

REGISTERED SPEED POST AD



**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. 195/125/14-RA/268

Date of Issue: 29.01.2021

ORDER NO. 43/2021-CX(WZ) /ASRA/MUMBAI DATED 15.01.2021 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 Ltd.
Piramal Tower Annexe, 6th Floor,
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai 400 013

Respondent : Commissioner
GST & Central Tax,
Mumbai Central Commissionerate

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. PD/11/M-I/2014 dated 22.01.2014 passed by the Commissioner of Central Excise(Appeals-I), Mumbai Zone-I.

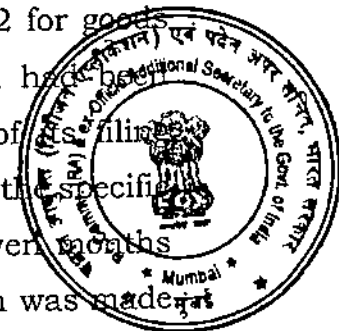


ORDER

This revision application has been filed by M/s Piramal Glass Ltd., Piramal Tower Annexe, 6th Floor, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013 (hereinafter referred to as "the applicant") against OIA No. PD/11/M-I/2014 dated 22.01.2014 passed by the Commissioner of Central Excise(Appeals-I), Mumbai Zone-I.

2. The applicant is engaged in the manufacture and export of various types of products falling under chapter 70 of the CETA, 1985. They had exported the duty paid goods on payment of central excise duty and education cess and submitted rebate claims for rebate of duty under Rule 18 of the CER, 2002 in respect of ARE-1 No. 048/2011-12 dated 09.04.2011 for an amount of Rs. 3002/-. It was observed that the goods therein had been cleared for export in the month of April 2011. The claim was returned to the applicant alongwith all documents under a deficiency memo. The applicant was informed that the office of the rebate sanctioning authority was unable to process the claim. The applicant after a lapse of nearly eleven months resubmitted the rebate claim. Since these resubmissions were made beyond one year period of limitation specified in Section 11B of the CEA, 1944, the Deputy Commissioner(Rebate), Mumbai-I rejected the rebate claims as time barred after issuing show cause notice vide his OIO No. K-II/452-R/2013(MTC) dated 12.06.2013.

3.1 Aggrieved by the OIO dated 12.06.2013 passed by the Deputy Commissioner(Rebate), Mumbai-I, the applicant filed appeal before the Commissioner(Appeals-I), Mumbai Zone-I. The Commissioner(Appeals) observed that the applicant had filed rebate claim on 23.04.2012 for goods cleared for export in the month of April 2011. The said claim had been returned to the applicant within the period of three months of its filing alongwith all the documents under a deficiency memo pointing out the specific deficiencies. Thereafter, the applicant after a lapse of nearly eleven months resubmitted the rebate claim. He observed that this resubmission was made beyond the period of one year period of limitation specified in Section 11B of the CEA, 1944. The Commissioner(Appeals) averred that the rebate claim



should have been resubmitted with all the documents within a reasonable time of fifteen days as envisaged in chapter 8 of the CBEC Manual and that the production of all relevant documents, correct documents, correct information in all aspects was mandatory as per provisions of Section 11B(2) of the CEA, 1944. He further averred that the claim is taken as filed only when all relevant documents, correct documents, correct information in all respects are available/filed in time as per Notification No. 19/2004-CE(NT) dated 06.09.2004 read with Rule 18 of the CER, 2002. He observed that the applicant in the present case had failed to do so.

3.2 Commissioner(Appeals) placed reliance upon the judgment of the Supreme Court in the case of UOI vs. Kirloskar Pneumatic Company[1996(084)ELT 0401(SC)], CCE, Chandigarh vs. Doaba Co-operative Sugar Mills Ltd., Jalandhar[1988(37)ELT 478(SC)], Porcelain Electrical Mfg. Co. vs. CCE, New Delhi[1998(98)ELT 583(SC)], Steel Strips vs. CCE, Ludhiana[2011(269)ELT 0257(Tri-LB)], Indian Oil Corporation Ltd. vs. CCE, Vadodara[2012(276)ELT 0145(SC)] to opine that the applicant had not fulfilled the substantial conditions specified in the said section, said rules read with the said notification, instruction, circulars etc. issued for this purpose. He also placed reliance upon the judgments in the case of Dugar Impex Pvt. Ltd. vs. Commissioner of Customs, Mumbai[2003(154)ELT 0576(Cal)] and Malwa Cotton Spinning Mills Ltd. vs. CCE, Ludhiana[2013(2)ECS (86) (Tri-Del)]. He further observed that the Hon'ble Supreme Court had in the case of Collector of Central Excise, Kolkata vs. Alnoori Tobacco Products[2004(170)ELT 135(SC)] held that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. He averred that the case laws cited by the applicants pertained to the period prior to the introduction of CBEC Manual.

