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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.198/54,162,124/WZ/16-RA

/ 4511

Date of Issue: 05.06.2023

ORDER NO. ³⁸⁻³²⁰ /2023-CX (WZ) /ASRA/Mumbai DATED 20.06.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise & Customs, Raigad
4th floor, Kendriya Utpad Shulk Bhavan, Plot No.1,
Sector 17, Khandeshwar, New Panel.

Respondent : M/s Piramal Glass Limited,
Piramal Tower, Annexe 6th floor,
Peninsula Corporate Park, Ganpatrao Kadam Marg,
Lower Parel, Mumbai - 400 013.

Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the following Orders-in-
Appeal passed by the Commissioner (Appeals), Central
Excise, Mumbai Zone - II

Sl. No.	Order-in-Appeal No.	Date
1	CD/30 & 31/RGD/16	12.11.2015
2	CD/106/RGD/2016	12.02.2016
3	CD/128/RGD/2016	19.02.2016

ORDER

The subject Revision Applications have been filed by the Commissioner of Central Excise & Customs, Raigad (here-in-after referred to as 'the applicant/Department') against the subject Orders-in-Appeal passed by the Commissioner (Appeals), Central Excise, Mumbai Zone - II which decided appeals filed by M/s Piramal Glass Limited, Mumbai (here-in-after referred to as 'the respondent') against three Orders-in-Original, which in turn, rejected the rebate claims filed by the respondent. The issue involved in all the three cases being the same, the subject Revision Applications are being taken up for decision together.

2. Brief facts of the case are that the respondent procured brushes, caps etc. from their suppliers on payment of duty and exported the same along with bottles manufactured by them, from their factory premises. The respondent thereafter filed rebate claims in respect of the duty paid on the exported goods in terms of Rule 18 of the Central Excise Rules, 2002. The said rebate claims were rejected by the original authority on the grounds that the respondent had failed to submit co-relating like ARE-1s with corresponding Shipping Bills, Bill of Lading, Central Excise Invoices etc. Aggrieved, the respondent filed appeals against the three Orders-in-Original before the Commissioner (Appeals) who vide the impugned Orders-in-Appeal allowed the appeals holding the respondent eligible to the rebate claimed by them.

3. Aggrieved, the applicant/Department has filed the subject Revision Applications. The grounds on which the same have been filed are similar are as follows:-

(a) The respondent had submitted two sets of ARE-1 (including one set of photo copies of ARE-1s) along with claim; that in the first set the respondent had submitted the original and duplicate copies of all ARE-1s issued by the manufacturer M/s Petucla Industries and M/s Harman Plastics for the

clearance of "Caps and Brushes"; that the original and duplicate copies of these ARE-1's do not bear the endorsement of Customs Officers on Part-B of reverse side of ARE-1, and the details such as Shipping Bill No., Vessel Name and MR No. etc was not shown; that the respondent had submitted second set (photo copies of ARE-1's) along with claim which was prepared by M/s Piramal Glass Ltd. for the clearance of "Caps, Brushes and Glass Bottles", in which the name of manufacturer was shown as M/s Piramal Glass Ltd and Central Excise Registration Number of exporter viz. M/s Piramal Glass Ltd. was mentioned, whereas the manufacturer of "Caps and Brushes" were M/s Petuela Industries and M/s Herman Plastics having different Central Excise Registration Number;

(b) that the Shipping Bills submitted are certified by Customs officers but there was no reference of the ARE-1's under which the goods removed from the manufacturer's premises; that the goods exported was shown as Caps, Brush and Empty Glass Bottles and the Chapter Sub-Heading is shown as 70109000; that the office of the authority for claiming rebate was shown as "D.C., C. Excise, Division Ankleswar"; that on reverse side of ARE-1's have not been signed by jurisdictional Central Excise Officer though the same have been signed by Customs Officer;

(c) that on examination of the photocopies (2 set) of ARE-1 & Central Excise invoices of M/s Piramal Glass Ltd., it was observed that the goods were cleared from the factory premises under Central Excise Invoices and ARE-1 under UT-1 (Undertaking) without payment of Central Excise Duty; that the original documents might have been filed by the claimant with the jurisdictional Asst. Commissioner/Dy. Commissioner for acceptance of proof of export; that in respect of the case decided vide Order-in-Appeal dated 12.11.2015 it was submitted that at the time of personal hearing the consultant of claimant tried to explain the detail of exported goods with the help of ARE-1 No. 21 dated 24.01.2014 of M/s Libra Industries with the ARE-1 No. 2771/2013-14 dated 25.12.2013; on examination of the same it was noticed that the goods from M/s Piramal Glass Ltd were exported on 25.12.2013 whereas goods were procured from M/s Libra Industries on 24.01.2014; the description of goods was shown as "Silver Caps in the ARE-1 No. 21 dated 24.01.2014 of M/s Libra Industries, whereas description of

goods in corresponding ARE-1 No. 2771/2013-14 dated 25.12.2013 of M/s Piramal Glass Ltd. was mentioned as "Gold Caps", ARE-1 No. 21 dated 24.01.2014 of M/s Libra Industries for export of goods under rebate, whereas ARE-1 No. 2771/2013-14 dated 25.12.2013 of M/s Piramal Glass under UT-1 (undertaking) without payment of duties;

(d) Reliance was sought to be placed on the following decisions in support of the arguments put forth: -

- i. M/s Enkay Containers [2013 (295) E.LT. 165 (GOI)];
- ii. M/s West Coast Pigment Corporation [2013 (290) ELT 135 GOI];
- iii. M/s Vee Exce; Drugs & Pharmaceuticals [2014 (305) ELT 100 (All)];
- iv. M/s Manik Machinery P Limited vs UOI [2014 (310) ELT 26 (Bom)].

