REGISTERED 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. 195/82/13-RA /2390 Date of Issue: 18/12/2018

ORDER NO. 420/2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018 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 PSL Tex-Styles Pvt. Ltd. Mumbai

Respondent : Commissioner of Central Excise, Thane-I

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/6/Th-I/2012-13 dated 19.12.2012 passed by the Commissioner (Appeals-I) Central Excise, Mumbai-Zone-I.

**ORDER**

This Revision Application has been filed by PSL Tex-Styles Pvt. Ltd. Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/6/Th-I/2012-13 dated 19.12.2012 passed by the Commissioner (Appeals-I) Central Excise, Mumbai-Zone-I.

2. Brief facts of the case are that the applicant is Merchant exporter and had exported goods of Manmade Fabrics cleared under ARE-1 from the premises of the processor namely M/s Suvilon Rarefab Pvt. Ltd. Bhiwandi, Thane Dist. The applicant filed rebate claim before jurisdictional Assistant Commissioner of Central Excise, Kalyan-I Division, Thane-I for Rs.44,198/- (Rupees Forty Four Thousand One Hundred and Ninety Eight only) for the duty paid on final product duly exported. The jurisdictional Assistant Commissioner of Central Excise, Kalyan-I Division vide Order in original No.449/07-08 dated 30.08.2007 rejected the said rebate claim on the ground that the applicant had not submitted duplicate copy of excise invoice and the concerned input invoices & relevant potion of RG23A Part-I ,Part-II for verification.

3. Being aggrieved by the aforesaid Order in original, the applicant filed appeal before Commissioner (Appeals-I) Central Excise, Mumbai-Zone-I. The Commissioner (Appeals-I) while upholding the Order in Original vide his Order No. BR/6/Th-I/2012-13 dated 19.12.2012 observed as under:

> *"In the instant case, it is observed that the appellants had filed the rebate claim on the basis of the Form C in triplicate. ARE 1 in triplicate, self attested copies of shipping bills and bill of ladings. However, on scrutiny of the said rebate claim. in the light of the aforementioned documents, the adjudicating authority, in order to enable him to check the correctness and authenticity of the Cenvat credit of the duty paid in respect of the inputs used in the manufacture of the exported goods had directed the appellants to submit the copies of the relevant input invoices against which the manufacturer had availed the Cenvat credit and the relevant pages of RG23A-Part-I & Part-II registers to establish the authenticity of the duty paid nature of the goods being exported. However. the appellants had failed to produce the same before the adjudicating authority even after repeated requests leaving no option before the adjudicating authority to reject the said rebate claim, It is obvious that unless the adjudicating authority is*

*satisfied about the genuineness of the transactions and authenticity of the payment of dues to the Govt. he was under no obligation to pass the rebate claim. Since the appellants had failed to produce the requisite relevant documents as were called for by the adjudicating authority, it was not possible for him to check and ascertain the duty paid character of the exported goods. Therefore, the adjudicating authority was justified in holding that since it was not possible for him to ascertain the genuineness of the Cenvat credit availed by the processor in respect of the goods processed and cleared by him for export by utilising such Cenvat credit. it was not proper to sanction the rebate claim. Under such circumstances. I see no infirmity in the OIO passed by the adjudicating authority".*

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application mainly on the following grounds that :

5.1 the Learned Commissioner (Appeals) ought to have appreciated during personal hearing that the rebate claims originally filed within the prescribed time limit and submit all the statutory documents prescribed by the Excise Law. The rebate claims were related to the duty paid on the final products exported and not related to the duty paid on input materials used for the export product. So, it is irrelevant to ask the Applicant who is a Merchant Exporter to furnish the input invoice along with rebate application. They have fulfilled all the conditions and procedures referred in Rule 18 of the Central Excise Rules. 2001 and laid down in the Notification No.40/2001 C.E(N.T.) dated 26.06.2001 at the time of clearance and export of the said goods and later on i.c, at the time of claiming rebate.

