets and Attachments Put. Ltd. [2007 (217) ELT 264].
- (xiii) The Commissioner(Appeals) has denied the rebate claim relying on the aforesaid case laws stating that the same have been remanded back to decide the case afresh on verification of collateral evidences. The Applicant submitted that only in case of Home Care (I) P. Ltd. v. CCE (2006 (197) ELT 110], the matter was remanded back, whereas in all the other case laws referred above, the refund was granted to the assessee based on the other collateral evidences. The Commissioner(Appeals) has simply stated that all the cases have been remanded back without perusing the cases provided and rejected the rebate claim.
- (xiv) The rebate should be allowed on the basis of the original copies of ARE-1 printed on yellow color paper as the same was endorsed by the

customs authority located in SEZ which establishes the proof of exports. When there is substantial proof of exports, the rejection of rebate claim on procedural lapse is bad in law and accordingly, Order-in-Original should be set aside.

(xv) The Applicant also rely on various other decision wherein it has been held that the refund/rebate can be granted on establishment of the proof of exports and such goods are duty paid and due to certain procedural lapse, the refund/rebate should not be rejected.

(a) Cosmonaut Chemicals [2009 (233) ELT 46 (Guj.)];

(b) Sanket Industries Ltd [2011 (@^*) ELT 125 (GOI)];

(xvi) The appellant has established that the goods have been exported based on the endorsed copy of ARE-1s duly endorsed by the authorized officer of the SEZ. Further, the duty paid on the finished goods exported has been established with supporting documents such as copies of ARE-1s, Excise invoice and extract of relevant records maintained under Excise legislation. They had fulfilled both essential conditions mentioned above for claiming rebate of excise duty. It is amply clear from the above submission that so far there are sufficient documents to prove that duty paid goods are exported minor procedural lapse should not be lead to denial of the substantive benefits to the exporter. Hence, the impugned Order-in-Appeal should be set aside and the rebate claim be sanctioned.

(xvii) (a) F.No. 195/71/13-RA - The Applicant submitted that all the original ARE-1s have been provided on record, the rebate claim be sanctioned fully

(b) F.No. 195/72/13-RA - The Applicant submitted that the rebate claim to the extent of the two original white copy ARE-1s and duplicate buff copy ARE-1s, i.e. Rs 2,42,969/- be sanctioned as all the documents required by the Commissioner(Appeals) for sanctioning the rebate claim is available. The details as given below:

Sr.No.	ARE-1 No available	Duty amount (Rs.)
1	HIPL/10-11/163 dt 12.01.2011	1,67,328
2	HIPL/10-11/164 dt 12.01.2011	75,641
	Total	2,42,969

(c) F.No. 195/73/13-RA – The Applicant submitted that since they has produced all the original ARE-1s except one, they requested that correct and complete documents available on record should be considered and rebate claim to that extend which amount to Rs. 18,57,417 should be sanctioned. The details as given below:

Sr.No.	ARE-1 No available	Duty amount (Rs.)
1	HIPL/10-11/166 dt 02.02.2011	1,64,272
2	HIPL/10-11/167 dt 02.02.2011	1,76,496
3	HIPL/10-11/169 dt 02.02.2011	1,67,328
4	HIPL/10-11/170 dt 03.02.2011	1,79,553
5	HIPL/10-11/171 dt 03.02.2011	1,64,272
6	HIPL/10-11/172 dt 03.02.2011	1,67,328
7	HIPL/10-11/173 dt 03.02.2011	1,65,036
8	HIPL/10-11/174 dt 04.02.2011	1,61,979
9	HIPL/10-11/176 dt 25.02.2011	1,64,272
10	HIPL/10-11/177 dt. 28.02.2011	1,79,553
11	HIPL/10-11/178 dt. 28.02.2011	1,67,328
	Total	18,57,417

(xviii) The Applicant prayed that the three Orders-in-Appeal be set aside and their appeal be allowed in full with consequential relief.