3.3 The Commissioner(Appeals) observed that on a conjoint reading of paragraph no. 1.1 and 1.2 of the CBEC Manual it was apparent that the instructions therein were applicable throughout India and officers of the Central Excise Department were not entitled to depart therefrom without the



previous approval of the Commissioner, who in turn is required to obtain sanction from the CBEC for such deviation. As per these instructions incomplete claim would not be in the interest of the Department and therefore they had been returned under a deficiency memo by the officers. The Commissioner(Appeals) held that the claim could be taken as filed only when all relevant documents were made available or submitted and that the claim in the present case had been filed complete in all respects beyond the stipulated period of one year. The Commissioner(Appeals) therefore rejected the appeal filed by the applicant vide OIA No. PD/11/M-I/2014 dated 22.01.2014.

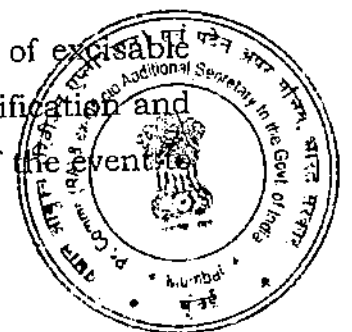
4. Aggrieved by the OIA No. PD/11/M-I/2014 dated 22.01.2014, the application has now filed for revision on the following grounds:

(a) The rebate claim was returned for resubmission to the applicant on the simple observation that "claimant profile" and other simple technical errors had not been submitted. The applicant averred that these errors were condonable in nature. Therefore, resubmission of the rebate claims cannot be considered as time barred.

(b) In a similar issue, the Hon'ble Joint Secretary, Revisionary Authority, Government of India, New Delhi had allowed the revision application filed vide Order No. 1749/12-CX dated 10.12.2012 and the said order has been accepted by the Commissioner of Central Excise, Mumbai-I.

(c) The applicant relied upon the judgments in the case of Arunoday Mills Ltd. vs. CCE, Ahmedabad[2003(156)ELT 790(T)], Rubberhood India (P) Ltd. vs. Commissioner of Customs(Appeals), Cochin[2006(206)ELT 536(T)], In Re : Dagger Forst Tools Ltd.[2011(271)ELT 471(GOI)] and CCE vs. Bharat Westfalia Ltd.[1989(44)ELT 687(Trb)].

(d) The applicant contended that the right to rebate on export of excisable goods is granted by the statute and documents listed in the notification and departmental instructions are only evidence of the occurrence of the event to which they relate.



(e) The para 3(b) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 was referred to and it was pointed out that the Maritime Commissioner is to compare the duplicate copy of application received from the officer of customs with the original copy and triplicate copy received from central excise officer. The original, duplicate and triplicate copies of the ARE-1 are required to be compared in such manner.

(f) The applicant averred that rebate claims cannot be denied for minor errors such as difference in flight date, custom invoice date not tallying, chapter head not tallying with shipping bill etc. which are merely technical errors/procedural lapses.

(g) It was stated that the rebate claim had been filed on 23.04.2012 with Original ARE-1(white), Duplicate ARE-1(Buff), Triplicate ARE-1(Pink), Duplicate for transporter invoice copy, Self-certified copy of shipping bill(EP copy), Self-certified copy of bill of lading, and Self-certified copy of customs invoice and packing list. Therefore, the rebate claim had been submitted in time alongwith all the required documents. The deficiency was only in relation to non-submission of "claimant profile" which was only a procedural lapse.

