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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. 195/62/2001-RA/1050

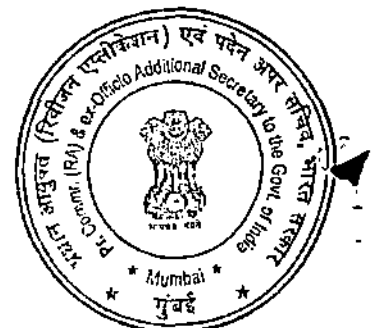
Date of Issue: 26/07/2018

ORDER NO. 222 /2018-CX(WZ) /ASRA/MUMBAI DATED 26.07.2018  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Parekh Bright Bars Pvt. Ltd.

Respondent : Commissioner of Central Excise and Customs,  
Belapur.

Subject : Revision Application filed, under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal  
No. AB (625) 298/M-VI/2001 dated 24.04.2001 passed  
by the Commissioner of Central Excise (Appeals),  
Mumbai.



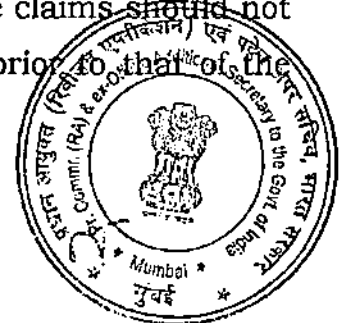
## ORDER

This Revision Application is filed by M/s Parekh Bright Bars Pvt. Ltd. (hereinafter referred to as 'applicant') against the Order-in-Appeal No. AB (625) 298/M-VI/2001 dated 24.04.2001 passed by the Commissioner of Central Excise (Appeals), Mumbai.

2. Brief facts of the case are that the applicant situated at C-346, TTC Industrial Area, Pawane Village had filed 6 Rebate Claims amounting to Rs. 12,46,158/- (Rupees Twelve Lakh Forty Six Thousand One Hundred and Fifty Eight only) under Rule 12(1)(a) of Central Excise Rules, 1944 in respect of export made by them during the period 15/07/1999 to 13/12/1999. The details of the said claims are as under.

Sr. No.	AR-4s / 1999-2000	Date	Shipping Bill No	Date	Date of Shipment	Bill of Lading No.	Date	Amount of Rebate (Rs.)
1	16	15.07.99	831654	17.07.99	27.07.99	NSVA049081	15.07.99	160097/-
2	15	14.07.99	831653	17.07.99	27.07.99	NSVA049081	15.07.99	307217/-
3	17A	17.07.99	832690	21.07.99	27.07.99	NSVA049081	15.07.99	154844/-
4	49	24.11.99	868612	25.11.99	30.11.99	BOM/ILL/ 43191	24.11.99	186405/-
5	51	02.12.99	871972	06.12.99	13.12.99	BOM/RTM/ 49767	03.12.99	198689/-
6	55	13.12.99	874841	15.12.99	19.12.99	BOM/RTM/ 44631	14.12.99	238906/-
TOTAL								1246158/-

3. In the matter the applicant was issued two Show Cause Notices dated 24/11/1999 and 30/09/1999 asking them as to why the claims should not be rejected as corresponding Bill of Lading are issued prior to that of the



respective Shipping Bill which is anomalous/ contradicting and hence not acceptable as proof of actual Export of the consignment under subject AR-4.

4. The Adjudicating Authority in its finding did not accept the applicant's contention that the date of Bill of Lading are on account of mistake by the shipping company and vide Order in Original No. R-350/2000 dated 30.06.2000 held that in absence of any cogent evidence of such goods having been exported, the rebate claim based on anomalous documents deserves to be rejected as unsubstantiated.

5. Aggrieved by the aforesaid Order, the applicant preferred appeal against the Order- in- Original before Commissioner (Appeals) Mumbai. Vide order No. AB (625)298/M-VI/2001 dated 24/04/2001 Commissioner (Appeals) upheld the Order in Original and rejected the appeal filed by the applicant as bad in law.

