

REGISTERED
SPEED POST



सत्यमेव जयते

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.195/200/2015-RA / 6485

Date of Issue: 15.11.2021

ORDER NO. 517 /2021-CX (WZ)/ASRA/MUMBAI
DATED 10.11.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI
SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO
ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Piramal Glass Limited

Respondent: Commissioner of Central Excise, Raigad

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No CD/169/RGD/2015 dated
11.02.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai
Zone-II.

ORDER

This Revision Application is filed by the M/s. Piramal Glass Limited, Piramal Tower Annexe, 6th floor, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/169/RGD/2015 dated 11.02.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the Applicant, had filed 06 rebate claims totaling to Rs. 1,09,821/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The details of these claims are as given below:

Sr. No.	RC No & date	ARE-1 No & date	Amount claimed (Rs.)	Shipping Bill No & date	Invoice No. & date
1	10271 dt 3.9.13	12 /15.9.12	19,134	19035337 dt 25.9.12	871/15.9.12
		2497/29.11.12		2835877 dt 1.12.12 39235010;2823389 dt 30.11.12 96033020	
2	10272 dt 3.9.13	14/ 27.11.12	28,813	28661660 dt 3.12.12	1307/27.11.12
		2543/30.11.12		3923510	
3	10273 dt 3.9.13	15/30.12.12	20,607	3645974 dt 24.1.13	1419/30.12.12
		3059/23.01.13		3923510	
4	10274 dt 3.9.13	16/ 30.12.12	14,030	3314435 dt 2.1.13	1420/30.12.12
		2884/ 31.12.12		96033020	
5	10275 dt 3.9.13	72/ 30.3.13	10,018	4759010, 4759033 dt 1.4.13	1925/ 30.3.13
		3982/ 31.3.13		39235010	
6	10276 dt 3.9.13	15/ 30.9.12	17,219	2373503 dt 29.10.12	992/30.9.12
		2091/29.10.12		96033020	
			1,09,821		

2.1 The rebate sanctioning authority on scrutiny of the rebate claims observed that the Applicant had procured excisable goods from manufacturer M/s. Petuela Industries, Dadra on the strength of ARE-1 and Tax invoice. The said goods were brought into the Applicant's factory at Kosamba and then exported from there. Following deficiencies were observed in the said rebate claims by the rebate sanctioning authority:

- (i) For each ARE-1, 2-3 Shipping Bills had been submitted. Therefore, it was not possible to co-relate quantity, value, Central Excise duty etc.
- (ii) The original and duplicate copies of ARE-1 No. 12, 14, 15, 16 and 72 do not contain the endorsement of Customs Officer in Part B.
- (iii) The Original, Duplicate & Triplicate copies of ARE -1 Nos. 2497, 2543, 3059, 2884, 3982 and 2091 had not been submitted. Only Xerox copies had been submitted.
- (iv) As per conditions No. 2(a) laid down under the Notification No. 19/2004-CE(NT), the goods should be exported directly from factory. The said condition had not been fulfilled as found out through documents/invoices submitted along with rebate claims.

2.2 Hence the Applicant was issued Deficiency Memo-cum-SCN dated 20.02.2013. The adjudicating authority, Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 2334/13-14/DC(Rebate)/Raigad dated 06.12.2013 rejected the rebate claims totally amounting to Rs.1,09, 821/- under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-II. The Commissioner (Appeals) vide Order-in-Appeal No. CD/169/RGD/2015 dated 11.02.2015 rejected the Applicant's appeal and upheld the Order-in-Original. The appellate authority while passing the impugned Order-in-Appeal observed that:-

- a. the applicant has not established that goods mentioned in ARE-1 are exported by them;
- b. the applicant has also not established the duty paid character of the goods exported;
- c. the condition No. 2(a) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 has not been fulfilled by the applicant.

3. Accordingly, the Applicant filed the current Revision Application on the following grounds:

- (i) The Applicant had procured the excisable goods from its supporting manufacturer M/s. Petuela Industries and brought the same to the

Applicant's factory located at Kosamba & Jambusar and the same were exported along with the bottles manufactured by the Applicant. The corroboration of the goods which has been cleared from the factory had actually been exported can also be evidenced from the export documents. Since duty paid goods has been exported, hence rebate should be granted.