5.2 the application of rebate claim submitted with the Original Triplicate Copy of excise Invoice No.1915 dtd.20.06.2006. As per the procedure adopted by the manufacturer, they issued the Triplicate copy for Central Excise purpose, instead of Duplicate Copy. That was discussed with the concerned officers for the time of submission, they accepted the same and the department issued the letter dtd, 20.08.2007 for further requirements of the claim for sanctioning the rebate. This Impugned Order is gross violation of natural justice and to be set aside. Kindly note that it is only a technical and procedural lapse which is condonable. The Honourable Supreme Court of India has held that such irregularities are condonable when the" factum of export is not disputed." In the instant case also there has never been a

dispute about the export of goods. However, the rebate has been sought to be denied on the basis of condonable procedural irregularities. The Government of India in its revisionary jurisdiction and the Hon'ble Supreme Court has also held that the procedural laps are condonable in interest of export promotion and rebate claims have been allowed. They seeks to place reliance on the following decisions of the Government of India and the Hon' ble Supreme Court

i) 200 I (131) ELT 726 (G01) IN RE: Mis, Krishna Filaments Ltd.
ii) 2006 (204) ELT 632 (GOD IN RE: Mts. Modern Process Printers.
iii) 1991 (51) ELT 437 (SC) IN RE: Mis. Mangalore Chemical and Fertilizers ltd.
iv) 1993 (39) ELT 503 (SC) IN RE: Mis. Suksha international.

5.3 the entire case has arisen only, because of the refusal of the Lower Adjudicating Officer (LAO) to allow some time to obtain the documents from the manufacturer/processor and produce them before the authorities. Simply for the failure to produce a document before the authorities, he cannot be so penalized mercilessly. The applicant had submitted the relevant records (Copies of RG23A-Part-I, II & Input invoices) before the Commissioner (Appeals). The Learned Commissioner (Appeals) did not consider these facts & substances provided by them while passing the order.

5.4 the original adjudicating authority just ignored this order of Hon'ble Apex Court of India, and without verification of the fact of payment of duty on input materials proceeded on the basis as if it was for the appellant to prove payment of duty on inputs. Hence rejected the rebate claims and passed the assessment order without issuing any SCN simply closing his eyes to Natural Justice, as no alternate remedy was left with the assessee, And Commissioner (Appeals) also failed to rectify the mistake as well.

5.5 the LAO had violated the basic right of the exporter, in as much as he not only denied the Appellant's legitimate request for some more time to submit the documents, but also denied their fundamental right to be heard before issue of the Order In Original.

there was no dispute of duty payments on the finished fabrics at the time of export and the Triplicate copies of ARE- I were

countersigned by the Central Excise Range officers certifying the payment of duty without raising any suspicion/objection about the CENVAT credit availed by their processor.

5.7 in the Order-in-Originals of rebate sanctioning authority and Commissioner (Appeals), there is no charge or allegation that the transaction between exporter/Processor and the manufacturer/supplier of inputs was not at arm's length or not non-bonafide and influenced by any extra commercial consideration. The only charge or allegation forming the genesis and basis for denial of rebate claim to the exporter is therefore not against him but the insufficient documentations to establish the correctness of Cenvat Credit availed in cases where the duty on export goods was paid through Cenvat Credit by manufacturer. In this regards, the Applicant observes sufficient legislative and machinery provisions exist in Central Excise Act/rules to recover such frauds detected if any from the manufacturer/supplier of goods along with interest and penalty.

5.8 for the fault of the processor if any in respect Cenvat availed, the Applicant who is the genuine exporter and who properly paid the duty of finished product should not be punished for none of his fault.

5.9 the Rebate / drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars etc. are to be condoned if export have really taken place, and the law is settled now that substantive benefits can't he denied for procedural laps. The Appellant seeks to place reliance on the following decisions of the Tribunal/Government of India in a caters of orders, including Birla VXL Ltd. 1998 (99) E.L.T. 387 (Trib.), T.I Cycles -1993 (66) ELT 497 (Trib,), Binny Ltd.,Madras-1987(31) ELT 722 (Tri), Mina Tube Products, 1998 (103) E.L.T.270 (Trib), and GTC Exports Ltd.-1994(74) ELT 468 (GOI) upheld that 'if the goods have actually been exported then all procedural conditions can be waived', In the present case the said textile fabrics have actually been exported and this is undisputed fact moreover all substantial requirements have

been fulfilled. The Impugned orders are required to be set aside on this ground.