4. Personal Hearing was held on 05.11.2015. Shri Sanjay Kumar Panda, Manger Taxation & Accounting and Shri Mangesh Jha, Legal Executive appeared on behalf of the Applicant and Shri R.R.S Dixit, Supdt. Pune-I and Shri Anil B Rupari, Sudpt Range-V, Akurdi Pune appeared on behalf of the Respondent . A written submission was made by both the Applicant and the Respondent. The Respondent submitted that as per statutory provisions read with the relevant notification and supplementary instruction, rebate cannot be allowed in the absence of original and duplicate copies of the ARE-1s and the disclaimer certificate had also not been furnished either. Since there was a change in the Revisionary Authority, a fresh hearing was

granted on 03.12.2019 or 10.12.2019, 22.01.2020. However none attended the hearing. Due to change in the Revision Authority, hearing in the matter was granted on 06.01.2011, 13.01.2021, 20.01.2021, 11.02.2021 and 18.03.2021 or 25.03.2021. On 25.03.2021, Ms Shruthee S, Assistant Commissioner appeared online on behalf of the Respondent and reiterated the point already made and requested to maintain Commissioner(Appeals) orders. No one appeared on behalf of the Applicant.

5. The Applicant in their written submission made the following substantial points:

- (i) (a) F.No. 195/71/13-RA – the duplicate copies of ARE-1 No. 176, 177 had been submitted, however, the duplicate copies of the said ARE-1s had been inadvertently printed in yellow
 - (b) F.No. 195/72/13-RA- adduced all the documents evidencing export of goods and therefore rejection of claim on account of minor inconsistency in printing the few of original ARE-1 on yellow colour page instead of white colour is completely an arbitrary rejection of the rebate claim.
 - (c) F.No. 195/73/13-RA - Eleven original ARE-1s had been submitted along with the refund claim and One original ARE-1 was not submitted. Further, the duplicate copies of ARE-1 No. 176, 177 had been submitted, however, the duplicate copies of the said ARE-1s had been inadvertently printed in yellow.
- (ii) The CBEC Circular No. 43/2007-Customs dated 05.12.2007 provides that the drawback in respect of goods supplied by DTA units to Developers or units in SEZ can be claimed by either the SEZ unit or the Developer, as the case may be, or by the DTA supplier on the basis of the disclaimer issued by the SEZ unit or the Developer. In the Applicant's case, they are not claiming any duty drawback from any of

the concerned authority and hence the 'Disclaimer certificate' would not be required to be submitted for rebate claim.

- (iv) In this regard, it cannot be gainsaid that rebate/drawback and other such export promotion scheme of the Government are incentive-oriented beneficial schemes intended to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt
- (v) The Applicant relies on few case laws squarely applicable to the instant issue:
- (a) M/s Aarti Industries Ltd. Vs UOI [2014 (305) ELT 196 (Bom)];
 - (b) Commr. of C.Ex. Surat-II Vs M/s Gujarat Organics Ltd [2014 (314) ELT 981 (GOI)];
 - (c) Asstt. Commr. C.Ex. Raigad Vs M/s Garg Tex-O-Fab Pvt Ltd [2011 (272) ELT 449 (GOI)].

6. The Additional Commissioner (L&T), Central Excise, Pune-I Commissionerate vide letter dated 15.05.2013 submitted the para-wise comments in respect of the three revision applications filed by the Applicant:

- (i) When goods are exported under claim of rebate under Rule 18 of Central Excise Rules, 2002, the procedure as set out and specified in Chapter 8, Para 2 of the CBEC Excise Manual of Supplementary Instruction is required to be followed by the Applicant. The Government has specified specific colors to distinguish Original, Duplicate, Triplicate, Quadruplicate and Quintuplicate copy of ARE-1(s). The intention of the Government to assign colors to ARE-1(s) appears to devise procedure for easy identification of the document and their submission by the claimant to the appropriate authority while processing the rebate claims. Further, Para 8.3 of Chapter 8 of the of CBEC's Excise Manual of Supplementary Instructions states that after satisfying himself that the goods cleared for export under

relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1s duly certified by Customs, and that the goods are of 'duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdiction Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case, and a reasoned order shall be issued. In the current case, the Applicant had failed to fulfill all these conditions even after giving an opportunity and ample time to them.

