

REGISTERED POST
SPEED 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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/143/2018-RA/4887

Date of Issue: 03.08.2023

ORDER NO. 332/2023-CX (WZ) /ASRA/MUMBAI DATED 27.07.2023
OF THE 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.

Applicant : M/s. Dana India Pvt Ltd
Survey No. 278, Raison Industrial Park,
Hingewadi, Tal. Mulshi,
Pune 411 057

Respondent: The Commissioner, GST-I, Pune

Subject : Revision Applications filed under Section 35EE of Central
Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-
001-APP-0072/18-19 dated 11.05.2018 [Date of issue:
05.06.2018] passed by the Commissioner, Appeals-I, Central
Tax, Pune.

ORDER

The Revision Application has been filed by M/s. Dana India Pvt Ltd, Survey No. 278, Raison Industrial Park, Hingewadi, Tal; Mulshi, Pune 411 057(hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-001-APP-0072/18-19 dated 11.05.2018 [Date of issue: 05.06.2018] passed by the Commissioner, Appeals-I, Central Tax, Pune.

2.1 The facts of the case in brief are that the Applicant is engaged in the manufacture of 'Axle Assembly' falling under Tariff heading No 87085000. The Applicant had filed a rebate claim for Rs. 16,42,830/- in respect of duty paid on goods manufactured and exported by them under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004 CE (NT) dated 06.09.2004 the details of which are as under:

Sr No	ARE No and date	ARE Value	Duty paid	FOB value in Rs	Amount of rebate eligible in cash	Amount of rebate eligible in cenvat
1	162470273/ 30.08.2016	1681341	210168	1681341	210168	0
2	162470333/ 12.10.2016	6150984	768872	5987747	748468	20404
3	162470353/ 20.10.2016	6150984	768872	5987747	748468	20404
			1747912		1707104	40808

2.2. Originally a claim was filed for Rs. 1,08,82,615/- which the jurisdictional adjudicating authority vide Order-in-Original No PI/THR-DN/REB/158/2016 dated 27.12.2016 had rejected Rs. 16,42,830/- on account of mismatch in quantity of items exported in respect of the ARE-I Nos. 162470333 and 162470353 for the reason that the same did not match with Shipping Bill Nos 1576064 and 1759218. Pursuant to issue of amendment certificate dated 01.07.2017 by the Deputy Commissioner of Customs, ICD, Talegaon, the Applicant has filed the rebate claim again in

respect of the said ARE-1's. The Original Adjudicating Authority vide Order in Original No PI/DII/R-II/277/REB/17-18 dated 05.12.2017 rejected the said rebate claims on the grounds that as per Para 15-Part-II of Circular No 1053/02/2017-CX dated 10.03.2017, it was mentioned that 'Under the Central Excise Act, adjudicating Authority did not have powers to review his own order and carry out corrections to the adjudicating order" and the Applicant had instead of filing appeal with the Commissioner (Appeals), had filed claim of rebate again in respect of the same ARE-1's to the same adjudicating authority.

3. Aggrieved by the said Order-in-Original, the Applicant filed an appeal with the Commissioner, Appeals-I, Central Tax, Pune I who vide Order-in-Appeal No. PUN-EXCUS-001-APP-0072/18-19 dated 11.05.2018 [Date of issue: 05.06.2018] rejected the appeal and upheld the Order-in-Original dated 05.12.2017. The Appellate Authority, relying on the decision of the Honorable High Court of Madras in the case of Maritime Collector vs. Madura Coats Ltd [2010(259) ELT 37(Mad)] held that the Applicant had to follow the statute and not proceed for filing the rebate claim again but has to resort to filing Appeal with Commissioner (Appeals). The Appellate Authority also relied upon the direction in Para 15-Part II of Circular No. 1053/02/2017-CX dated 10.03.2017.

4. Aggrieved by the impugned Order-in-Appeal, the Applicant has filed the Revision Application of the following grounds:

4.01. That the Commissioner (Appeals) has merely re-iterated the findings of the adjudicating authority and held that the cases relied upon by the Applicant are not relevant in the present situation without recording any justifiable finding in this impugned order and hence, the impugned order is a non-speaking and liable to be set aside on this ground itself. The Applicant has relied on the decision of the Hon'ble Gujarat High Court in the case of Anil Products Ltd [2010(257) ELT 523 (Guj)]

4.02. That in identical issue of the Applicant in the past, on obtaining amendment certificates from the Customs department, the fresh claim applied to by the Applicant was duly sanctioned vide OIO dated 09.10.2017 and 30.11.2017 and no appeals were preferred by the revenue authorities and thus the said orders have attained finality.