6. Being aggrieved the applicant filed Revision application against the Order of Commissioner (Appeal) before the Revisionary Authority. Revisionary Authority vide its Order No. 101/2001 dated 15.11.2001 rejected the revision application filed by the applicant. Revisionary Authority in its order, in the light of Hon'ble Supreme Court's judgment in the case of British India Steam Navigation Company Ltd reported in 1990(48)ELT 481(SC), observed that :

*the Bill of Lading is made out either after taking over or loading of the goods by the carrier; that in the instant case, all the Bill of Lading are dated before the actual date of clearance of the goods for export purposes, although containing the same container No. etc. In view of the circumstances, whether the very same goods on which the Central Excise duty was paid have in fact been exported is to be answered in the negative in view of the Hon'ble Supreme Court decisions i.e. to say whether at all goods on which duty of excise was paid have in fact been exported? That normally, after receipt of mate receipts the Bill of Lading is made out; that it is pertinent to note that once the bill of lading is prepared and issued it becomes a negotiable instrument in the common trade parlance and how can such an instrument be prepared well in advance is beyond the realm of imagination; that by having prepared and issued Bill of Lading the carriers of the goods have got*





*rejoinder affidavit filed by the Petitioners. The fresh order shall be passed uninfluenced by the earlier conclusions.*

*(e) We clarify that we have not expressed any opinion on the merits of the Petitioners contentions. All contentions are kept open.*

*(f) Rule is made absolute accordingly. No costs.*

8. A Personal hearing was held in this case on 03.07.2018 Smt. Shilpa Parekh and Shri Hitesh Parekh, both Directors of the applicant company appeared for hearing. Shri Rajendra Salaskar, Supdt., Belapur-III Division appeared on behalf of the respondent department. The applicant reiterated the Order of the Hon'ble Bombay High Court dated 03.05.2018 and pleaded that exports have taken place and furnished copy of BRC dated 28.02.2002 evidencing the realisation of proceeds. The only issue is that Bill of Lading is before the date of shipping bill. This is a technical lapse which should not deny the substantive right to rebate claim.

The respondent reiterated the findings of Commissioner (Appeals) and Joint Secretary (Revision Application) and adjudicating authority alongwith replay of Writ Petition and rejoinder. It was mentioned that the claim is in Order except the discrepancy of the Bill of Lading. Hence the RA be dismissed and Order in Appeal be upheld. They have nothing more to add.

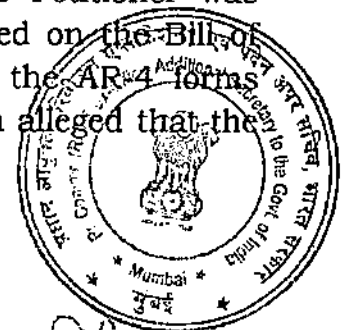
9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal, Revisionary Authority's Order No.101/2001 dated 15.11.2001 and Hon'ble Bombay High Court's Order dated 03.05.2018.

10. Government observes that Hon'ble Bombay High Court in its Order dated 03.05.2008 has categorically directed that "*while passing the fresh order, the Revisional Authority shall take into consideration all pleas including the contents of the rejoinder affidavit filed by the Petitioners. The fresh order shall be passed uninfluenced by the earlier conclusions*".



11. During the proceedings before the Hon'ble Bombay High Court, the applicant filed Rejoinder affidavit to the reply filed by the Respondent department the main points made therein are as under:

- 11.1 the Affidavit in Reply has sought to confuse the issue raised in the Petition and has conveniently skirted and/or avoided to answer the critical questions which have been raised in the Writ Petition for the kind consideration of this Hon'ble Court.
- 11.2 the main relief sought in the Petition is to direct the Respondents to grant and pay to the Petitioner the rebate of the duty of excise paid on the Stainless Steel Bright Bars cleared by the Petitioner under cover of AR-4s Nos.15/14.07.1999, 16/15.07.1999, 17A/17.07.1999 and 49/24.11,1999, which was denied to the Petitioner vide Order dated 15.11.2001 passed by the Revisionary Authority.
- 11.3 the goods cleared under the AR-4s were exported. The copy of the AR-4 is annexed at Exhibit A (Page No.27-28 of Petition), Exhibit B (Page No.32-33 of Petition), Exhibit C (Page No.37-38 of Petition) and Exhibit E (Page No.43-44 of Petition). If the AR-4 is perused, it will appear that the certification of clearance has been done by both the Central Excise Officers as well as the Customs Officers.
- 11.4 the goods were loaded and relevant Shipping Bills were also issued, which copies have been annexed to the Petition. Copy of Certificate of Export has also been annexed to the Petition, which is at Page No.47-A and Page No. 47-B, The Certificate clearly proves that the export made by the Petitioner under the Shipping Bill was realized Mate's Receipt showing that the goods were loaded on the Board of the Ship are also annexed to the Petition. All these documents conclusively prove that the goods, which were manufactured by the Petitioner were exported and hence, they were entitled to claim rebate totalling to Rs.12,46,158/- which was paid towards the duty at the time of clearance of the goods.
- 11.5 the Respondents issued a Show Cause Notice and consequently which was adjudicated and the claim of the Petitioner was rejected on the ground that the date mentioned on the Bill of Lading were prior to the date mentioned on the AR-4 forms showing clearance of the goods and it has been alleged that the



date of clearance cannot be after the date of Bill of Lading and hence, the claim has been rejected by the Adjudicating Authority as well as Appellate and Revisionary Authority.