- (ii) The Applicant had not satisfied all the conditions and not followed the procedure prescribed in Notification No. 19/2004-CE (N.T.) as they failed to submit the Duplicate ARE-1s. The Applicant while submitting the instant rebate claim of Rs.11,62,570/- was well aware of the fact that Duplicate copies of ARE-1s are essential documents for filing the rebate claim. It is evident from their letter dated 27.02.2012, where under the subject rebate claim of Rs.11,62,570/- was filed with division office that, they promised to submit Duplicate copies of ARE-1 Nos.188,189,190,191,192 and 193. The Range Superintendent in his verification report informed that the Applicant had filed Sixuplicate copy (Yellow) of ARE-1 Nos. 179,180,182,184,185 & 186. The Applicant also failed to submit the disclaimer certificate. Thus, it was evident from the records of the claim that, they failed to follow the procedure as stated above. Thus, on merit, the entire claim was liable for rejection for want of essential documents which are vital for acceptance of Proof of Export and sanctioning the claim.
- (iii) The Applicant while submitting the rebate claim of Rs. 9,30,618/- was well aware of the fact that Original and Duplicate copies of ARE-1s are essential documents for filing the rebate claim. It has been reported by the Range Superintendent, in his verification report dated 21.02.2012

that the Applicant had failed to submit Original copies of ARE-1Nos. 158,159,160,161 & 165 and Duplicate copies of ARE-1 Nos 163 & 164 both dated 12.01.2011 Secondly, they had failed to submit duplicate copy (buff colour) of ARE-1 Nos. 163 and 164. Thus, on merit, the entire claim was liable for rejection for want of essential documents which are vital for acceptance of Proof of Export and sanctioning the claim.

- (iv) The Applicant while submitting the rebate claim of Rs. 19,49,103/- was well aware of the fact that Duplicate copies of ARE-1s are essential documents for filing the rebate claim. It was evident from the Applicant's letter dated 29.02.2012, where under the subject rebate claim was filed with division office that they promised to submit Original copy (White colour) of ARE-1 No 175, Duplicate copies (Buff colour) of ARE-1Nos 166,167,169,170,171,172,173,174,175,176,177 and 178. The Applicant filed Sixtuplicate copy (yellow colour) of ARE-1 Nos. 176,177 and 178 instead of Duplicate copy (Buff colour). They also failed to submit the disclaimer certificate.
- (v) In support of Proof of Export, the Applicant had to submit the Original as well as Duplicate copies of ARE-1s vide which the goods have been exported for acceptance as Proof of Export. The Applicant had failed to submit Duplicate copies of ARE-1s.
- (vi) The contention of the Applicant that without verifying the original documents which were provided with the rebate claim the claim had been rejected in toto, is not correct. The processing of rebate claim, under Section 11B of the Act, is 'Time Bound Work' for the Central Excise Department and disposal of rebate claims within three months is binding on the Department and same is given 'TOP PROIORITY'. Further, taking into consideration, the time constraint to dispose off the claim, the department, vide letter dated 28.03.2012 and 03.01.2012 respectively raised the deficiency memo with regard to non-submission of duplicate copies of ARE-1(s). A reminder letter

dated 09.04.2012 and 28.02.2012 respectively was also issued to the Applicant before passing the rebate rejection order. Vide office letter dated 03.05.2012, the Applicant was again asked to furnish requisite documents for processing of the subject rebate claim.