- (ii) The goods were removed originally from support manufacturer M/s. Petuela Industries's factory and were finally exported under the Applicant's ARE-1 under the supervision of Central Excise Officer. The details are as given below:

Sr. No.	ARE-1 No. & date	Quantity	Value	Description	Excise duty	Excise Invoice No.
1	S-V/Rebate/16/2012-13 dt 15.09.12	360000	154800	Nail Polish Brush	19,134	871
2	S-V/Rebate/43/2012-13 dt 30.12.12	264000	113520	RD BLK Brush	14,030	1420
3	S-V/Rebate/27/2012-13 dt 27.11.12	248000	233120	Pearl Silver Twirl cap	28,813	1307
4	S-V/Rebate/42/2012-13 dt 30.12.12	292500	166725	Blk Nail polish cap	20,607	1419
5	S-V/Rebate/10/2012-13 dt 9.7.12	342500	137000	Nail Polish Brush	16,933	460
6	S-V/Rebate/20/2012-13 dt 30.9.12	324000	139320	Black Nail Polish Brush	17,219	992

Further, the name of the supporting manufacturer M/s. Petuela Industries was also endorsed in the examination report of Pre-Shipment Invoice which substantiate that the duty paid goods mentioned in the ARE-1s have been exported. In the instant case, condition No. 2(a) of Notification No. 19/2004-CE(NT) ibid required export of goods directly either from factory or warehouse is fulfilled.

- (iii) The Applicant has cleared the goods with payment of duty and under claim of rebate. The same fact has also been certified by the Superintendent and Inspector of Central Excise, Range Office in the Part-A of the ARE-1s. The Shipping Bills attached with the rebate claims also contain details of ARE-1 and description of goods and the description also matches with the ARE-1. The Shipping bills were also

endorsed by the Custom Appraiser which substantiate that the goods have been exported. The non-endorsement of Part B of ARE-1 is merely a procedural lapse. As long as the goods have been exported, the rebate shall not be denied. The Applicant places reliance upon the judgment of Mangalore Chemicals and Fertilizers [1991 (55) ELT 437 (SC.)].

- (iv) The Applicant has purchased the goods from the factory of the supporting manufacturer and has cleared the goods under the ARE-1s prepared by them. The goods were then brought into the factory of the Applicant, stuffed in the container and thereafter exported. The ARE-1s are prepared in the factory of the Applicant and duty is also paid at the factory. Therefore, the goods have been directly exported from the factory for which ARE-1 was prepared. Duty payment is also substantiating that the goods have been directly exported from the factory. Accordingly, the condition No. 2(a) of Notification No. 19/2004-CE(NT) has been fulfilled.
- (v) Assuming without admitting, even if the procedure laid down in Circular No. 294/10/94-CX dated 30.01.1997 has not been followed, the procedural infraction of circulars is to be condoned if exports have taken place and the law is settled that substantive benefit cannot be denied for procedural lapses and hence rebate should be granted. In this they relied on few case laws.
- (vi) There is no allegation in the deficiency memo as well as Order-in-Original that goods have not been exported as well as duty has not been paid. The Applicant had submitted the following documents to satisfy that the goods are actually exported:
- (a) Copy of ARE-1s;
 - (b) Copy of Shipping Bills (EP Copy);
 - (c) Copy of Bill of Lading;
 - (d) Invoice issued under Rule 11;
 - (e) Custom Invoice;
 - (f) Packing List;
 - (g) Duplicate for Transporter's copy of Invoice (Excise Invoice);
 - (h) Mate Receipt.

The copies of the aforesaid export documents contain details regarding batch No. of the goods, description of goods, weight of the goods, details of the export invoice No. which is correlating with other export documents. Further, on page 3 of the Shipping also contains endorsement of the mate receipt number by the Custom officer. Therefore, there is no dispute that duty paid goods has been exported.

