



REGISTERED
SPEED POST

F.No.195/763-765/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue...19/2/14

ORDER NO. 22-24/14-Cx DATED 17.02.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, 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 orders-in-appeal No. 78 to 80/CE/MRT-II/2012 dated 30.03.2012 passed by Commissioner of Central Excise (Appeals) Meerut-II

APPLICANT : M/s Polyplex Corporation Ltd., Bannakhera Road, Bazpur, Distt. Udham Singh Nagar, Uttrakhand

RESPONDENT : Commissioner of Customs & Central Excise, Meerut-II

ORDER

These revision applications are filed by M/s Polyplex Corporation Ltd., Bannakhera Road, Bazpur, Distt. Udham Singh Nagar, Uttrakhand against the orders-in-appeal No. 78 to 80/CE/MRT-II/2012 dated 30.03.2012 passed by Commissioner of Central Excise (Appeals) Meerut-II with respect to orders-in-original No. 417 to 419/11 all dated 17.12.2011 passed by Assistant Commissioner of Cental Excise, Division Haldwani.

2. Brief facts of the case are that the applicants are engaged in the manufacture of Biaxially Oriented Propylene Film BOPP film (plain), Biaxially oriented polyester film (plain), metal used Biaxially oriented polyester Film & Polyester Chips falling under Ch. 39. They are availing area based exemption under notification no. 50/2003 CE dated 10.06.2003 and input stage rebate under rule 18 of Central Excise Rules, 2002 in respect of Central Excise duty paid on goods used in manufacture of goods exported outside India. The applicants filed three rebate claims dated 05.08.2011/08.08.2011 alongwith the original/duplicate copies of the ARE-2s, concerned shipping bills and bill of ladings. The adjudicating authority in all three cases vide impugned orders all dated 17.12.2011, partially sanctioned the rebate amount and rejected the balance amount on the ground that the original copies of ARE-2 No. 205 dated 12.06.2011, 215 dated 18.06.2011 & 26 dated 07.04.2011 respectively were not filed but only photocopies of the same were filed.

3. Being aggrieved by the said orders-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 That the Commissioner (Appeals) has completely ignored the standing instructions contained in Chapter 7 & 8 of CBEC's Excise Manual regarding rebate claim

of input state duty under rule 18 of Central Excise Rules, 2002 read with Notification No.21/2004-NT dated 06.09.2004.

4.2 That both the lower authorities had rejected the rebate claims of Rs.1,34,859/-, 1,65,501/- & Rs.1,93,981, in respect of ARE-2 No.205 dated 12.06.2011, 215 dated 18.6.2011 and No.026/2011-12 dated 07.04.2011 on the ground that the applicant had claimed rebate on the basis of photocopy of this ARE-2 and had not filed the original copy of the said ARE-2. The Commissioner (Appeals) failed to appreciate that the applicant had already submitted the original and duplicate copies of ARE-2 No.026/2011-12 duly signed by the Customs Authority at the time of filing the rebate claim. The applicant in their rebate letter dated 20.07.2011 had specifically mentioned ARE-2 No.026/2011-12 as one of the documents in support of their claim. It is not in dispute that goods had in fact been exported and applicant were claiming rebate of duty as per input – output norms fixed by the Assistant Commissioner.

4.3 That the Commissioner (appeals) failed to appreciate that while exporting the goods under claim for rebate of duty of excisable goods used in the final products exported, the applicant have complied with all the conditions of Notification No.21/2004-CE(NT) dated 06.09.2004 and it is not the case of the Revenue that the applicant violated any of the conditions of the said Notification. Therefore, the rebate claimed by the applicant was admissible on merit. The impugned order passed by the Commissioner (Appeals) ignoring the documents submitted by the applicant is bad in law and the same is not sustainable under law.

4.4 That it is a settled law that the substantial benefit in the form of rebate or refund of duty or exemption of duty is not deniable on the ground of clerical or procedural lapses on the part of the assessee. The Hon'ble Supreme Court in the case of CST, UP V/s Auriya Chamber of Commerce, Allahabad – 1986 (25) ELT 867 (SC) that "rules or procedures are handmade of justice, not its mistress". Further the Apex Court has once again emphasized upon the need to ignore procedural lapses while considering substantive benefit otherwise available to the assessee. In the case of Mangalore

Chemicals & Fertilizers Ltd. v/s Dy. Commissioner – 1991 (55) ELT 437 (SC), the Hon'ble Supreme Court held that a distinction should be made between a procedural condition of technical nature and a substantive condition. The Apex Court held that non-observance of procedural condition is condonable while that of substantive condition is not.