6. A Personal hearing held in this Revision Application was attended by Shri Pravin Dave, Director and Shri Sajimon K.C., Export Manager of the applicant company. They reiterated the submission filed through Revision Application and written submissions filed on the date of personal hearing and pleaded that the substantive benefits of the rebate cannot be denied because of technical infractions which are trivial. Hence, it was pleaded that Order in Appeal be set aside and the Revision Application may be allowed. In the additional submissions filed on the date of personal hearing, the applicant has contended as under:

6.1 regarding Non-submission of Duplicate copy of Central Excise Invoice; they submitted Triplicate copy of Central Excise Invoice, instead of Duplicate copy, along with rebate claim. The manufacturer / processor issued Triplicate copy for Central Excise purpose, it was clearly mentioned on the face of Invoice No.1915 as "TRIPLICATE COPY FOR CENTRAL EXCISE". If there is any clerical mistakes are there these need to be condoned in the interest of justice. Revision Authority has passed many orders in respect of condonation of procedural mistakes if any in the interest of export. Applicants rely on the same. In this connection applicants rely on CBEC Circular No.81/81/94-CX dated 25.11,1994. Further, the Government of India vide his Order No.357/14-CX dated 14,11.2014 in the matter of M/s. Tricon Enterprises Pvt. Ltd Vs The Commissioner, Central Excise, Mumbai-III has allowed Revision Application without excise invoice. The Impugned orders are required to be set aside on this ground.

6.2 they interalia state that both the lower authorities have failed to appreciate the facts and circumstances of the case and also the true purport and effect of Scheme of Rebate as provided by the Govt. of India under Rule 18 of Central Excise Rules, 2002 and has rejected the claims of rebate not dealing with the aspect of burden of required proof on the manufacturer/producer to show that duty is paid on inputs used in the final product exported by the exporter-claimant. It is also submitted that the Original adjudicating authority deliberately ignored the instructions from various Higher Appellate Authorities that a Shaw Cause Notice should have been issued and the appellant should have been

heard before passing an Order. Inasmuch as these requirements had not been fulfilled, the order dated 30.08.2007 is bad in law and Commissioner (Appeals) also failed to rectify the mistake as well. Hence, those orders deserve to be set aside.

7. 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.

8. Government observes that while rejecting the rebate claim of Rs.44,198/- (Rupees Forty Four Thousand One Hundred and Ninety Eight only) the Original adjudicating authority in Order in Original No. No.449/07-08 dated 30.08.2007 observed as under:

*The claimant has submitted following documents in respect of their rebate*

*1. Form C in triplicate.*
*2. Original copy of ARE!.*
*3. Duplicate copy of ARE I*
*4. Triplicate copy of ARE l.*
*5. Self attested copies of shipping bills.*
*6. Self attested copies of bill of ladings.*

*The claimant was requested vide* letter 20.08.07 to submit the copies of inputs invoices against which their manufacturer had availed the Cenvat Credit and relevant pages of RG23A and Pt-II to establish authentic duty paid nature of the goods being exported. But the claimant has not submitted the same till date.

*FINDINGS*

*I have carefully gone through the case records of the rebate claims.*

*As per Para 8.4 of the CBEC Manual of supplementary instructions, the rebate sanctioning authority has to satisfy himself that the goods on which rebate is claimed are of duty paid character.*

*In case where the duty is paid through Cenvat Credit, the goods can be treated as duty paid only if the Cenvat credit availed is proper,*

*Due to detection of large scale frauds in the textile sector and due to large number of alert circulars issued by different Central Excise formations it has become necessary to check the correctness of the cenvat credit availed in cases where the duty on export goods was paid through Cenvat Credit.*

*To check whether the cenvat credit is availed on the invoices issued by the manufactures / said persons traders who are appearing in the Alert Circulars, the claimant was requested to submit the copies of input invoices on which their manufacturer had availed the cenvat credit and also the copies of the Cenvat Credit Accounts like RG23 A Pt-I and Pt-II.*

*Despite repeated requests the claimant has not submitted these documents to enable to check the duty paid character of the goods.*