(h) The applicant submitted that in order to qualify for grant of rebate under Rule 18, the mandatory conditions which are required to be fulfilled are that the goods should have been exported and the duty has been paid on those goods. The submission of "claimant profile" was a procedural matter and should not result in deprivation of the statutory right to claim rebate subject to the satisfaction of the authority on production of sufficient documentary material to establish the identity of the goods exported and duty paid character of the goods.

(i) They placed reliance on the judgment of the Bombay High Court in the case of UM Cables Ltd.[2013-TIOL-386-HC-MUM-CX] wherein it was held that rebate of excise duty granted under Rule 18 of the CER, 2002 cannot be denied merely on the ground of non-production of original and duplicate copies of ARE-1 provided the conditions for grant of rebate have been satisfied.



(j) The applicant contended that the judgment held that the procedures laid down in the notification and in CBEC Manual of Supplementary Instructions are meant to facilitate processing of application of rebate to enable the rebate sanctioning authority to satisfy himself about the requirements of export of the goods and their duty paid character. They contended that this procedure could not be raised to the level of a mandatory requirement. It was further stated that Rule 18 itself makes a distinction between conditions and limitations and that while the conditions and limitations are mandatory, the procedure was directory.

k) The applicant placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilisers Ltd. vs. Deputy Commissioner[2002-TIOL-234-SC-CX] wherein it was held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in invalidation of the claim. However, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to non-observance irrespective of the purposes which they were intended to serve.

l) The applicant stated that the High Court judgment(no judgment cited) directed the rebate sanctioning authority to process the rebate claim without insisting on the original and duplicate ARE-1's if it was otherwise satisfied that the conditions for grant of rebate had been fulfilled.

m) The applicant referred the clause 8 in Chapter 8 of the CBEC Manual of Supplementary Instructions which relates to sanctioning the rebate claims by the central excise authorities and observed that the rebate sanctioning authority was required to verify two things; viz. goods were actually exported and the duty paid character of the goods was clear and thereafter grant rebate. It was submitted that neither the deficiency memo nor the order-in-original contained any allegation to the effect that the goods had not been exported or that the duty had not been paid.



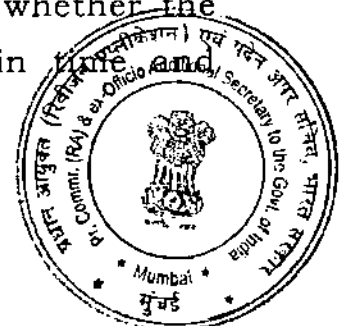
n) Reliance was placed upon the judgments in the case of Birla VXL Ltd. vs. CCE, Chandigarh[1998(99)ELT 387(Trb)], Ind Euro Textiles[1998(97)ELT 550(GOI)] and CCE vs. Binny Ltd.[1987(31)ELT 722(Trb)].

o) The applicant averred that there were several judgments of the Government of India/Tribunal which hold that claiming rebate is a substantive right given to an exporter and that it should not be denied merely on the ground of technical mistakes/lapses. Reliance was placed upon the decision In Re : Cotfab Exports[2006(205)ELT 1027(GOI)].

5. The applicant was granted an opportunity for personal hearing on 08.08.2018. Shri Karan Awtani, Chartered Accountant appeared on their behalf and reiterated their submissions filed through revision application and written submission filed by them during personal hearing. They therefore pleaded that the impugned OIA be set aside and revision application be allowed. In their written submissions, the applicant submitted copy of Rule 18 of the CER, 2002, Notification No. 19/2004-CE(NT) dated 06.09.2004, para 2 of Chapter 9 of CBEC Manual, para 7 of Part V of Chapter 8 of the CBEC Manual alongwith copies of various case laws. On change in the Revisionary Authority, the applicant was granted a fresh hearing on 09.12.2019. Shri Karan Awtani, Chartered Accountant appeared on their behalf and reiterated his submissions in the earlier personal hearing, their grounds in the revision application and stated that their original claim had been filed within time. They also cited several case laws. The applicant was again granted a personal hearing on change in Revisionary Authority. Shri Sanjay Mishra, AGM appeared on behalf of the applicant, reiterated their submissions dated 09.12.2019 and stated that their claims were not time barred.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Appeal and Order-in-Original.

