REGISTERED
SPEED POST

F.No.195/1064-1078/11-RA & 195/1092-1098/11-RA
195/311-320/12-RA, 195/449-451/12-RA, 195/762/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue 5/6/13

ORDER NO. 518-553 /2013-CX DATED 04.06.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject	:	Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal passed by the Commissioner (Appeals) Central Excise, Meerut-II as per Column No.5 of the table in para 1 of this order.
Applicant	:	M/s Polyplex Corporation Ltd., Bazpur, Udham Singh Nagar, Uttrakhand.
Respondent	:	Commissioner of Customs & Central Excise, Meerut-II, Meerut (U.P.)

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ORDER

These revision applications are filed by the applicants, M/s Polyplex Corporation Ltd., Bazpur, Udham Singh Nagar, Uttrakhand against the orders-in-appeal numbers as mentioned at column No.5 of the table passed by Commissioner of Customs & Central Excise (Appeals) Meerut-II:

Sl. No.	Revision Application No.	RA filed against O-I-A No./Date
(1)	(2)	(3)
1.	195/1064-1078/11	363-377-CE/MRT-II/11 dt. 30.6.11
2.	195/1095-1098/11	422-428-CE/MRT-II/2011 dt. 8.8.11
3.	195/311-320/12	01-09/CE/MRT-II/2012 dt. 13.01.12
4.	195/449-451/12	32-34/CE/MRT-II/12 dt. 17.02.12
5.	195/762/12	77-CE/MRT-II/2012 dt. 30.03.12

2. Brief facts of the case are that the applicants filed various claims in the division office to avail rebate of central excise duty paid on inputs & packaging material used in the exported excisable goods. The rebate claims were submitted along with the original duplicate copies of the ARE-2s, concerned Shipping Bills & Bill of Lading. The adjudicating authority in all the cases vide impugned orders partially sanctioned the rebate amount claims and rejected the balance amount as stated in the impugned order-in-appeal.

3. Being aggrieved by the impugned orders-in-original rejecting a portion of the rebate claim, applicants filed appeal before Commissioner (Appeals) who, except allowing the full amount of rebate in case of furnace oil, rejected the appeals.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following common grounds that,

4.1 Commissioner (Appeals) have passed the order without appreciating the provisions of rule 18 of CER, 2002 r/w Notification No.21/2004-CE(NT) dated 6.9.2004 and the instruction issued by the CBEC in the rebate matter and as such the impugned order is bad in law and the same is liable to be set aside.

4.2 Commissioner (Appeals) erred in holding that the adjudicating authority was not obliged to issue Show Cause Notice prior to rejection of rebate claimed by the applicant and non-issuance of SCN did not result into violation of natural justice. He failed to appreciate that the issuance of SCN is fundamental requirement in the process of carrying out natural justice. The Hon'ble Supreme Court in the case of Uma Nath Pandey Vs. State of Uttar Pradesh - 2009 (237) ELT 241 (S.C.) has held that natural justice is essence of fair adjudication and to be ranked as fundamental; notice and hearing required as per principle of natural justice. The Apex Court further observed that order passed is wholly vitiated if such notice and reasonable opportunity is absent and it is essential that party is put on notice before passing adverse order against him. It is also been held by the Hon'ble Supreme Court in the case of Metal Forgings Vs. Union of India - 2002 (146) ELT 241 (SC) that SCN is a mandatory requirement for raising the demand and communications, orders, suggestions or advices from the Department cannot be construed as SCN. What is required is issuance of a specific SCN indicating the amount of duty demand and calling upon the assessee to show cause if he has objections to the proposed demand. In the instant case the applicants were never allowed any opportunity to explain the objections, if any, raised by the Range Officer. The issuance of SCN is a mandatory requirement not o nly for raising demand against the assessee but also before rejecting any refund filed by the assessee.

4.3 Rebate in respect of PTA & MEG inputs:-

4.3.1 Both the lower authorities rejected the rebate claim on the ground that the entire quantity of input covered by the invoices cited by the applicant had already been used in claiming rebate earlier and in the absence of quantity now left in the said invoices, no rebate could be allowed. The Commissioner (Appeals) failed to appreciate that the appellant filed rebate claim in respect of their prime input (PTA) that was used in the manufacture of polyester films which were ultimately exported under rebate claims procedure.