- 11.6 none of the authority disputes the document such as Bill of Lading, Shipping Bill, Mate Receipt and other documents, which has been produced. Even the AR-4 have been signed by both the Central Excise and Customs Authorities and hence, there is no reason to doubt that the goods have not been exported. Merely, a technical breach of date cannot be reason for declining the rebate of the amount of duty paid.
- 11.7 it relies upon the decision in the case of Zandu Chemicals Ltd. reported in 2015 (315) ELT 520 (Bom) which is annexed hereto and marked as Exhibit 'A', wherein this Hon'ble Court has held that procedural requirement are capable of substantial compliances and cannot be held mandatory.
- 11.8 The Petitioner also relies upon the Order dated 28.09.2004 passed by the Revisionary Authority i.e. Joint Secretary in the case of Arviva Industries (India) Ltd., wherein, also, the Commissioner (Appeals) had rejected the rebate claim and the Revisionary Authority has allowed the refund, which is annexed hereto and marked as Exhibit 'B', The issue remains Live as the rebate claim is pending qua the Petitioner.

12. Government observes that respondent department filed affidavit in sur-rejoinder countering the Rejoinder affidavit filed by the applicant mainly stating therein that:

- 12.1 Petitioners submissions that goods cleared under the AR-4s have been exported is not substantiated as the petitioner has failed to reconcile the anomaly of Bill of Lading date prior to that of Shipping Bill date. Hence, it cannot be accepted as proof of actual export of the consignment covered under the said AR-4s.
- 12.2 the Bill of Lading is a legally binding evidence of receipt of goods by the carrier and goods are delivered on submission on original Bills of Lading. It is further submitted that Bill of Lading is one of dual channels evidencing the actual export of a consignment and is an essential requirement of the rebate claim, since the Bill of Lading is the last chain of documents to evidence sailing of vessel with the goods contained therein on board. Bill of Lading date being prior to the date of clearance of goods.







12.4 While replying to the Show Cause dated 28/09/1999, the Petitioners have taken a plea that the anomaly in the dates of bill of lading was due to mistake by the Shipping Company. It is pertinent to note that the Petitioners have submitted some three other applications for removal of excisable goods in Form AR-4, bearing AR-4 Nos. 49/99-2000, 51/99- 2000 and 55/99-2000 and dates of the Shipping Bills thereof are 30.11.1999, 13.12.1999 and 19.12.1999 respectively. However, it is utter surprise that the dates of Bill of Lading for the aforesaid Shipping Bills are 24.11.1999, 03.12.1999 and 14.12.1999 respectively. Hence, it is hard to believe that the same type of mistake with the same party can occur repeatedly. The Commissioner (Appeal) in his order has also observed that the appellants are mainly harping on the point that it was a clerical mistake in the Bills of Lading. **The said claim is not corroborated with any legal instructions, notices or clarification in any case.**

12.5 the facts of the case as reported in 2015(315) ELT 520(Bom) in the case of Zandu Chemicals Ltd Versus Union of India are different than the case is dispute. Hon'ble Court has held that Rebate Claim could not be rejected for non submission of lost ARE 1 original and duplicate. In the case of M/s Zandu Chemicals Ltd. details of shipping Bill, rotation number and sailing date were found to be correct on verification by the adjudicating authority. Whereas in the Petitioner's matter the most important document i.e. Bill of Lading is pre-dated to the date of shipping bills & other documents. Hence the case law mentioned by the Petitioner cannot be made applicable in the case.

The issue involved in the case of M/s Arviva Industries (India) Ltd, is that the Bills of Lading are not pre-dated but are subsequent to the AR-4 date. Whereas in the case of Petitioners, the Bill of Lading in pre-dated to the date of shipping bills and other documents. Hence the case law mentioned by the petitioner cannot be made applicable in the case.