- (vii) It is to state that many times, the Applicant was found to submit incomplete set of documents when the rebate claims are filed with Division office. For example they did not submit duplicate copies (buff colour) of ARE-1 No. 188,189,190,191,192 and 193, Original copies of ARE-1 Nos. 158, 159, 160, 161 and 165 and Duplicate copies of ARE-1 Nos. 163 & 164 even after giving ample time to produce the same. In the context of claimant's non-filing of the requisite documents, along with the claim, a copy of letter dated 23.02.2012 written by the Division office to the Applicant, proves their careless attitude.
- (viii) As contended by Applicant, the omission/default committed by the Applicant are not mere procedural lapse, but the same are vital requirement for sanction of claim, which are not fulfilled by the them. For sanctioning of rebate claim, it is one of the important condition that Proof of Export is established with documentary evidence. The proof of export is not established as Duplicate copies of ARE-1s are not submitted by the Applicant. Unless, all the copies - original, duplicate and triplicate are tallied with each other, the proof of export is not established. As this major condition for sanctioning the rebate was not fulfilled, the rebate cannot be sanctioned.
- (ix) The contention of the Applicant is totally wrong, since they filed sixuplicate copies of ARE-1s which bear yellow colour, they have not filed Original and duplicate copies of ARE-1s. As the Applicant had not submitted all the essential required documents, the case laws referred by them are not relevant as rightly held in the subject Order-in-Appeal.

- (x) The contention of the Applicant that duplicate ARE-1s are not required to be submitted along with the rebate claim and it is for verification purpose only is partly correct. In fact, submission of duplicate copies of ARE-1s with proper colour i.e. buff is requirement of the law and the Applicant themselves submitted and agreed that Duplicate copies are required for verification purpose and thus the claim was rejected as they failed to submit Duplicate copies of ARE-1s. The duplicate copies of ARE-1s had not been submitted by the Applicant along with the rebate claim. Before rejecting their rebate claim, the Applicant were given ample time to submit the same. When these copies were not submitted to the department, there was no question of calling for these documents from the division office.
- (xi) The Hon'ble Commissioner (Appeals) in Para-19 of the Orders-in Appeals has already discussed regarding the case laws referred by the the Applicant. Further, it is pertinent to mention case laws of M/s. Indian Aluminum Co. Ltd. [1991 (55) ELT 454 (S.C.)] and M/s. Avis Electronics Pvt. Ltd. [2000 (117) ELT 571(Tri.-LB) wherein it has been observed that where provisions are stipulated for doing a particular act in a specific manner, then it would mean that any deviation there from is not permitted at all and it should be performed in that manner itself as per Rules.
- (xii) As per the procedure given in CBEC's Manual of Supplementary Instructions, the duplicate and triplicate copies of ARE-1 are to be verified and tallied with each other for establishing proof of export. In absence of duplicate copies of ARE-1, the same could not be done and hence, the proof of export is not established.
- (xiii) It is mandatory on part of the Applicant before filing the refund/rebate claim to ensure the complete set of documents required are submitted. Whereas in the instant case the Applicant seeks the rebate claim without filing the requisite documents. Many a times the Applicant is submitting the rebate claims in Division Office without

essential documents. The Applicant does not bother to do follow up with Division Office regarding incomplete documentation even though query memo are raised.

- (xiv) The contention of assessee is not acceptable. The assessee have not submitted the Original and duplicate copies as prescribed and required under law. Non-submission of documents as required under law cannot be termed as 'procedural deviation' and same cannot be condoned.
- (xv) The substantive requirement for Proof of Export is not satisfied as the duplicate copies of ARE-1, required for verification of proof of export, had not been submitted by the Applicant which is not procedural infraction, but an essential requirement for sanction of rebate claim.
- (xvi) The Respondent prayed that the impugned Orders-in-Appeals be upheld on merit as the rejection of rebate claims are proper, correct and legal in this case.

7. 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.

9. On perusal of the records, it is observed that the Applicant, manufacturer had filed rebate claims in respect of the following ARE-1s which were rejected by the adjudicating authority as the Applicant had not filed Original and duplicate copy (White and Buff colour) of the ARE-1 and Disclaimer Certificate:

Sr.No.	ARE-1 No	Original copy submitted	Duplicate copy submitted	Duty amount (Rs.)
(a)	F.No. 195/71/13-RA			
1	HIPL/10-11/179 dt 01.03.2011	Yes	Yes	1,79,553
2	HIPL/10-11/180 dt 01.03.2011	Yes	Yes	1,65,800
3	HIPL/10-11/182 dt 04.03.2011	Yes	Yes	1,50,519
4	HIPL/10-11/184 dt 11.03.2011	Yes	Yes	7,282
5	HIPL/10-11/185 dt 11.03.2011	Yes	Yes	5,387