(vii) Without prejudice to the above, the procedural infraction of Notification/Circular etc. are to be condoned if exports have really taken place, and the law is settled that substantive benefit cannot be denied for procedural lapses and hence rebate should be granted. In this they relied on the case law of :-

- (a) Cotfab Exports [2006 (205) ELT 1027 (GOI)];
- (b) Atma Tube Products Ltd. [1998 (103) ELT 270 (T)];
- (c) Modern Process Printers [2006 (204) ELT 632 (GOI)].

4. A personal hearing in the case was held on 11.08.2021. Shri Sanjay Mishra, Assistant General Manager appeared online on behalf of the Applicant. He reiterated their earlier submission and stated that duty paid goods were purchased from manufacturers and exported after stuffing the same under the supervision of officers. He requested to allow the claim.

5. 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.

6. The Government observes that the impugned rebate claims were rejected on the basis of following four grounds:-

- (i) For each ARE-1, 2-3 Shipping Bills had been submitted. Therefore, it was not possible to co-relate quantity, value, Central Excise duty etc.
- (ii) The original and duplicate copies of ARE-1 No. 12, 14, 15, 16 and 72 do not contain the endorsement of Customs Officer in Part B.

(iii) The Original, Duplicate & Triplicate copies of ARE -1 Nos. 2497, 2543, 3059, 2884, 3982 and 2091 had not been submitted. Only Xerox copies had been submitted.

(iv) As per conditions No. 2(a) laid down under the Notification No. 19/2004-CE(NT), the goods should be exported directly from factory. The said condition had not been fulfilled as found out through documents/invoices submitted along with rebate claims.

7. On perusal of the records and on test checking one rebate claim, Government observes that:-

- i. Rebate Claim No. 10271/03.09.2013 is for Rs.19,134/-.
- ii. It covers ARE-1 No.12 dated 15.09.2021 and Invoice no. 871 dated 15.09.2021 issued by M/s. Petuela Industries. The goods mentioned in said documents are 36 boxes of 13/96/43.5N Polish 12ml Afradit-80020100086 valuing Rs.1,54,800/- and involving total duty of Rs.19,134/- .
- iii. It also covers ARE-1 No.2497 dated 29.11.2021 and Invoice no. 1212002395 dated 29.11.2021 issued by M/s. Piramal Glass Limited. The goods mentioned in said documents are 16 cartons of 13/1018 *Black PC cap - 12ml Afradit* and 7 cartons of 13/96/43.5N Polish *Rdbrush 12ml Afradit*.
- iv. The rebate claim covers two shipping Bills viz. No. 2835877 dated 1.12.2012 and No. 2823389 dated 30.11.2012. The goods mentioned in these shipping bills are - *CAPS BIOCURA 12 ML* and *BRUSH BIOCURA 12ML* respectively
- v. The rebate claim covers Bill of Lading No. 4731-0220-211.081 dated 10.12.2021. The goods mentioned in the said B/L are - *30 ML DROPPER, AFRADIT BIOCURA, MIRO CABAL 100ML, ISANA 50ML, CAPS BIOCURA, and BRUSH BIOCURA*.

7.1 Thus the Government observes that the description of goods mentioned in ARE-1 and Excise invoice do not match with the description of goods exported vide Shipping bills mentioned in the claim. Therefore the

Government observes that the Appellate authority has rightly held that the applicant has not established that goods mentioned in ARE-1 are exported by them.

7.2 Government also observes that the reliance placed by the applicant on various case laws is misplaced in as much as the applicants/appellants in these cases had substantially complied with the provisions under the relevant Notifications / Circulars whereas in the instant case the applicant has failed to substantiate their claim.

8. In view of above position, Government holds that the lower authorities have rightly concluded that the rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9. Government, therefore, does not find any reason to modify Order-in-Appeal No. CD/169/RGD/2015 dated 11.02.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

10. The revision application filed by the applicant is hereby rejected as being devoid of merits.


10/11/21
(SHRAWAN KUMAR)

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

ORDER No. 51) /2021-CX (WZ)/ASRA/Mumbai dated 10.11.2021

To,
M/s. Piramal Glass Ltd.,
Piramal Tower Annexe, 6th floor,
Peninsula Corporation Park,
Ganpatrao Kadam marg,
Lower Parel, Mumbai 400 013.

Copy to:

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D.
Belapur, Navi Mumbai - 400 614.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.