

SPEED POST  
REGISTERED POST



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No.195/452,453/16-RA  
F. No.195/127/17-RA  
F. No.195/211/WZ/2019

14582

Date of Issue: 11.07.2023

ORDER NO. ~~322~~-325/2023-CX (WZ) /ASRA/Mumbai DATED 07.07.2023 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 : M/s Piramal Glass Limited,  
Piramal Tower, Annexe 6<sup>th</sup> floor,  
Peninsula Corporate Park, Ganpatrao Kadam Marg,  
Lower Parel, Mumbai - 400 013.
- Respondent : Commissioner of Central Excise & Customs, Raigad  
4<sup>th</sup> floor, Kendriya Utpad Shulk Bhavan, Plot No.1,  
Sector 17, Khandeshwar, New Panel.
- 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	SK/22/M-I/2016	11.04.2016
2	SK/21/M-I/2016	11.04.2016
3	SK/106/M-I/2016	23.12.2015
4	MKK/500/RGD-APP/2018-19	26.02.2019

## ORDER

The subject Revision Applications have been filed by M/s Piramal Glass Limited, Mumbai (here-in-after referred to as 'the applicant') against the subject Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Central Excise, Mumbai - I (Sr.No.1 to Sr.no.3) and Commissioner of Central Tax, Central Excise & Service Tax, (Appeals), Raigad (Sr. No.4), which decided appeals filed by the applicant against three Orders-in-Original, which in turn, rejected the rebate claims filed by the applicant. The issue involved in all the four cases being the same, the subject Revision Applications are being taken up for decision together.

2. Brief facts of the case are that the applicant procured Brushes, Caps etc. from their suppliers on payment of duty. These Brushes and Caps were cleared to the applicant under the cover of ARE-1s prepared by the suppliers. The applicant exported these Brushes and Caps along with empty bottles manufactured by them, from their factory premises under the cover of ARE-1s prepared by them. The empty bottles so exported were cleared under LUT. The applicant thereafter filed rebate claims in respect of the duty paid on the Brushes and Caps procured by them in terms of Rule 18 of the Central Excise Rules, 2002. The said rebate claims were rejected by the original authority vide four Orders-in-Original on the grounds that the applicant had failed to submit co-relating like ARE-1s with corresponding Shipping Bills, Bill of Lading, Central Excise Invoices etc. Aggrieved, the applicant filed appeals against the said four Orders-in-Original before the Commissioner (Appeals) who vide the impugned Orders-in-Appeal rejected the same.

3. Aggrieved, the applicant has filed the subject Revision Applications. The grounds on which the same have been filed in respect of Order-in-Appeal dated 26.02.2019 are as follows:-

(a) That in similar issue, the Hon'ble Commissioner (Appeals), Central Excise, Mumbai Zone-II, had allowed the rebate claims to them;



(b) That with respect to their rebate claim bearing R.C. No.472 dt.13.06.2018, 474 dt.13.06.2018 and 576 dt.29.06.2018 they submitted that they had claimed the rebate of excise duty paid on export of goods which had been procured from the supporting manufacturers; that the goods cleared and removed under ARE-1 prepared by the supporting manufacturers and duty has been paid vide respective CENVAT Debit Entry in the respective ARE-1s; that since the goods had been procured on the strength of various manufacturer's ARE-1 and simultaneously exported under exporter's ARE-1 wherein certification of Customs Officer in Part-B has been done; thus non-endorsement of supporting of supporting manufacturer's ARE-1 by Customs was only a procedural lapse which may kindly be condoned and rebate be allowed to them;

(c) That they had procured Caps and Brushes from their supporting manufacturers on payment of excise duty, however, they exported their main products i.e. empty glass bottles under Letter of Undertaking; that the duty paid goods procured from their supporting manufacturers was brought to their factory and the same were exported along with the bottles manufactured by them;

(d) That the contention of the Commissioner (Appeals) was incorrect as they had submitted all the relevant documents of export to substantiate that those goods which has been cleared from factory of the manufacturers were exported under exporter's ARE-1, Shipping Bill and Bill of lading etc. which were correlating and matching with each other in export documents;

(e) That in the R.C. No.473 dated 13.06.2018 and R.C. No.475 dated 13.06.2018 the refund claim was submitted well within stipulated time of one year; that the amount claimed on 13.06.2018 with respect to export vide Shipping Bill no.6485818 dated 02.06.2017 having Bill of Lading dated 10.06.2017 may be reduced and the rest of the amount claimed be allowed to them; that they had not availed cenvat credit on goods procured from the supporting manufacturers which was brought to their premises and hence the contention raised in the Order-in-Appeal was baseless and liable to be dropped;



(f) That the core aspect for determination of rebate claim was the fact of manufacture and payment of duty thereon and its subsequent export and that if this fundamental requirement was met, other attendant procedural requirements could be condoned; that the goods mentioned in the ARE-1 had been actually exported: that the corroboration of the goods which had been cleared from the factory were actually exported could be evidenced from the following documents viz. ARE-1s, Excise Invoices, Shipping Bills (EP copy), Bills of Lading, Custom Invoices and Packing Lists;