The Applicant has relied on the following case laws:

- (i) J.K.Synthetics Ltd [1981(008) ELT 328(Del)]
- (ii) Camlin Private Ltd. Vs. Union of India and Another, [1982 (10) E.L.T. 1 (Bom.)]
- (iii) Jain Exports Pvt. Ltd., New Delhi and Another Vs. Union of India and Others, 1987 (29) E.L.T. 753 (Del.) - Approved in 1992 (61) E.L.T. 173 (S.C.)
- (iv) (iii) Basant Industries and Another Vs. Collector Of Customs, Bombay And Another, 1987 (29) E.L.T. 155 (Tribunal)

4.03. That the present claim of rebate dated 06.09.2017 filed by the Applicant is within the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 and the said fact is not disputed by the revenue authorities. It is further submitted that the Applicant has fulfilled all the conditions of Rule 18 of the Rules read with Notification No. 19/2004 C.E (NT) dated 06.09.2004 and this fact is also undisputed in the present case

4.04. That the finding of the Appellate Authority is legally incorrect in as much as neither Rule 18 of the Rules nor Notification No. 19/2004-CE(NT) creates any bar on the Applicant for not filing the rebate claim again in respect of same ARE-1 in case first claim is rejected due to procedural infractions.

4.05. That there were procedural infractions by way of mismatch in the declaration filed by the Applicant in ARE-1 and corresponding shipping bill and upon accepting the said procedural mistakes, corrective action was taken and followed up for amendment certificate from the customs

authorities in respect of the said shipping bills and fresh claim filed by the Applicant was in order;

4.06. That the deficiency noted in the said OIO dated 27.12.2016 was acceptable to it and there was no cause of action which was arising out of the said order and hence no appeal was maintainable.

4.07. That without appreciating the submissions of the Applicant and understanding judicial precedence relied upon by the Applicant, the Ld. Commissioner (Appeals) has relied upon the CBEC Circular dated 10.03.2017 to hold that processing the fresh claim of rebate filed by the Applicant would amount review of order dated 27.12.2016. The Applicant has relied upon the following case law which are applicable to the instant case

- (i) Punjab Bevel Gears Ltd. [2015 (328) ELT 737 (GOI)]

4.08. That such sanctioning of the claim would not have amounted to review of own OIO dated 27.12.2016 in as much as the documents which were not produced during the said adjudication proceedings while filing the earlier rebate claim were submitted by it in the present proceedings. Therefore, this fresh claim of the Applicant ought to have been considered on merits without referring to the earlier claim.

4.09. That the Appellate Authority has erred in passing the impugned order by holding that the rebate claim is not admissible to the extent of the said ARE-1 as only photocopy was submitted and the original, duplicate and triplicate copies of the ARE-I was not submitted along with the rebate claim and that the production of original and duplicate copies of ARE-Is not a condition precedent. It is submitted that as such production of original and duplicate copies of ARE-1s is a procedural one along with other corresponding documents so as to satisfy the authority to consider the rebate claim of the exporter. The Applicant has relied upon the following case laws in support of their claim

- (i) Raj Petro Specialities Vs. Union of India [2017 (345) E.L.T 496 (Guj.)].
- (ii) U.M. Cables Ltd. [2013 (293) E.L.T 641 (Bom)]

4.10. That the lower authority had accepted the fresh rebate claim submitted on 06.09.2017 and was intending to disburse the same to the Applicant in cash but based on the comment received from pre-audit of the claim, the claim of the Applicant was rejected on the ground that the adjudicating authority does not have the power to review his own order and also held that the Applicant should have filed an appeal with the Commissioner (Appeals) against order No. PI/THR-DIVN/REB/158/2016 dated 27.12.2016.

4.11. That as per the provision of Section 35E of the Act, a person has the option to appeal to the Commissioner (Appeals) if the person is aggrieved by the order passed by the Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise. In the present case, the mistakes pointed out in the said order were acceptable to the Applicant and therefore, it has applied for corrections in the shipping bill to office of Customs. Accordingly, it is submitted that the Applicant was not aggrieved by the order No. PI/THR-DIVN/REB/158/2016 dated 27.12.2016 and hence, did not file an appeal to the Commissioner (Appeals).