4.5 That in view of the above grounds, the requested to

(a) set aside the impugned order-in-appeal No. 78 to 80-CE/MRT-II/2012 dated 30.03.2012 insofar as it relates to rejection of part rebate claim ;

(b) hold that the applicants are legally entitled to rebate claim on input materials that were actually used in the manufacture of finished product exported out of India.

5. Shri S.S. Arora, Advoate of the applicants filed written submissions vide letter dated 02.08.2013 and made following submissions :-

5.1 That during the course of rebate proceedings the adjudicating authority advised the applicant to submit the original copy of the ARE-2 in all the three revision applications. In spite of the fact that the applicant had already submitted the original and the duplicate copies of the ARE-2 duly signed by the Customs Authorities along with the rebate claim papers and on 21.11.2011 gave the reply that they have already submitted the original ARE-2 forms.

5.2 That the Commissioner (Appeals) stated that filing of the original and the duplicate copies of the ARE-2 is an essential requirement. Since, the applicant had not submitted the original copies of the ARE-2 in the above said cases the adjudicating authority has rightly rejected the rebate claim. Applicant had submitted original ARE-2 alongwith rebate claims and subsequently they submitted photocopies of said ARE-2 form on receipt of objection from department.

5.3 Even otherwise if the ARE-2 was not submitted it should not have vitiated the claim made by the applicant. As has been held by the Hon'ble Mumbai High Court in the case of :-

(a) UM Cables Limited versus Union of India 2013 (293) ELT 641

Rebate claim of non-production of original and duplicate copy of ARE-1, ipso facto, it cannot invalidate rebate claim – In such a case, exporter can demonstrate by cogent evidence that the goods were exported and duty paid, satisfying requirements of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) – On facts, claim directed to be considered on the basis of bill of lading, bankers certificate of inwards remittance of export proceeds and certification by customs authorities on triplicate copy of ARE-1.

(b) Shreeji Colour Chem. Industries versus Commissioner of Central Excise Vadodara 2009(233) ELT 367 (Tri-Ahmd.)

Export – proof of export – Non-production of ARE-4 form – Proof of export of goods by way of invoice, bill of lading and shipping bill sufficient even in absence of original ARE-4 form – Absence of allegation that export not taken place – Duty demand not sustainable – Section 11A of Central Excise Act, 1944.

5.4 Applicant further stated in the said letter that case may be decided on merits without personal hearing in these cases.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of records, Government observes that in these cases, part input rebate claims of Rs.1,34,859/-, 1,65,501/- and 1,94,435/- were rejected by the adjudicating authority on the grounds instead of original copies of ARE-2 No. 205 dated 12.06.2011, 215 dated 18.06.2011 and 26 dated 07.04.2011 only the photo copies of said ARE-2 were filed. Commissioner (Appeals) upheld the said order and now

applicant has filed these revision applications against impugned orders-in-appeal on the grounds stated above.

8. Government notes that applicant had been claiming right from beginning that said original and duplicate ARE-2 forms duly endorsed by Customs were submitted alongwith the rebate claims. The forwarding letter clearly states that they have submitted original and duplicate copies of ARE-2 form. The rebate claims are found otherwise in order as the use of duty paid inputs in the manufacture of goods exported is not disputed by the department. The proof of export is available in the form of Customs endorsements on the shipping bills and duplicate ARE-2 in original forms certifying export of said goods. The photocopies of the original ARE-I duly endorsed by customs are also submitted. In these circumstances the pleadings of the applicant that they are entitled for said rebate claims merit acceptance.

9. The applicant has relied upon judgment dated 24.04.2013 of Hon'ble Bombay High Court in the case of UM Cables Vs. UOI in W.P. No.3102/13 and 3103/13. In the said judgment in para 11,12,13,14.....16,17, Hon'ble High Court has observed as under :-

"11. The Manual of Instructions that has been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original copy of the ARE-I, the invoice and self-attested copies of the shipping bill and the bill of lading. Paragraph 8.4 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-I applications were actually exported as evident from the original and duplicate copies of the ARE-I form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-I form received from the jurisdictional Superintendent of Central Excise. 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.