7.1 The issue involved in the revision application is whether the impugned order holding that rebate claim filed within time and



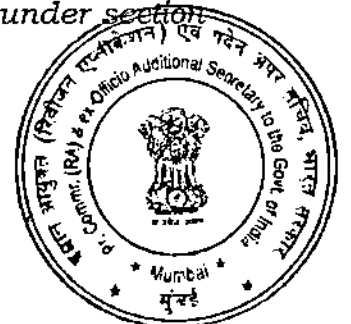
returned to the applicant under deficiency memo which was then resubmitted after a lapse of one year was time barred or otherwise.

7.2 On perusal of records, Government observes that the applicant had filed a rebate claim amounting to Rs. 3002/- on 23.04.2012 for the goods stated to have been cleared for export in the month of April, 2011. The claim was returned to the applicant alongwith all the documents under deficiency memo. The said deficiency memo pointed out the deficiency in the claim. Thereafter, the applicant after the lapse of nearly eleven months resubmitted the rebate claim. Since this resubmission was made beyond the one year period of limitation specified in Section 11B of the CEA, 1944, the original authority after issuing show cause notice rejected the refund claim as time barred. The applicants appeal against the order of the original authority was also rejected by the Commissioner(Appeals).

8. Government in the instant case observes that there are a catena of judgments wherein it has been held that time-limit is to be computed from the date on which refund/rebate claim was originally filed. High Court, Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”



Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”

In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.



9. Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

10. In view of foregoing discussions, it is quite clear that time limitation as stipulated in Section 11B of Central Excise Act, 1944 is to be computed from the initial date of filing such claims as available in relevant office records. Since the rebate claim in the instant case were initially filed within stipulated time limit, Government is of the considered view that the rebate claim is to be treated as filed within the prescribed time limit.

11. Government also observes that another reason for rejecting rebate claims by the Commissioner (Appeals) in this case was that all the relevant documents, as required to be filed alongwith the claim of rebate, as per Notification No. 19/2004-CE(NT) dated 06.09.2004 were not submitted by the applicant and therefore the rebate claim could not be taken to have been filed. Government observes that there are various judgments wherein Rebate claims have been allowed in cases where the requisite original documents have been lost, but other collateral evidences that the export has actually taken place have been produced by the claimant. Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) [2013 (293) E.L.T. 641 (Bom.)], while allowing the Petition filed against rejection of rebate claims for non production of the original and the duplicate copy of the ARE-1 form, at para 16 and 17 of its Order observed as under :-

16. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that



*the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in *Shreeji Colour Chem Industries v. Commissioner of Central Excise* - 2009 (233) E.L.T. 367, *Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise* - 2007 (217) E.L.T. 264 and *Commissioner of Central Excise v. TISCO* - 2003 (156) E.L.T. 777.*

17. We may only note that in the present case the Petitioner has *inter alia* relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the



revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

12. Government observes that the Hon'ble High Court of Gujarat had in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] while deciding the identical issue, relying on aforesaid order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 held as under :

7. *"Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".*

13. Government finds that aforesaid Hon'ble High Court orders are squarely applicable to such cases where the claimant has failed to submit the original documents due to loss or due to the same being misplaced. Government, therefore is of the considered view that the applicant is eligible for rebate provided that the original authority satisfies himself with collateral evidences such as Bill of Lading, Mate Receipt, Shipping Bill etc. submitted by the applicant evidencing the actual export of duty paid goods.

14. In view of the above discussion, Government holds that rebate is admissible to the applicant, provided that the collateral evidences produced by the applicant can prove that the export of duty paid goods has actually taken place. Accordingly, Government modifies the impugned Order-in-Appeal and directs the original authority to decide the case afresh taking into account the above observations. The applicant is directed to submit all the documents



before original authority for verification. A reasonable opportunity of hearing will be afforded to the concerned parties.

15. The revision application is disposed of in the above terms.

Shrawan
15/01/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 43/2021-CX (WZ)/ASRA/Mumbai DATED 15.01.2021.

To,

M/s Piramal Glass Ltd.
Piramal Tower Annexe, 6th Floor,
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel,
Mumbai 400 013

Copy to :-

1. The Commissioner of GST & Central Tax, Mumbai Central Commissionerate.
2. The Commissioner(Appeals-II), GST & Central Tax, Mumbai.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file
5. Spare Copy.