They submitted that the respondent did not follow the procedure laid down under Circular No. 294/10/97-CX dated 30.01.1997 as the goods viz. Caps and Brushes cleared from the factory of manufacturer M/s Petuela Industries and Harman Plastics which were further cleared from M/s Piramal Glass Ltd. for export had not been verified by the Central Excise Authorities;

(e) That in view of the above decisions it was not noticed that the exporter had not submitted essential and mandatory corresponding documents viz. Self-attested copies of ARE-1's with endorsements by the Customs/Central Excise Officer, in Original form, along with the rebate claims; that in the instant case the genuineness of the goods cleared from the factory of manufacturer has actually been exported could not be corroborated with the available documents and the claimant was not able to substantiate the facts, supported with necessary documents.

In view of the above the applicant/ Department requested for the impugned Orders-in-Appeal to be set aside.

4. Personal hearing in the matter was granted to the applicant and the respondent. Shri Mehul Jivani and Shri Ashutosh Shukla both Chartered Accountants, appeared on 14.02.2023 and submitted that caps and brushes of nail polish bottles were got manufactured from supporting

manufacturers. They submitted that these goods were easily verifiable with export documents to establish that the very same goods on which supporting manufacturer paid duty were exported. They further submitted that Department's application in the three cases should be rejected as Commissioner (Appeals) had already verified their documents. They also submitted further written submission wherein they sought to rely on several decisions in support of their argument that refund claim cannot be denied for non-compliance of procedural/technical conditions.

5. Government has gone through the relevant case records available, the written and oral submissions and also perused the impugned Orders-in-Original and Orders-in-Appeal.

6. Government notes that the respondent is engaged in the manufacture and export of glass bottles, and they also procure duty paid goods viz. Caps and Brushes from their supporting manufacturers which they exported along with the glass bottles manufactured by them. Government notes that the caps and brushes were cleared by the supporting manufacturers on payment of duty under the cover of Central Excise invoices and ARE-1s to the premises of the respondent from where they were cleared for export along with the bottles manufactured by the respondent under the cover of ARE-1s prepared by the respondent. It is in this factual matrix that the objections raised by the applicant Department needs to be examined. Government finds that the crux of the objections raised by the applicant Department in the subject Applications is that the ARE-1s prepared by the supporting manufacturers under which they were originally cleared to the respondent does not bear endorsement of the Customs authorities and also do not indicate the details of the Shipping Bill, Vessel name etc. Having submitted so, the applicant Department goes on to submit that the ARE-1s prepared by the respondent under which all the goods, i.e. Caps and Brushes received from the supporting manufacturers as well as the glass bottles manufactured by the respondent, were exported, does bear the endorsement of the Customs authorities and indicates all the other relevant details such as Shipping Bill etc.; however, the objection raised here is that

the respondent has indicated themselves to be the manufacturer and the corresponding Shipping Bills do not refer to the ARE-1s under which the Caps and Brushes were originally cleared by the supporting manufacturers.

7. On examining the facts mentioned above, Government finds that the objections raised by Department are clearly procedural in nature. Government finds that in the present case it is not in dispute that the Caps and Brushes on which rebate has been claimed by the respondent have been cleared on payment of Central Excise duty, as evidenced by the report received from the jurisdictional Superintendent of the manufacturer of Caps and Brushes. It is also not in doubt that the goods in question have been exported by the respondent. The respondent had submitted copies of the ARE-1s prepared by the manufacturer of Caps and Brushes along with the ARE-1s prepared by them while clearing the goods for export, to the rebate sanctioning authority, which, Government finds should have sufficed for establishing that the goods cleared by the supporting manufacturers were exported by the respondent. Government notes that that the Commissioner (Appeals) has examined the reconciliation statements submitted by the respondent and has found that the goods cleared by the supporting manufacturers were the goods that had actually been exported by the respondent. Given these findings, Government finds that duty paid goods were exported and rebate of such duty paid cannot be denied as correctly held by the Commissioner (Appeals).

8. Government notes that it has been held in a plethora of decisions of the higher Courts that mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. Government finds support in the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be

denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export. In view of the above, Government does not find any fault with the impugned three Orders-in-Appeal and uphold the same.

9. The subject Revision Applications are rejected.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio

Additional Secretary to Government of India

²⁰⁸⁻³²⁰
ORDER No. /2023-CX (WZ) /ASRA/Mumbai dated ³⁰.06.2023.

To,

Commissioner of Central Excise & Customs, Raigad
4th floor, Kendriya Utpad Shulk Bhavan, Plot No.1,
Sector 17, Khandeshwar, New Panel.

Copy to:

1. M/s Piramal Glass Limited, Piramal Tower, Annexe 6th floor, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013.
2. Commissioner of Central Excise (Appeals), Mumbai Zone - II, 3rd floor, Utpad Shulk Bhavan, Plot No.C-24, Sector E, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.