6	HIPL/10-11/186 dt 11.03.2011	Yes	Yes	42,787
7	HIPL/10-11/188 dt 24.03.2011	Yes	No	32,090
8	HIPL/10-11/189 dt 24.03.2011	Yes	No	1,70,384
9	HIPL/10-11/190 dt 24.03.2011	Yes	No	26,742
10	HIPL/10-11/191 dt 28.03.2011	Yes	No	1,70,384
11	HIPL/10-11/192 dt 29.03.2011	Yes	No	1,70,384
12	HIPL/10-11/193 dt 29.03.2011	Yes	No	41,259
	Total claim			11,62,570
(b)	F.No. 195/72/13-RA			
1	HIPL/10-11/158 dt 06.01.2011	Yes(yellow paper)	yes	1,64,272
2	HIPL/10-11/159 dt 06.01.2011	Yes(yellow paper)	yes	1,64,272
3	HIPL/10-11/160 dt 07.01.2011	Yes(yellow paper)	yes	1,19,192
4	HIPL/10-11/161 dt 09.01.2011	Yes(yellow paper)	yes	1,63,508
5	HIPL/10-11/163 dt 12.01.2011	Yes(white paper)	No	1,67,328
6	HIPL/10-11/164 dt 12.01.2011	Yes(white paper)	NO	75,641
7	HIPL/10-11/165 dt 17.01.2011	Yes(yellow paper)	Yes	76,405
	Total claim			9,30,618
(c)	F.No. 195/73/13-RA			
1	HIPL/10-11/166 dt 02.02.2011	Yes	No	1,64,272
2	HIPL/10-11/167 dt 02.02.2011	Yes	No	1,76,496
3	HIPL/10-11/169 dt 02.02.2011	Yes	No	1,67,328
4	HIPL/10-11/170 dt 03.02.2011	Yes	No	1,79,553
5	HIPL/10-11/171 dt 03.02.2011	Yes	No	1,64,272
6	HIPL/10-11/172 dt 03.02.2011	Yes	No	1,67,328
7	HIPL/10-11/173 dt 03.02.2011	Yes	No	1,65,036
8	HIPL/10-11/174 dt 04.02.2011	Yes	No	1,61,979
9	HIPL/10-11/175 dt 04.02.2011	No	No	Not submitted
10	HIPL/10-11/176 dt 25.02.2011	Yes	No	1,64,272
11	HIPL/10-11/177 dt 28.02.2011	Yes	No	1,79,553
12	HIPL/10-11/178 dt 28.02.2011	Yes	No	1,67,328
	Total claim			19,49,103

10. The Commissioner(Appeals) had rejected the Applicant's rebate claims for non-furnishing of Original and Duplicate copies of ARE-1s in correct colours and Disclaimer Certificate. Government notes that evidence of duty payment and export of goods have been submitted by them and

(a) F.No. 195/71/13-RA – the Range Superintendent vide report letter dated 30.04.2012 has submitted that the Applicant had failed to furnish the Duplicate copies (Buff colour) of ARE-1 Nos 188,189,190,191,192 and 193 and had filed sixuplicate copy (yellow coly) of ARE-1 Nos. 179,180,182,184,185 and 186. Further, they had not submitted the 'Disclaimer Certificate';

(b) F.No. 195/72/13-RA- the Range Superintendent vide report letter dated 21.02.2012 has submitted the Applicant had failed to furnish the Original copies of ARE-1 Nos 0158, 159, 160, 161 & 165 i.e. original (white colour of January, 2012 and duplicate copies (buff copies of ARE-1 No. 163 and 164 both dated 12.01.2011. Further, they had not submitted the 'Disclaimer Certificate'

(c) F.No. 195/73/13-RA - the Range Superintendent vide report letter dated 30.04.2012 has submitted that the claim was in order and while recommending the claim for sanction, it was certified that no Govt dues are pending against the Applicant

Government finds that the all the ARE-1s has been duly certified by the Authorized Officer, Superintendent of Customs of SEZ units and the Applicant had submitted the Bank Realisation Certificate along with the rebate claim. Government finds that the rebate claims have been rejected only on technical grounds.