4.12. That the reliance of the Appellate Authority on the decision of Hon'ble Madras High Court in case of Madura Coats Ltd. [2010 (259) ELT 37 (Mad.)] to hold that the Appellant had alternate remedy to file appeal against order dated 27.12.2016 and hence instead of filing fresh claim, the Appellant ought to have filed an appeal against the said order, is legally and factually distinguishable in the instant case

4.13. That instead of passing a deficiency memo cum show cause notice, allowing the Applicant an opportunity for rectification of the said documents and sanctioning the rebate claim adjudicating authority ought to have passed a deficiency memo cum show cause notice to the Applicant, the adjudicating authority has preferred to reject the claim to the extent of Rs.

16,42,830/- as the ground for rejection was only due to mismatch in the quantity and description of the shipping bills which was not correct as the adjudicating authority should have passed a corrigendum, corresponding to its order dated 27.12.2016, rectifying the order after being satisfied with the documents submitted by the Applicant;

4.14. The Applicant has relied upon the following case laws in support of their contention

- (i) Hon'ble CESTAT in case of Amrit Paper Mills Pvt. Ltd. [1991 (54) ELT 293 (T)].
- (ii) Arya Export and Industries [2001 (132) ELT 669 (Tri. - Del.)]. The said decision of Hon'ble CESTAT was further affirmed by Hon'ble Delhi High Court reported at 2005 (192) ELT 89 (Del.).

5. Personal hearing in the case was scheduled for 09.11.2022 or 22.11.2022, 13.12.2022 or 10.01.2023, 08.02.2023 or 15.02.2023. Shri Bipin Verma, Advocate, Shri Rinku Panbude, Chartered Accountant and Shri Vijay Nandre, Authorised Representative appeared online for personal hearing on 15.02.2023 on behalf of the Applicant. They submitted that in the instant case second order of the Adjudicating Authority can not be challenged on the grounds of res judicata. They also submitted that second claims were made with connected documents.

6. The Applicant filed written submissions on 16.02.2023, wherein they reiterated their earlier submissions and additionally submitted as under

6.01. That the legal maxim 'res judicata', which prevents the reopening of a matter before the same court or authority and the said legal maxim is not applicable to the facts of the case;

6.02. The Applicant relies upon the decision of the Rajasthan High Court in the case of Babulal Saini vs. State of Rajasthan [2000 SC Online Raj 236] wherein the Court observed that that principles of res judicata is not applicable on following counts 1) That the previous writ petition was not decided on merits and was only decided on a technical point and 2) That there is a fresh cause of action has arisen in favour of the petitioner. The

Applicant states that the principles of res judicata is not applicable in the present case as the previous rebate claim was decided only on technical and mechanical grounds that there was a mismatch in the export documents and the rebate claim was not decided on merits;

6.03. That as show cause notice was not issued to the Applicant the proceedings in connection therewith is a nullity and adjudication is non est and thus there is no question of any review of the order;

6.04. Though as per master circular 1053/2017, by applying the principles of res judicata, review of own order is not permissible, in the instant case neither show cause notice nor deficiency memo was issued and thus no adjudication proceedings were initiated and hence there is no adjudication order;

6.04. Reliance is placed on the case of Commissioner of Cus, C.Ex and ST Guntur vs. Narayana Coaching Centre [2015(39) S.T.R 433(AP)] [2015(39) S.T.R. JI 73(SC)]

7. Government has gone through the relevant case records available in case file, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of the records, Government observes that in the instant case, vide the Order-in-Original No PI/THR-DIVN/REB/158/2016 dated 27.12.2016, part of the rebate claim amounting to Rs. 16,42,830/- was rejected due to discrepancies in the details mentioned in the corresponding shipping bills of the ARE-1's. The Applicant did not go into appeal against the rejected portion of the claim. The Applicant rectified the deficiency by way of obtaining necessary amendment certificate from the customs authorities and filed fresh rebate claim for Rs. 16,42,830/-vide letter dated 06.09.2017, which was within the time limit of one year from the relevant date of export. Pursuant verification of the resubmitted documents, the Applicant was found to be eligible for rebate amounting to Rs. 15,37,744/- but the rebate claim was rejected as the claim was not accepted in pre-audit, on the grounds that as per Para 15-Part II of Circular No 1053/02/2017-CX dated 10.03.2017 states that under the Central Excise

Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.

9.1. Government notes that the moot question is whether rebate claims once rejected can be resubmitted again without filing an appeal against the rejection. To understand the nuances of the same, it is essential to understand the relevant provisions of the law.