12.6 the prayer made by the Petitioner may not be granted as the goods mentioned in the AR-4s are not proved to have been exported under the Bills of Lading as mentioned by the Petitioner.



13. Government observes that the main reason for the rejection of the rebate claims filed by the applicant was in all the cases Bill of Ladings have been issued prior to that of Shipping Bills. The applicant in its revision application has also contended that in an export transaction, it is a common practice for the exporter to approach the shipping companies for issue of Bill of Lading even before the shipment is made. However, the Shipping company marks the Bill of Lading with "SHIPPED ON BOARD" and signs it with mentioned date after it receive the contained, in the above case signing authority by mistake entered wrong date. However all other data such as container number, bottle seal number are mentioned on the Bill of lading and they are identical to those mentioned by excise Superintendent on the AR 4 and Custom Invoice. Bottle seal has always a unique number and never repeated hence it clearly proves that the date was erroneously on the bill of lading. The applicants have contended that it was a clerical mistake in the Bill of Ladings.

14. Government observes that a Bill of Lading is a negotiable instrument and a document of title issued by carrier of goods to the shipper as a proof of receipt of goods which contains the details of goods. The details of Bill of lading includes the description of goods, quantity of goods, number of packages, gross weight, freight details, place of receipt, port of loading, port of discharge, place of final destination, shipper name, consignee name, notify party if any, buyer other than consignee if any etc. The bill of lading is issued by the carrier of goods only after receiving the cargo by them after completion of customs formalities. Let Export Order of shipping bill is the proof of completion of customs formalities. The carrier issues bill of lading by confirming receipt of cargo from shipper/exporter, once after receipt of 'let export' order delivered by shipper's customs house agent. A bill of lading is the proof of receipt of goods by carrier, and the carrier can issue Bill of lading once he received the cargo along with original customs signed let export order of shipping bill which is a proof of completion of customs formalities. To illustrate the above, if the container has been shipped on Board on 15.01.2011, the Bill of lading date cannot be 14.01.2011 as the



carrier is supposed to issue a bill of lading showing Shipped on Board only after the container has been physically shipped on Board. Therefore, the bill of lading date has to be on or after the shipped on board date and certainly not before.

15. Government observes that there are number cases where the assesses have manipulated documents whereby the Bill of Lading was ante-dated in order to take the benefit of an otherwise expired Advance License or to fraudulently avail OGL benefit in respect of import various commodities under OGL and the suitable penalties have been imposed. Further, even in cases where there is a Letter of Credit involved and the Letter of Credit stipulates a date by which the shipment must be effected, and for some reason, the shipper is not able to carry out the shipment within the stipulated time, he stands to lose his order and could be subjected to further penalties etc. and default. Also there are chances that the party that opened the letter of credit rejects the shippers request for an extension of the letter of credit and therefore ante dating of Bill of Lading may be resorted to. Therefore, Government observes that predating or anti dating of Bill of Lading can also be on a purpose and therefore, it was incumbent upon the applicant that such discrepancies/clerical mistakes were substantiated by documentary evidence from shipping company, more so when the purported clerical mistake has occurred in respect of all the Bills of Lading covering ARE-4s vide which the impugned goods have been exported. Further, during the course of personal hearing, the applicant among other documents have also presented the certificate issued by the M/s Dhanji Khimji & Co, a Custom House Agent which only certifies Bills of lading Number which covered the export made under the relevant ARE 4s but conspicuously fails to mention the dates of Bills of Lading. Moreover, it is not the certificate issued by the Shipping Company and hence not relevant, cannot be relied upon.

16. Government notes that in case Re: Audler Fastners [2007 (21) ITR 465 (G.O.I.)] the rebate claims were rejected on ground that the container



number mentioned on Bill of Lading was not tallying with container number mentioned on ARE-1 and seal number mentioned on mate receipt was different from seal number given on ARE-1. However, the Revisionary Authority vide Order No. 262/2007, dated 27-4-2007 allowed the Revision Application/rebate claims filed by the applicant on the basis of certificate issued by the Shipping Company wherein it was inter alia, certified that the container and seal No. were wrongly mentioned in the Bill of Lading. However, in the instant case it is difficult to understand why the applicant who was issued with Show Cause Notices dated 24/11/1999 and 30/09/1999 asking them as to *why the claims should not be rejected as corresponding Bill of Lading are issued prior to that of the respective Shipping Bill which is anomalous/ contradicting and hence not acceptable as proof of actual Export of the consignment under subject AR-4*, did not contact the concerned shipping Company and could not obtain a clarificatory letter certifying that pre-dating of Bills of Lading was a clerical mistake/error and what were the correct dates of those Bills of Lading.

