

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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/1011/13-RA / 3335

Date of Issue: 20.08.2020

ORDER NO. 478/2020-CX (WZ) /ASRA/Mumbai DATED 05.05.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Birla Cotsyn (India) Ltd., Buldhana.

Respondent : Commissioner, Central Excise, Nagpur.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.NGP/EXCUS/000/APP/840-841/13-14 dated 16.09.2013 passed by the Commissioner (Appeals), Customs & Central Excise Nagpur.



ORDER

This revision application is filed by M/s. Birla Cotsyn (India) Ltd., Buldhana (hereinafter referred to as "the applicant") against the Order-in-Appeal No. No.NGP/EXCUS/000/APP/840-841/13-14 dated 16.09.2013 passed by the Commissioner (Appeals), Customs & Central Excise Nagpur.

2. The brief facts of the case are that the applicant filed following rebate claims in respect of 2/52 NM/P/V 75/25 Dyed yarn exported by them.

Sr. No.	ARE-1 No. & Date	Amount of Duty paid (Rebate Claimed) (Rs.)	Rebate Claim rejected vide Order in Original No. & Date.
1.	2.	3.	4.
1.	003/09.02.2012	5,24,780/-	45/REB/AMT/13 dated 30.04.2013.
2.	004/21.03.2012	3,96,123/-	46/REB/AMT/13 dated 30.04.2013.

The clearances for exports had been made on payment of duty under claim for rebate of duty vide ARE-1s shown in table above. The applicant vide affidavits dated 30.06.2012 and 08.02.2013 respectively, intimated that the original copy of ARE-1 had been lost by them. They also submitted the copy of FIR dated 11.02.2013 (for both ARE-1s) lodged by them with Police Authorities. They also intimated that BRC has also been lost. The Assistant Commissioner, Amravati Division rejected the said Rebate claims vide Orders in Original mentioned at column 4 of above table, holding that the applicant did not submit the original copy of relevant ARE-1s and also BRC and the rebate claims could not be sanctioned without accompanying documents which were mandatory as per provisions of law.

3. Being aggrieved, the applicant filed appeals before the Commissioner (Appeals), Customs & Central Excise, Nagpur. The said Commissioner (Appeals) rejected the appeals filed by the applicant vide Order-in-Appeal No. NGP/EXCUS/000/APP/840-841/13-14 dated 16. 09.2013

4. Being aggrieved with the impugned order in appeal, the applicant filed this Revision Application mainly on the following grounds :

4.1 Mere loss of original ARE-1 in transit cannot be basis for denying rebate when other evidences like invoice, Bill of Lading and Shipping Bill are sufficient to prove that the export has been done. They should not be penalized for some procedural lapse / loss of paper, which is not under exporter's control and they rely on following case laws:



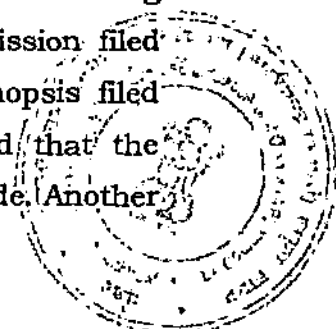
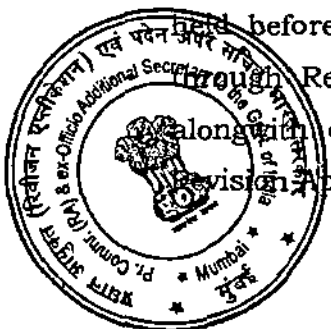
CCE Vs Tisco 2003(156) ELT 777 (CEGAT) and

Clipsal Vs CCE, Ahmedabad 2004 (174) ELT 188 (CESTAT) SMB.