4.3.2 Commissioner (Appeals) failed to appreciate that the applicant filed rebate in respect of their prime inputs viz. PTA and MEG that were used in the manufacture of polyester films which were ultimately exported under ARE-2 procedure. However, while submitting rebate claim, the applicant due to oversight cited reference of invoice in respect of which the applicant have already claimed rebate earlier. However, the applicant procured input material under different invoice whose quantity was used in the manufacture of export product. The mistake was purely a clerical error on the part of the applicant in reporting the invoice No. in the rebate claim/on the back of ARE-2 document. After receipt of Order-in-Original, the applicant have re-checked their records and noted that invoice No. were wrongly cited in the rebate claim document. The applicant submitted a revised statement to the Commissioner (Appeals) giving consumption of input materials in the manufacture of finished product(s) that were exported under ARE-2 document. Further that the Commissioner (Appeals) failed to appreciate that substantial benefit in the form of rebate or refund of duty or exemption of duty is not deniable on the ground of clerical or procedural lapses on the part of the assessee.

4.4 Commissioner (Appeals) disbelieved that due to clerical error, the applicant did not cite the correct invoice nos. in the ARE-2 document on the ground that a clerical error may be justified in one or two cases but such a repeated practice cannot be taken for granted in the category of a clerical error. He further held that reportedly the applicants were not maintaining separate record of inputs used in the export goods vis-a-vis DTA clearances. Under such circumstances, the submission of the applicant that invoice numbers were wrongly cited in the ARE-2 document was only an afterthought contention. The Commissioner (Appeals) failed to appreciate that the applicant were maintaining record towards receipt and usage of input material used in the manufacture of goods exported out of the country as per input-output norms and at the time of generation of ARE-2 documents, the applicant based on record could connect and cite references of the input invoice nos., quantity used in the goods produced and exported under a particular ARE-2 document. The finding recorded by the Commissioner (Appeals) that no separate records for DTA and exports were maintained by the applicant is without any basis and is purely based on assumptions and presumptions. It is a settled law that no order can be passed by the authorities on assumptions and presumptions of facts and an order, if passed under such circumstances, is not maintainable under law. Both the lower authorities have not disputed receipt of duty paid input material in the applicant's factory and used of the same in the manufacture of final products which were further exported from the applicant's factory.

4.5 Rebate claimed in respect of duty paid on Antimony Trioxide and Phosphoric Acid:- The Commissioner has simply endorsed the order of the adjudicating authority on the ground that the adjudicating authority did not fix any input-output norms for these inputs and hence no rebate was admissible to the applicant. Both the lower authority failed to appreciate that both these inputs were used as Additive or Catalyst in the manufacture of films. The Assistant Commissioner in his letter dated 10.3.2011 has specifically fixed Input-

Output Norms in respect of Additive stating that 0.0006 Kg. of Additive is required in the manufacture of 01 Kg. of plain polyester films. Since the quantity of Additive required in the manufacture of 01 Kg. of polyester films is insignificant, the appellant have not declared separately the consumption of norms of Antimony Trioxide and Phosphoric Acid. Instead, the applicants have declared the norms for uses of Additive including material in question in the manufacture of export product. That since both the inputs namely Antimony Trioxide and Phosphoric Acid were used as additives in respect of which input-output norms were already fixed by the Assistant Commissioner, there was no rationale of fixing or non-fixing of separate norms for these two inputs. Therefore, even if the Assistant Commissioner had not fixed separately norms by the name of Antimony Trioxide and Phosphoric Acid, the applicant were eligible to avail rebate on the ground that both these inputs were in the nature of additives or catalyst used in the manufacture of final products, i.e. polyester films. Since, the Assistant Commissioner had already fixed norms for additives, the applicant claimed rebate on the inputs in question treating the same as additives.

Case relied upon:

- CST, UP Vs. Auriaya Chamber of Commerce, Allahabad 1986(25) ELT 867 (SC)
- Mangalore Chemicals & Fertilizers Ltd., Vs DC 1991 (55) ELT 437 (SC)
- In Re : Barot Exports 2006 (203) ELT 321 (GOI)
- In Re : 2007 (216) ELT 465 (GOI)

4.6 Applicant vide his letter dated 13.3.2013 has submitted written submissions enclosing thereunder a comparative chart showing correct number of Central Excise Invoices in place of wrongly mentioned invoice Nos in the relevant ARE-2 forms. They have also requested that RA Nos. 195/311-320/12, 195/449-451/12 and 195/762/12 filed by the applicant may also be decided alongwith this case as similar issue is involved in these cases also.

5. The respondent departments have vide their letter dated 16.3.12 submitted the memoranda of cross objection on the grounds of revision application. They have mainly submitted that:

5.1 The impugned order has been passed by the Assistant Commissioner Central Excise , Haldwani after verifying the relevant invoices of Inputs, raw material, & packaging material claimed by the party in the ARE-2's pertaining to their rebate claims & strictly in accordance to the Input output norms fixed in the instant case as well as the provisions contained in Rule 18 of Central Excise Rule, 2002 read with notification No. 21/2004- CE (NT) dated 06/09/2004 & the same is just, legal & proper. Further the Hon'ble Commissioner (Appeals) Central Excise Meerut-II has rightly upheld the said order-in-original after considering all the aspects of the case in terms of the provisions of Central Excise Act & after considering all the aspects of the case in terms of the provisions of Central Excise Act & rules made thereunder & this office is fully in agreement with the order passed by him.