(i) That the goods were exported from their factory and hence condition 2(a) of Notification No.19/2004-CE(NT) dated 06.09.2004 was fulfilled; that the goods in question were duty paid; that the facts had been certified in the Part-A of the ARE-1 by the Central Excise Officers; that the Shipping bills attached with the claim of rebate contains details of ARE-1 and also description of goods which have been exported which clearly indicates export of brush, cap etc; that the quantity of goods exported also matches with the ARE-1 which have been attached with the claim for rebate; that the Shipping Bills were also endorsed by the Customs Appraiser which substantiate that the goods have been exported; that the non-endorsement in part B of ARE-1 is merely a procedural lapse; that as long as the goods have been exported, the rebate shall not be denied; they also submitted that they had submitted all documents as required under para 8.3 of the Chapter 8 of the Central Excise Manual;

(h) That the fundamental requirements had been fulfilled and hence they were lawfully entitled for rebate and sought to place reliance on the following decisions:-

- i) Mangalore Chemicals & Fertilizers Ltd. Vs. Dy. Commissioner 1991(55)ELT 437 (SC)
- ii) Modern Process Printers 2006 (204) ELT 632 (GOI)
- iii) Parke Davis (I) Ltd.Vs. CCE, Mumbai-II 2004 (176) ELT 340 (Tri. Mum).
- iv) M/s Madhav Steel Vs. UOI 2010-TIOL-575-HC CX;



(j) That even though the procedure laid down in the Circular No. 294/10-94-CX dated 30.01.1997 had not been followed, the procedural infraction of circulars are to be condoned if exports have taken place and sought to rely upon the following decisions - Atma Tube Products Ltd. [1198 (103)ELT 270 (T)], Modern Process Printers [2006 (204) ELT 632 (GOI)] and Cotfab Exports [2006 (205) ELT 1027 (GOI)];

(k) That it could be seen that from the aforesaid mentioned judgments that once the substantive condition of export has been complied, rebate claim should not be denied merely on ground of technical lapses and hence the rebate claims filed by them should be allowed.

4. Personal hearing in the matter was granted to the applicant and the applicant. 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 requested to allow the applications filed by them. 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 applicant is engaged in the manufacture and export of empty glass bottles, and they also procure duty paid goods viz. Caps and Brushes for these empty bottles 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 applicant



from where they were cleared for export along with the empty bottles manufactured by the applicant under the cover of ARE-1s prepared by the applicant. It is in this factual matrix that the objections raised by the lower authorities needs to be examined. Government finds that the crux of the objections raised by original authority and the Commissioner (Appeals) is that the ARE-1s prepared by the supporting manufacturers under which such Caps and Brushes were originally cleared to the applicant do not bear endorsement of the Customs authorities and also do not indicate the details of the Shipping Bill, Vessel name etc. Government has examined the copies of the ARE-1s prepared by the applicant under the cover of which the goods in question were exported and find that they bear the endorsement of the Customs authorities and indicate other relevant details such as Shipping Bill etc. Government finds that the details of the goods procured by the applicant from their supporting manufacturers can be verified vis-à-vis the ARE-1s and other documents prepared by the applicant, which, bears the endorsement of the Customs Authorities. Government notes that the applicant had submitted copies of the ARE-1s and other duty paying documents of the supporting manufacturers along with the ARE-1s prepared by them, to the original authority and hence it was possible for the original authority to verify whether the duty paid goods cleared by the supporting manufacturers were actually exported by the applicant. Further, the applicant has submitted that they had not availed Cenvat credit of the duty paid on such Caps and Brushes by their supporting manufacturers and hence Government notes that rebate cannot be denied on this count either.

7. On examining the facts mentioned above, Government finds that the objections raised by lower authorities 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 applicant have been cleared on payment of Central Excise duty. It is also not in doubt that the goods in question have been exported by the applicant. The applicant 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 applicant.



8. Government finds that the deficiencies observed by the lower authorities are merely procedural in nature. In such cases, it is essential to ascertain whether duty has been paid and verify whether the goods have been exported. If substantive proof of the same is evidenced by the documents furnished by the exporter, rebate claims cannot be restricted by narrow interpretation of the provisions. 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. In fact, in cases of rebate it is a settled law that the procedural infractions 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.

9. Having observed so, Government notes that in one case involving rebate of Rs.29,544/, viz. the consignment covered by Shipping Bill no.6485818 dated 02.06.2017 and exported on 10.06.2017, the applicant will not be eligible for the rebate claimed by them as the claim has been filed on 13.06.2017, which clearly is after a period of one year from the date of export and hence time barred.

10. In view of the above, Government finds that except for the one case mentioned above, the applicant shall be eligible to the rebate of the duty paid by their supporting manufacturers on the Caps and Brushes exported by them subject to verification on the lines mentioned above. In view of the above, Government remands the cases covered by the subject Revision Applications back to original authority for the limited purpose of carrying out verification on the above-mentioned lines. The applicant is directed to provide copies of all the relevant documents for the purpose of carrying out such verification. The original authority shall not reject the claims merely on the ground of the non-production of an isolated document, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled.

11. The subject Revision Applications are allowed in the above terms.

*Shrawan*  
10/7/23  
(SHRAWAN KUMAR)

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

ORDER No. <sup>322-</sup>325/2023-CX (WZ) /ASRA/Mumbai dated 10.07.2023

To,

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

Copy to:

1. Commissioner of GST & Central Excise, Belapur Commissionerate, 1<sup>st</sup> floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
2. Commissioner of Central Excise (Appeals), Mumbai Zone - II, 3<sup>rd</sup> 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.