- 4.2 They also rely on the case of M/s UM Cables Ltd. Vs. Union of India [2013-TIOL-386-HC-Mum-CX
- 4.3 If Original ARE-1 is not submitted, the rebate may be allowed on the basis of other documentary evidences including the duplicate copy of ARE-1 duly endorsed by Customs Authority. In this connection they rely on the following cases:-
- Hebenkraft - 2001 (136) E.L.T. 979 GOI
Kansal knitware Vs CCE 2001 (136) ELT 467 (Tri-Del.)
Shri Krishna Pharmaceuticals Vs CCE 1988(36) ELT 190 (CESTAT) & Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 (CESTAT)
- 4.4 In the instant case goods were exported directly by the manufacturer exporter and not through merchant exporter and hence there can be no chance of filing duplicate claim, if claim is accepted without original and duplicate copy of ARE-1
- 4.5 The appellate authority has not considered that their finished goods having been cleared on payment of duty and having been examined and sealed under the supervision of Central Excise Officer at their factory. The rebate claim was rejected and denied only on the ground that original ARE-1 has not been submitted at the time of claiming rebate. The reliance place by the appellate authority on the case of Synergy Technologies [20212(280) ELT-578(GOI)] is not applicable to the facts of their case.
- 4.6 They have followed statutory provision and procedure prescribed under Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended from time to time except that they were unable to provide the original ARE-1 which was lost. However, they provided duplicate copy of ARE-1 duly endorsed by the Customs Authorities along with all the supporting documents required for claiming the refund. The sanctioning authority erred in rejecting the claims without considering the facts that they can easily verify the correctness of the exported goods through duplicate copy of ARE-1 duly endorsed with the Customs with Triplicate Copy of ARE-1 duly endorsed by the Superintendent of Central Excise and satisfies that claim is in Order.

5. Personal hearing in this case was scheduled on 18.01.2018, 05.02.2018, 26.02.2018 and 12.03.2018. Shri R.K.Sharma, Advocate appeared for the hearing

held before my predecessor on 12.03.2018 and reiterated the submission filed through Revision Application and along with those made in the synopsis filed along with case laws during the said personal hearing. He pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside. Another



opportunity of hearing was offered to them on 09.12.2019 on account of change of revisionary authority. However, neither the applicant nor the respondent attended the scheduled personal hearing nor had any communication been received from them seeking further extension till date. In view of the above position and since no complex questions of law or facts are involved, Government proceeds to decide the case on the basis of available records especially as the applicant have been heard by my predecessor.

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

7. Government observes that rebate claim was rejected by the original authority for the reason of non-submission of original copy of ARE-1 and BRC by the applicant. Commissioner (Appeals) vide impugned Order in Appeal while rejecting the appeals filed by the applicant and upholding both the Orders in Original held that submission of documents as specified / prescribed are must because leniencies lead to possible fraud of claiming an alternatively available benefit which may lead to additional / double benefits.

8. Government in the instant case notes that the original copy of relevant ARE-1 No. 3 dated 09.02.2012 and ARE-1 No. 4 dated 21.03.2012 were misplaced/lost by the applicant. The applicant had also submitted copy of FIR (for both ARE-1s) lodged by them with the police authorities and also intimated that BRC had also been lost. It is also on record that the applicant executed Affidavit cum undertaking given by G.M. Commercial, executing indemnity Bond in favour of Assistant Commissioner, Central Excise, Amaravati to the effect that if the original copy of ARE-1 subsequently received, the same shall be submitted to his office and no further claim shall be made in respect of the same.

9. In this regard Government observes that while deciding the identical issue, 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.),] at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. 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.

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

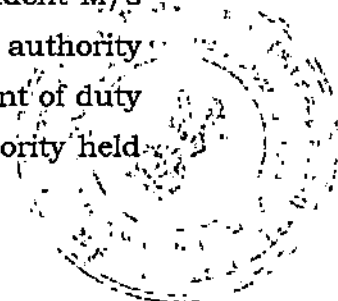
11. Government finds that rationale of aforesaid Hon'ble High Court orders which are incidentally relied upon by the applicant, are squarely applicable to this case. Government further observes that the applicant has submitted the following documents to the rebate sanctioning authority along with his claims :

1. Duplicate ARE-1 duly endorsed by the officer of Customs
2. Affidavit cum Undertaking (Indemnity Bond)
3. Self attested copies of Shipping Bills, Bill of Lading and Mate's Receipts
4. Declaration / undertaking regarding refund of rebate amount in case of excess or erroneous sanction of the same.
5. Excise Invoice under which the export goods were removed from the factory of manufacture.
6. Copy of extract of cenvat credit register showing debit of the duty paid on the export consignment and
7. Packing Lists.

12. From the aforementioned documents Government observes that the bonafides of export can be established and therefore, the rebate claim should not be denied for non production of original copy of ARE-1.

