

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. 198/90/13-RA/5735

Date of Issue: 20.09.2020

ORDER NO. 619/2020-CX (SZ) /ASRA/Mumbai DATED 11.09.2020 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 : The Commissioner of Central Excise, Surat-II.

Respondent : M/s Birla Cellulosic,
Birla Dham, Village - Kharach,
Kosamba Rly Station-394 120
Dist. Bharuch (Gujarat).

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 against the Order-in-Appeal No. CCEA-SRT - II/SSP-49/2013-14 dated 31.05.2013 passed by the Commissioner of Central Excise (Appeals), Surat-II.

ORDER

This revision application is filed by the Commissioner of Central Excise, Customs & Service Tax, Surat-II Commissionerate (hereinafter referred to as "the department") against the Order-in-Appeal No. CCEA-SRT II/SSP-49/2013-14 dated 31.05.2013 passed by the Commissioner of Central Excise (Appeals), Surat-II.

2. Brief facts of the case are that M/s Birla Cellulose, Bharuch (hereinafter referred as the respondent) had cleared filed rebate claim for Rs. 8,74,102/- (Rupees Eight Lakh Seventy Four Thousand One Hundred and Two Only) in respect of goods exported vide ARE- 1 No. 746 dated 27.02.2012. The rebate claim filed by the respondent was processed after usual scrutiny and the same was rejected by the Rebate Sanctioning Authority vide Order in Original No. ANK-III/NN/574/R/2012-12 dated 11.01.2013 on the ground that the Original and Duplicate copies of ARE-1 which are mandatory have not been filed by the respondent and the same cannot be treated as minor of procedural lapse.

3. Being aggrieved by the said Order-in-Original the respondent filed appeal before Commissioner (Appeals), who vide his Order-in-Appeal No., CCEA-SRT-II/SSP-49/2013-14 dated 31.05.2013, allowed the Appeal of the respondent by setting aside the Order-in-Original. While allowing the Appeal of the respondent, the Commissioner (Appeals) observed that:-

3.1 The Rebate Sanctioning Authority had not given any findings and considered documentary evidence like FIR dated 30.07.2012 filed with Nahva Sheva Police Station for loss of Original & Duplicate Copies of ARE-1.

3.2 The respondent had complied with the substantial legal provisions.

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

4.1 The filing of Original & Duplicate Copies of ARE-1 are mandatory under Section 11B of Central Excise Act, 1944.

4.2 Hon'ble Delhi high Court in the case of CCE, Delhi-I Vs. Joint Secretary (Revisionary Authority)- 2013 (287)ELT 177 (Del.) and in the case of Joint Secretary (Revisionary Authority) Vs. M/sTata Steel Ltd.- 2012 (281) ELT 313 (GOI) has held that exemption has to be strictly construed.

5. A Personal hearing was held in this case on 06.11.2019 and Shri Lasmidhar Pradhan, Assistant Commissioner appeared for hearing on behalf of the department. No one attended the personal hearing on behalf of the respondent.

6. 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.

7. Government observes that rebate claim was rejected by the original authority on the ground that the Original / Duplicate copies of ARE-1 as required under paragraph 8.3 of the Chapter 8 of CBEC Manual of Supplementary Instructions were not submitted by the respondent. Commissioner (Appeals) vide impugned Order in Appeal while allowing the appeal observed that the respondent had complied with substantial legal provisions and hence allowed the appeal.

8. Government in the instant case notes that the Original / Duplicate copy of ARE-1 No. 746 dated 27.02.2012 was lost and the respondent had lost the relevant copies and had lodged FIR and affidavit for the same. The respondent submitted the third copy of the ARE-1 duly endorsed by the Customs Authority to satisfy the requirement of Rebate Sanctioning Authority. The Respondent had also submitted the relevant Shipping Bills, Bill of Lading and Mate Receipt for verification of Rebate Sanctioning Authority.

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) reported as TIOL 386 HC MUM CX. = 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. 449J 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 ARE1 s, 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 are squarely applicable to this case also. Further, from the Order-in-Original No.ANK-III/Dn.III/18-2159/R/12-13 dated 11.01.2013. Government observes that respondent had submitted the following documents to the rebate sanctioning authority along with his claims:

1. Triplicate copy of ARE-1 (duly endorsed by the Customs Officer).
2. Self Attested copy of Excise Invoices under which the export goods were removed from the factory of manufacturer,
3. Self attested copies of Shipping Bills /Bills of Lading and Mate Receipt,
4. No Objection Certificate from the exporter M/s Grasim Industries,
5. Affidavit dated 31.08.2012 regarding loss of Original & Duplicate copy of ARE-1, self attested copy of FIR filed at Nhava Sheva Police Thane,
6. Reply to the Deficiency Memo.


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 & duplicate copy of ARE-1.

13. In view of the above, Government 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 respondent 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 Duplicate copy of the ARE-1 form, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. In view of above discussions and findings, Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned order and upholds the impugned order in appeal.

15. Revision application is dismissed accordingly.

16. So, ordered.


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

ORDER No. 619/2020-CX (SZ) /ASRA/Mumbai DATED 11.09.2020

To,

The Commissioner of CGST & CX, Surat,
 New Central Excise Building,
 Opp. Gandhi Chowk Bazar,
 Surat 395 001.

Copy to :

1. M/ s Birla Cellulosic, Birla Dham, Village- Kharach, Kosamba Rly Station- 394 120 Dist. Bharuch (Gujrat)
2. The Commissioner of GST 86 CX, (Appeals), Surat, 3rd floor, Mangus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Suart- 395 017.
3. Sr P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

REGISTERED POST
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. 195/761/12-RA/5383

Date of Issue: 14.09.2020

ORDER NO. 477 /2020-CX (WZ) /ASRA/MUMBAI DATED 11.09.2020 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 CENTRAL EXCISE ACT, 1944.

Applicants : M/s Pidilite Industries Ltd., Daman.
Plot No. 1806, 3rd Phase, GIDC,
Vapi.

Respondents : Commissioner of Central Excise, Daman.

Subject : Corrigendum to Order No. 477/2020-CX (WZ) /ASRA/MUMBAI dated 24.04.2020 in respect of Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal CS/25/DMN/Vapi-I/2012-13 dated 10.05.2012 passed by the Commissioner of Central Excise (Appeals), Vapi.


CORRIGENDUM

In Order No. 477/2020-CX (WZ) /ASRA/MUMBAI dated 24.04.2020 the name of the addressee / applicant on page 13 appearing as

“To,
M/s Pidilite Industries Ltd.,
Plot No. 67,68,78 & 79,
Bharat Industrial Estate,
Bhimpore, Daman.”

May be read as

“M/s Pidilite Industries Ltd., Daman.
Plot No. 1806, 3rd Phase, GIDC,
Vapi.”


(SEEMA ARORA)

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

ORDER No 477 /2020-CX (WZ) /ASRA/Mumbai DATED 11 .09.2020

M/s Pidilite Industries Ltd., Daman.
Plot No. 1806, 3rd Phase, GIDC,
Vapi.

Copy to:

1. The Commissioner of GST & Central Excise, Daman, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi- 396191.
2. The Commissioner of Customs, CGST & Central Excise (Appeals), Central Excise Building, 1st floor Annexe, Race Couse Circle, Vadodara- 390 007.
3. The Deputy Commissioner of CGST & Central Excise, Daman-I Division, 2nd floor, Hani's Landmark, Vapi-Daman Road, Chala, Vapi- 396191.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.