11. Government notes that the Notification No.19/2004-CE(NT) dated 06.09.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions cannot override substantive compliance.

12. In this regard it is noticed that while deciding an 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.), observed at para 16 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.

13. Further, the Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] also while deciding the identical issue, relied on aforesaid order of Hon'ble High Court of Bombay.

14. Government finds that rationale of aforesaid Hon'ble High Court orders is squarely applicable to the issue in question. Government in the instant case notes that Applicant have submitted that

(a) F.No. 195/71/13-RA – the duplicate copies of ARE-1 No. 176, 177 had been submitted, however, the duplicate copies of the said ARE-1s had been inadvertently printed in yellow

(b) F.No. 195/72/13-RA- All the documents evidencing export of goods submitted and therefore rejection of claim on account of minor inconsistency in printing the few of original ARE-1 on yellow colour page instead of white colour is completely an arbitrary rejection of the rebate claim.

(c) F.No. 195/73/13-RA - Eleven original ARE-1s had been submitted along with the refund claim and one original ARE-1 No. 175 was not submitted.

15. Government finds all the ARE-1s have been received and duly certified by Authorized Custom Officer of SEZ Units except of ARE-1 No. HIPL/10-11/175 dated 04.02.2011 which was not produced by the Applicant along with the claim. The only discrepancies in this whole issue is that the correct colour ARE-1s was not submitted along with claim. Since the Applicant printed the Original and duplicate ARE-1s in wrong colours, the same is a procedural lapse and the same is condoned.

16. As regards Disclaimer Certificate not submitted by the Applicant, Government observes that the CBEC Circular No. 43/2007-Customs dated 05.12.2007 provides that the drawback in respect of goods supplied by DTA units to Developers or units in SEZ can be claimed by either the SEZ unit or the Developer, as the case may be, or by the DTA supplier on the basis of the disclaimer issued by the SEZ unit or the Developer. The Applicant submitted that they are not claiming any duty drawback from any of the concerned authority and hence the 'Disclaimer certificate' would not be required to be submitted for rebate claim. Further, Applicant vide letter dated 16.04.2012 clarified that 'Disclaimer Certificate' of M/s IBM India Pvt Ltd. was not received by them from their customer and would submit the same after wards and submitted Indemnity Bond of Rs. 100/- stamp paper

in absence of 'Disclaimer Certificate'. Government finds that as Applicant, manufacturer had submitted the Indemnity Bond on Rs. 100/-in stamp paper, hence on this ground the rebate cannot be denied.

17. Therefore the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of original and duplicate copy of ARE-1 in correct colours. And here the Applicant have submitted the original and duplicate copies of the ARE-1. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting to rejection on technical grounds/procedural lapses would not serve the purpose of justice.

18. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions the claims for rebate shall be considered on the basis of the aforesaid documents submitted by the Applicant. After satisfying the authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

19. In view of above, Government sets aside the impugned Orders-in-Appeal Nos. P-I/MMD/189/2012, P-I/MMD/187/2012 and P-I/MMD/190/2012 all dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Pune and the matter is remanded to the Original Adjudicating Authority.

F.No. 195/71/13-RA

F.No. 195/72/13-RA

F.No. 195/73/13-RA

20. The three revision applications are allowed with consequential relief, as above.

Shrawan
29/4/21
(SHRAWAN KUMAR)

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

ORDER No ¹⁹¹⁻¹⁹³ /2021-CX (WZ) /ASRA/Mumbai Dated 29.04.2021

To,
M/s. Haworth India Pvt. Ltd.,
Raisoni Industrial Park, Site No. 276,
Village-Mann, Taluka-Mulshi,
Pune-411 046

Copy to:

1. The Commissioner of CGST, Pune-I, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. ~~Spare Copy~~