13. As regards non submission of BRC by the applicant with the rebate claim, Government relies on GOI Order No.17-19/2016—CX dated 28.01.2016 In Re:

Mobile Technologies. The issue involved in this case was that the respondent M/s Mobile Technologies had filed three rebate claims with the adjudicating authority claiming the rebate of excise duty paid on their goods exported on payment of duty under Rule 13 of the Central Excise Rules, 2002. The adjudicating authority held

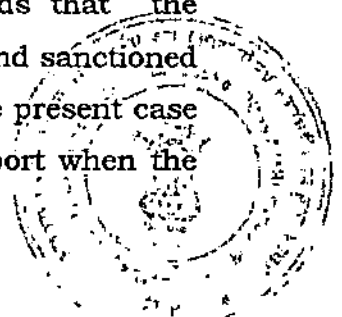


that the exporter had not submitted (BRCs) in respect of export clearances for the period 21-12-2009, 28-6-2010 to 23-7-2011 & 28-4-2010 on the date of the Order-in-Original viz. 1.4.2011, 30-6-2011 and 21-7-2011 when in terms of RBI guidelines the foreign proceeds are to be realized within a period of one year from date of export. He therefore, rejected the rebate of duty for non-production of BRCs. Being aggrieved by the impugned Orders-in-Original, the respondent M/s Globe Technologies filed appeals before Commissioner (Appeals), who was of the view that the rebate sanctioning authority can very well verify the BRC subsequently also and take necessary action to recover the duty within the time limit if the BRC is not produced within the prescribed time. Therefore, the appeals were decided in favour of the respondent by holding that submission of BRCs have not been envisaged as precondition for grant of rebate under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 read with Rule 18 of the Central Excise Rules, 2002. Being aggrieved by the impugned Orders-in-Appeal, the applicant department had filed revision applications before Government and GOI while allowing the Revision Applications and setting aside Commissioner (Appeals) Orders vide its aforementioned Order held as under:-

14. *It is a fact on record that the stipulated period of one year for the realization of export proceeds had been exceeded much before issue of the show cause notices. The question of submission of BRC would not arise when rebate is filed and sanctioned within one year of the date of export. However, in a scenario as in the present case were pending the sanction of rebate, the Bank Remittance Certificate had become due, it cannot be held that rebate ought to be sanctioned as it is not a prescribed document at the time of filing of rebate. It is also a fact on record that till date the respondent has failed to submit the BRCs to the department. Though it is claimed by them before the revisionary authority that remittance has been received by them partially, no evidence has been produced to that effect.*

15. *It is a universally known principle that one of the main reasons any export incentive including rebate is allowed is to encourage export-generated foreign exchange earnings for the country. From a harmonious reading of Rule 18 of Central Excise Rules, Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, relevant provisions of Foreign Exchange Management Act, Foreign Trade Policy and RBI guidelines as applicable, it can be concluded that exports are entitled for rebate benefit only if export realization is received, which has not happened in the present case.*

Relying on the GOI order referred supra, Government holds that the question of submission of BRC would not arise when rebate is filed and sanctioned within one year of the date of export, however, in a scenario as in the present case when rebate was pending for sanction beyond one year of the export when the



BRC had become due, it cannot be held that rebate ought to be sanctioned without BRC as it is not a prescribed document at the time of filing of rebate claim. It is also a fact on record that the applicant had also intimated that BRC has also been lost and therefore they failed to submit the BRC to the department. Therefore, the applicant is also required to produce evidence to the effect that they have received foreign remittances towards the said exports to the original authority.

15. In view of the forgoing discussion Government sets aside Order-in-Appeal No. No.NGP/EXCUS/000/APP/840-841/13-14 dated 16.09.2013 passed by the Commissioner (Appeals), Customs & Central Excise Nagpur and remands the matter back to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents and also production of proof regarding receipt of the export remittances by the applicant. The original adjudicating authority shall pass the order expeditiously.

16. The revision application is allowed in terms of above.

17. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 478/2020-CX (WZ) /ASRA/Mumbai DATED 05.05.2020.

To,
M/s. Birla Cotsyn (India) Ltd.,
A-82, MIDC, Khamgaon-444 303,
District Buldhana (M.S.).

TESTED

LEXANATHA REDDY
Deputy Commissioner (R A)

Copy to:

1. The Commissioner of GST & CX, Nagpur-II Commissionerate. GST Bhavan, Civil Lines, Telangkhedi Road, Nagpur-440001(Maharashtra)
 2. The Commissioner of GST & CX, Nagpur (Appeals), GST Bhavan, Civil Lines, Telangkhedi Road, Nagpur-440001(Maharashtra)
 3. The Deputy Commissioner (Division Akola), Nagpur-II Commissionerate. GST Bhavan, Civil Lines, Telangkhedi Road, Nagpur-440001(Maharashtra)
- S. to AS (RA), Mumbai

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