9.2 Para 15 of Circular No 1053/02/2017-CX dated 10.03.2017 reads as under:

“15.It may be noted that after issuing an adjudication order, the adjudicating authority becomes functus officio, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, functus officio is bound with the doctrine of res judicata, which prevents the re-opening of a matter before the same court or authority. It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.”

9.3. Further Section 35 of the Central Excise Act, 1944 reads as under

“Section 35. Appeals to Commissioner (Appeals). -

*(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Commissioner of Central Excise (Appeals) [hereafter referred to as the Commissioner(Appeals)] within sixty days from the date of the communication to him of such decision or order
.....”*

10. Government notes that the Para 15 of the said circular clearly stipulates that *“under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order”*. In the instant case the rebate claim was rejected partially and the Applicant re-applied for the amount rejected which is against the spirit envisaged at para 15 of the said Circular.

11. Government notes that in the instant case, the remedy provided by Section 35 of the Central Excise Act, 1944, in respect of rejection by the Adjudicating authority is to file an appeal before the Commissioner (Appeals), which has not been adhered to by the Applicant.

12. Government notes that the Appellate Authority has discussed the issue and relying on the decision of the Hon'ble High Court of the Madras in the case of Maritime Collector vs. Madura Coats Ltd [2010(259) ELT 37(Mad)] had rightly arrived at the conclusion that the Applicant had to follow the statute and not proceed for filing the rebate claim again but has to resort to filing Appeal before the Commissioner (Appeals).

13. Further, the Government also observes that the ratio of the decision of the Hon'ble Supreme Court in the case of ITC Ltd vs. Commissioner of Central Excise, Kolkata IV [2019(368) ELT 216 (SC)] is applicable to the facts and circumstances of the instant case. The Hon'ble Apex Court while deciding a question whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained has held that the provisions of refund more or less in the nature of execution proceedings and not open to the Authority which processes refund to make fresh assessment on merits and to correct assessment on the basis of mistake or otherwise. Refund claim cannot be entertained unless the order of assessment or self assessment is modified in accordance with the law by taking recourse to the appropriate proceedings. After discussing the issue threadbare the Hon'ble Supreme Court at Para 47 of the judgement has stated as under:

"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

14. In view of the above judgement of the Apex Court, the ratio of which is squarely applies to the instant case, Government opines that the Applicant has erred in not following the statutory provisions and in not filing an appeal before the Appellate Authority. The argument of the Applicant that they were not aggrieved by the Order-in-Appeal and filed the rejected portion of the claim again after rectifying the defects fails legal scrutiny in view of the judgement of ITC Ltd cited supra.

15. Government also observes that the reliance placed by the Applicant on various case laws is misplaced in as much as the cited cases pertain to issues wherein procedural lapses were committed and the Applicants/appellants in those cases had substantially complied with the provisions under the relevant Notifications/Circulars whereas in the instant case the Applicant has failed to follow the provisions under Central Excise Act and Rules made thereunder, as rightly held by Appellate Authority in his Orders In Appeal.

15.1 Further the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018(362) ELT 404(Mad)] has stated as under:

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise."

Since the Applicant has failed to comply with the provisions of the filing appeals under the Central Excise Act, 1944 and the rules/notifications issued thereunder, the reliance placed on the case laws by the Applicant is also misplaced.

16. In view of the above discussion, Government holds that the appellate authority has rightly allowed the appeal rejected the appeal filed by the Applicant. Thus, Government does not find any infirmity in the Order-in-Appeal No. PUN-EXCUS-001-APP-0072/18-19 dated 11.05.2018 [Date of

issue: 05.06.2018] passed by the Commissioner, Appeals-I, Central Tax, Pune and therefore, upholds the impugned Order-in-Appeal.

17. The Revision Application is dismissed being devoid of merit.

Shrawan
27/7/23
(SHRAWAN KUMAR)

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

ORDER No 332/2023-CX (WZ) /ASRA/Mumbai DATED 27.07.2023

To,
M/s. Dana India Pvt Ltd,
Survey No 278, Raisonni Industrial Park,
Hinjewadi, Tal.Mulshi
Pune 411057

Copy to:

1. The Commissioner of CGST, GST-1 Commissionerate, Pune, GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001
2. The Commissioner (Appeals -I), Central Tax, Pune, 3rd Floor, "F" Wing, G.S.T. Bhavan, 41/A, Sassoon Road, Pune-411 001
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.