17. Government further observes that in its Rejoinder affidavit dated 13.04.2018 filed before Hon'ble Bombay High Court no fresh facts have been brought on record by the applicant except placing reliance upon the decision in the case of Zandu Chemical Ltd reported in 2015(615)ELT 520(Bom) and GOI Order No. 352-353/04 dated 28.09.2004 passed by the Revisionary Authority i.e. Joint Secretary in the case of Arviva Industries (India) Ltd.

18. Government has perused both the case laws relied upon by the applicant. As regards the case of Zandu Chemicals Ltd Versus Union of India as reported in 2015 (315) ELT 520 (Bom) Government observes that the same cannot be made applicable to the issue in the present Revision Application as it deals with issue of non-production of Original and Duplicate copies wherein Hon'ble Court held that rejection of rebate claim for non-submission of original and duplicate copies of ARE1, found to suffer from non-application of mind when the shipping bills and which contain the endorsement necessary for recording a finding that the goods were indeed



exported by the petitioners. In the present case the issue relates to anomaly of Bill of Lading date being prior to that of Shipping Bill Date which has not been substantiated by the applicant. As regards another case of Arviva Industries (India) Ltd., Government observes that the Commissioner (Appeals) rejected the rebate claims as the appellants failed to pinpoint as to how the stated goods had really been exported and as to how the date of Bill of Lading was a date prior to the date mentioned in the ARE4 and also not corroborated with any legal instructions, notices or clarification in any case from any higher authority. Government further observes that the applicants in the said case in their Revision Application before Government of India not only explained how the stated goods were exported but have also openly come out with the reasons for pre-dating of Bill of Lading which is appearing at para 3(d) of GOI Order No. 352-353/04 dated 28.09.2004 passed by the Revisionary Authority i.e. Joint Secretary in the case of Arviva Industries (India) Ltd. which is reproduced below:

*d) If the two Bill of Lading No. 0799/0752 and No. 0799/0982 were dated subsequent to the last dates of the shipment mentioned in the respective letters of credit, the Applicants would not have received their payments for the shipments made a few days after the said last dates. Alternatively, the Applicants had to approach the overseas customers with a request to amend the said Letters of Credit by extending the said last shipment dates to some other date which would not have helped the applicants”.*

The aforesaid situation for pre-dating the Bill of Lading has already been envisaged by the Government at para 15 supra, while discussing the various motives for pre/ante dating Bills of Lading.

19. Government observes that the one of the reasons for allowing the Revision Application filed by M/s Arviva Industries (India) Ltd. was the aforesaid explanation given by them adequately explaining the reasons of pre-dating the Bill of Lading in their Revision Application, thus substantiating that the exported goods were in fact covered by those Bills of Lading. Whereas despite given a very long rope, the applicant in the present case has failed to substantiate the clerical error of pre dating the Bills of



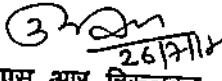
loading either with their own clarification or from any higher authority / shipping company. In facts of the case, therefore, the reliance placed by the applicant on GOI Order No. 352-353/04 dated 28.09.2004 in the case of Arviva Industries (India) Ltd. is misplaced.

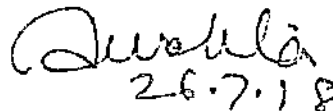
20. In view of the above, Government is of the considered opinion that given the circumstances of the case, the rebate claims have rightly been held as inadmissible to the applicant. Government, therefore, finds no infirmity in the Order-in-Appeal No.AB (625) 298/M-VI/2001 dated 24.04.2001 passed by the Commissioner of Central Excise (Appeals), Mumbai and hence upholds the same.

21. The revision application is thus rejected being devoid of merits.

22. So, ordered.

**Attested**

  
26/7/18  
एस. आर. हिरुलकर  
**S. R. HIRULKAR**  
(A-C)

  
26.7.18  
(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 222 /2018-CX (WZ) /ASRA/Mumbai Dated 26-07-2018

To,

M/s Parekh Bright Bars Pvt. Ltd.

C-346, TTC Industrial Area, Pawna Village, P.O. K.U. Bazaar,  
Thane 400 705.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner, Belapur -III Division, GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