*I therefore, find that in this case the duly, paid character of the export goods has not been established. Accordingly the rebate claim is liable for rejection. I also find that the claimant has not submitted the duplicate copy of excise invoice No. 1915/20.06.06, which is also a mandatory document for filing the rebate claim.*

9. From the above, Government observes that the rebate claim of the applicant was rejected mainly on the ground that the applicant despite repeated requests failed to submit the copies of the relevant input invoices against which the manufacturer had availed the Cenvat credit and the relevant pages of RG 23A Part-I & Part-II registers to establish the authenticity of the duty paid nature of the goods being exported. Government further observes that the applicant in the present Revision Application has contended that because of the refusal of the Lower Adjudicating Officer to allow some time to obtain the documents from the manufacturer/processor and for the failure to produce these documents before the authorities, their rebate claim was rejected. However, the applicant has submitted these relevant records (Copies of RG23A-Part-I, II & Input invoices as well as triplicate copy of Central Excise Invoices No.1915) before the Commissioner (Appeals) as well as before this authority.

10. Government further observes that GOI vide Order No. 357/2014-CX, dated 14-11-2014 [ 2015 (320) E.L.T. 667 (G.O.I.)], while allowing the

Revision Application filed by M/s Tricon Enterprises Pvt. Ltd., which is also relied upon by the applicant, observed as under:

> ***9.*** *Government proceeds to examine a situation assuming without admitting that the applicant failed to submit original Central Excise invoices. Government notes that Hon'ble Bombay High Court's judgment in case of U.M. Cables Ltd. reported as 2013 (293) E.L.T. 641(Bom.).*
>
> *Hon'ble High Court of Bombay in its judgment dated 24-4-13 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/13 & 3103/13) reported as TIOL-386-HC-MUM-CX., has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled.*
>
> *Applying the ratio of aforesaid judgment Government finds that even if copy of Excise invoices are not submitted, the export of duty paid goods may be ascertained on the basis of other collateral documents. In this case there is no dispute of payment of duty per se, which is also evident from copies of impugned AREs-1 where in such duty particulars are clearly given. Further there is no dispute that such duty paid goods have not actually been exported. Under such circumstances, when substantial condition of export of duty paid goods stands established, the rebate claims can't be held inadmissible considering a situation that Excise invoices are not submitted in terms of ratio of judgment of Hon'ble Bombay High Court.*

11. Government observes that the original adjudicating authority had rejected the rebate claim of the applicant without issuing show cause notice and without proper verification of the documents and now, when the relevant documents are furnished by the applicant and it is in the context of these documents, verification has to be carried out by the original adjudicating authority keeping in mind GOI observations in its Order Re: M/s Tricon Enterprises Pvt. Ltd., reiterated at para 10 supra. This verification from the original authority is also necessary, to establish the genuineness of the Cenvat credit availed & subsequently utilized by the manufacturer for payment of duty towards the above exports. The applicant is also directed to submit relevant records/documents to the original authority in this regard.

12. In view of discussions and findings elaborated above, Government sets aside the impugned order in Appeal and remands the case to the original

adjudicating authority for *de novo* adjudication after affording a reasonable opportunity of being heard to the applicant before passing fresh order. The original adjudicating authority will pass a speaking order within a period of Eight weeks from the date of receipt of this order.

19. Revision application is disposed off in above terms.

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

ORDER No.420/2018-CX (WZ) /ASRA/Mumbai DATED 30.1.2018

To,
M/s PSL Tex-Styles Pvt. Ltd,
6/147, Mittal Ind Estate,
Andheri Kurla Road, Andheri(East),
Mumbai 400 059.

Copy to:

1. The Commissioner of CGST & CX, Thane-Rural, 4th Floor, Utpad Shulk Bhawan, Plot No. 24-C : Sector E, Bandra Kurla Complex, Bandra )East), Mumbai 400 051
2. The Commissioner of CGST & CX, (Appeals), Thane, 12th Floor, Lotus Info Centre, Parel (east), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, Division –II, CGST & CX, Thane-Rural, Bhagwandas Mansion, Shivaji Chowk, 1st and 2nd Floor, Kalyan (West) 421 301
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.