5.2 In order to facilitate the highest principles of natural justice, the party was given an opportunity to produce the original copies of the Invoices of Inputs, raw material & packaging material with certain other records & the same were verified by the Range Officer (on FIFO basis) on being produced the same the authorized signatory of the Party. No disagreement was shown by the authorized signatory of the party at the time of verification of the said original Invoices produced by him before the jurisdictional Range Officer & only the plea contended by the party in this appeal after issuance of order by the rebate sanctioning authority is an afterthought story which in beyond the real facts & is liable to be rejected. Further there is also no need to issue a SCN or grant a personal hearing by the rebate sanctioning authority in refund cases as rightly held by the Commissioner (A) Central Excise M-II in O-I-A based in the instant

case, the details or which has been mentioned in the said O-I-O. Further the judgement cited by the party related to the Demand matter covered under Section 1 A of Central Excise Act, 1944 & has no relevance with the instant case covered under Section 11 B of Central Excise Act, 1944.

5.3 The rebate claim was duly sanctioned by the rebate sanctioning authority strictly in accordance to the provisions contained under Rule 18 of the Central Excise Rule, 2002 read with notification no 21/2004-CE (NT) dated 01/04/2004. Prior to sanction of the said rebate claim, due verification of the invoices claimed by the party in the relevant ARE-2's has been done on FIFO basis with the original copies the same produced by the party at the time of verification of their claim. In the present case, it has been found that the party has reclaimed rebate on some quantity of the same invoice on which they had already claimed rebate in earlier ARE-2's pertaining to their earlier rebate claims. Suitable remark to this effect has also been given the chart annexed with the orders passed by the Rebate Sanctioning authority in the instant case. The chart annexed with the orders passed by the rebate sanctioning authority in the instant case is correct & duty prepared after verifying the original documents produced by the party. The quantity shown consumed against the Invoices shown in the said chart has duly been verified on FIFO basis & found correct. The case cited by the party have no relevance in the instant case. The issue involved in the instant case has rightly been settled by the Hon'ble Commissioner Appeal vide O-I-O No. 422-428/CE/ MRT-II/2011 dated 08/08/11 on the similar case against the same party. Since the instant case is not a procedural/technical lapse as explained in the earlier para, the judgement cited by the party has no Relevance. It is not a case or clerical errors as contended by the party. The claim has duly been verified with the original copies of relevant Invoices on FIFO basis & whatever Quantity is available in the Invoice claimed by the party on which they had already claimed rebate in earlier ARE-2's, the same is disallowed to them by the Rebate Sanctioning authority

6. Personal hearing was scheduled in this case on 21.2.13 and 1.4.2013. Ms. Harsimran Kaur, Advocate appeared on behalf of the applicant who reiterated the grounds of revision application.

7. Government has carefully gone through the relevant case records and perused the orders-in-original and orders-in-appeal. Since a similar issue is involved in all these revision applications so these are taken up together for decision by this common order.

8. On perusal of records Government observes that the part input rebate claims were rejected on the ground that applicant had mentioned some Central Excise Invoice numbers in ARE-2 against which input rebate was earlier availed, that in some cases only photocopies of invoices were submitted that inputs Antimony Trioxide and Phosphoric Acid were not approved in the input out norms declaration. Commissioner (Appeals) has upheld the impugned orders-in-original except to the extent of allowing full rebate of Furance Oil as claimed by applicants. Now the applicant has filed these revision applications on the grounds stated above.

9. Government notes that applicant has mainly contended that original authority has decided the case and passed orders-in-original without issuing any show cause notices and affording an opportunity of hearing and thus violated principles of natural justice. They have further pleaded they were deprived of the opportunity of explaining the discrepancies before adjudicating authority. Government observes that order passed without following principles of natural justice is vitiated in the eyes of law. It is a well settled principle that no order can be passed against any person without affording the opportunity of hearing. Hon'ble Supreme Court in the case of Uma Nath Pandey Vs. State of U.P. – 2009 (237) ELT 241 (SC) has held that natural justice is essence of fair adjudication

and to be ranked as fundamental. Notice and hearing are required as per principles of natural justice. Apex Court has further observed that order passed is wholly vitiated if such notice and reasonable opportunity is absent and it is essential that party is put on notice before passing adverse order against them. In view of the principles laid down by Hon'ble Supreme Court in the above said judgment, adjudicating authority has erred in passing order without following principles of natural justice. However, Commissioner (Appeals) has heard the party and then passed a speaking order. So, applicant cannot say that they were not heard at all.