12. The procedure which has been laid down in the notification dated 6 September 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and

limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.

13. 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* 1991 (55) E.L. T. 437 (S.C.) = (2092-TIOI.-234=SC-CJ). 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 at paragraph 11. 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 of all conditions irrespective of the purposes they were intended to serve."

14. The particulars which are contained in Form ARE-I relate to the manufacturer of the goods, the number and description of the packages, the weight, marks and quantity of the goods and the description of the goods. Similarly, details are provided in regard to the value, duty, the number and date of invoice and the amount of rebate claimed. Part A contains a certification by the central excise officer to the effect inter alia that duty has been paid on the goods and that the goods have been examined. Part B contains a certification by the officer of the customs of the shipment of the goods under his supervision.

15. In the situation in the two writ petitions, the rebate claims that were filed by the Petitioner would have to be duly bifurcated. As noted earlier the first writ petition Writ Petition 3102 of 2013. relates to two claims dated 20 March 2009 and 8 April 2009 in the total value of Rs.12.54 lacs. In respect of the second of those claims dated 8 April 2009, of a value of Rs.10.08 lacs, the Petitioner has averred that the goods were loaded by the Shipping Line on the vessel and the vessel sailed on 18 April 2008 whereas the Let Export Order was passed by the customs authorities on 19 April 2008. The Petitioner has stated that in view of this position the customs authorities withheld the endorsement of the ARE-1 forms and the issuance of the export promotion copy of the shipping bill paragraphs 8(g) and 8(h) of the petition. We find merit in the contention of counsel appearing on behalf of the Revenue that in these circumstances, the rejection of the rebate claim dated 8 April 2009 by the adjudicating authority and which was confirmed in appeal and in revision cannot be faulted. Admittedly even accordingly to the Petitioner the goods came to be exported and the vessel had sailed on 18 April 2008 even before a Let Export Order was passed by the customs authorities. The primary requirement of the identity of the goods exported was therefore, in our view, not fulfilled. In such a case, it cannot be said that a fundamental requirement regarding the export of the goods and of the duty paid

character of the goods was satisfied.

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-I form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-I 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-I 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.1754/10-CX dated 20 December 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35 EE of the Central Excise Ad 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 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 = (209B-TIQL-1973- CESTAT-AHHJ. 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-I 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-I 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."

9.1 The ratio of said judgment is squarely applicable to this case. The rebate claim was otherwise found admissible except the deficiency of non-availability of original ARE-2 form. In view of position explained above, the instant rebate claims are admissible to the applicants as the use of duty inputs in the manufacture of goods exported is not in dispute and export of goods stands established from customs certified relevant duplicate ARE-2 as well as shipping bills. The original authority is directed to sanction the rebate claims if claims are otherwise found in order. The impugned orders are modified to this extent.

10. The revision applications are thus allowed in above terms.

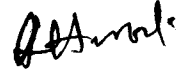
11. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

M/s Polyplex Corporation Ltd.,
Bannakhera Road, Bazpur,
Distt. Udham Singh Nagar,
Uttarakhand



(भागवत शर्मा/Bhagwat Sharma)

सहायक आयुक्त/Assistant Commissioner

C B E C - O S D (Revision Application)

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt of Rev /


भारत सरकार/Govt of India

नई दिल्ली / New Delhi

Order No. 22-24/14-Cx dated 17.02.2014

Copy to:

1. Commissioner of Central Excise & Customs, Meerut-II Commissionerate, Opp. Shaheed Park (Near Ashok Ki Lot), Delhi Road, Meerut – 250 001.
2. Commissioner of Central Excise & Customs (Appeals-II), Meerut-II Commissionerate, Opp. Shaheed Park (Near Ashok Ki Lot), Delhi Road, Meerut – 250 001.
3. The Assisant Commissioner of Central Excise, Haldwani Division, Mishra Kunj, Opp. Vitika Restaurant, Nainital Road, Haldwani
4. Shri S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi – 110029.
- ✓ 5. PA to JS(RA)
6. Guard File.
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(B.P. Sharma)
OSD(Revision Application)