10. Applicant has contended that by mistake they did not mention the correct invoice numbers in the relevant ARE-2 form and in fact they had used duty paid inputs in the manufacturing of exported goods. Applicant had submitted a comparative chart before Commissioner (Appeals) wherein correct invoice numbers for each ARE-2 was mentioned. In this regard, Government notes that major portion of input rebate is already sanctioned where correct duty paid invoices were mentioned in ARE-2. But the part of rebate claims could not be sanctioned as the valid invoices were not specified in the ARE-2 and the invoice mentioned did not have any balance quantity of inputs. So it cannot be said that they have mentioned 100% wrong invoices. Applicant has also claimed that they are maintaining proper records of duty paid inputs received and used for manufacturing of exported goods. They have also submitted a comparative chart mentioning the correct duty paying input invoices of inputs for each of the ARE-2 forms. Since the duty paid inputs are claimed to have been used in the manufacture of exported goods and there is no allegation from the department that duty paid inputs were not used in the manufacture of export goods, so, the input rebate claim cannot be denied merely on the ground that correct invoice numbers were not mentioned in the ARE-2. It is a settled law that substantial benefit of rebate claim cannot denied for minor procedural technical infractions. As such the chart containing correct input invoices numbers is required to be

verified by the original authority with reference to original case records of the case matter to determine its correctness. If the said revised statement of correct input invoices is found correct on verification, the input rebate claim will be allowed. Applicant will submit all the relevant invoices and records for verification by the adjudicating authority.

11. As regards input rebate claim of duty paid on additives namely Antimony Trioxide and Phosphoric Acid, it is on record that input output norms were fixed for additives vide ACCE letter dated 10.3.2011 as 0.0006 kg of additive required in the manufacture of 01 kg of plain polyester films. Applicant has contended that since the quantity of additives required in the manufacture of 01 kg of polyester films is quite insignificant they had not declared separately the consumption norms of these items. In this regard, it is noted that there is no allegation that these two inputs were not used in the manufacture of exported goods. Since these inputs are claimed as additives for which input out norms are fixed, there is justification in denying the input rebate of duty paid on said inputs. The issue needs to be examined with reference to the use of said inputs as additives in the manufacture of exported goods. The rebate will be admissible if the claim of applicant is found correct on verification of case records. Applicant will submit the relevant records before adjudicating authority to establish that said inputs are used in the manufacture of exported goods. Similarly in some cases rebate claims were rejected as party did not produce original input invoices. Applicant has contended that they have original invoices in all these cases. As such applicant is directed to produce said original invoices before adjudicating authority. The rebate claim will be allowed on this count if valid original invoices are produced by party.

12. In this regard, it cannot be gainsaid that rebate/drawback and other such export promotion scheme of the Government, are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to

earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In Suksha International v. Union of India, 1989 (39) ELT 503 (SC) the Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In Union of India v. A.V. Narsimhalu, 1983 (13) ELT 1534 (SC), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observations was made by the Apex Court in Formika India v. Collector of Central Excise, 1995 (77) ELT 511 (SC), in observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statue similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) ELT 437 (SC). In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Not. /Circulars etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect of fundamental requirement for input rebate is use of duty paid inputs in the manufacture of exported goods. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL 1998 (99) ELT 387 (Tri.), Alfa Garments-1996 (86) ELT 600 (Tri.), Alma Tube 1998 (103) ELT 270, Creative Mobous-2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. – 2003 (157) ELT 359 (GOI), and a host of other decisions on this issue.

13. In view of above discussions, Government modifies the impugned orders to above extent and remands the case back to original authority for denovo consideration of matter by taking into account the above observations and after conducting the verification as directed above, applicant will submit all the relevant original records / invoices for verification within 15 days of receipt of this order and thereafter adjudicating authority will sanction the claim if invoice submitted now are found in order on verification. It is needless to say that reasonable opportunity of hearing will be afforded to the applicants.

14. The revision applications are disposed off in terms of above.

15. So ordered.

(D.P.SINGH)
Joint Secretary (Revision Application)

M/s Polyplex Corporation Ltd.,
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Distt. Udham Singh Nagar
Uttrakhand

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
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Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 518-553 /2013-Cx dated 04.06.2013

Copy to:

1. Commissioner of Central Excise & Customs, Meerut-II, Opp. Shaheed Samarak, Delhi Road, Meerut (UP)
2. Commissioner (Appeals), Customs & Central Excise, Meerut-II, Opp. Meerut University, Mangal Pandey Nagar, Meerut.
3. Assistant Commissioner, Central Excise Division, Haldwani, Uttrakhand
4. Ms Harsimran Kaur, Advocate, B-1/71, Safdarjung Enclave, New Delhi-29
5. PA to JS(RA)
6. Guard File
7. Spare Copy.

ATTESTED

(Bhagwat P. Sharma)
OSD (Revision Application)