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**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.195/198/15-RA

26/22

Date of Issue: 06.2022

ORDER NO. 645/2022-CX (WZ) /ASRA/MUMBAI DATED 06.2022 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 Neptunus Power Plant Services Pvt Ltd,  
A/554, MIDC, Mhape,  
Navi Mumbai 400 710

Respondent: Commissioner of Central Excise, Raigad

Subject : Revision Applications filed under Section 35EE of Central Excise  
Act, 1944 against the Order-in-Appeal No. CD/156 &  
157/RGD/2015 dated 09.01.2015 passed by the Commissioner,  
(Appeals), Central Excise, Mumbai-II

**ORDER**

The Revision Application has been filed by the M/s Neptunus Power Plant Services Pvt Ltd, A/554, MIDC, Mhape, Navi Mumbai 400 710 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal No. CD/156 & 157/RGD/2015 dated 09.01.2015 passed by the Commissioner, (Appeals), Central Excise, Mumbai-II

2. Brief facts of the case are that the applicants who are merchant exporters have filed three rebate claims (on 20.3.13 and two claims on 22.3.2013) under Rule 18 of the said Rules read with Notification No. 19/2004 CE (NT) dated 06.09.2004 for the duty paid on goods exported. While processing the rebate claims, it was observed that the applicant had not furnished the triplicate copy of relevant ARE-1s and duplicate copy of relevant invoices as required under Chapter 8 of CBEC's Excise Manual of Supplementary Instructions 2005 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. As the applicant had not submitted the Invoice / triplicate copies of ARE-1's, the original authority rejected both the rebate claims vide the impugned Orders-in-Original dated 20.06.2013 and 24.06.2013.

3. Being aggrieved with the impugned order, the applicant filed an appeal before the Commissioner, (Appeals), Central Excise, Mumbai-II. The Appellate Authority vide Orders-in-Appeal No. CD/156 & 157/RGD/2015 dated 09.01.2015 disposed of the appeal by setting aside the Order-in-Original No. 680/12-13 dated 20.06.2013 and rejecting the appeal against Order-in-Original No. 747/12-13 dated 24.06.2013. While rejecting the appeal against Order-in-Original No 747/12-13 dated 24.06.2013, the Appellate Authority observed that the basic purpose of triplicate copy of ARE-1 duly certified by the jurisdictional range superintendent is to ensure the duty has been paid on the goods exported as the applicant had not submitted any proof evidencing payment of duty.

4. Being aggrieved by the Orders-in-Appeal, the applicant has filed the revision application against the Appellate Authorities rejection of the OIO No 747/12-13 dated 24.06.2013 on the following grounds:

4.1 That the Adjudicating Authority passed the impugned order in violation of principles of natural justice by ignoring the written submission of the Applicants, not providing the adequate opportunities for submitting their reply and not granting a minimum period of 30 days given to the applicant to file written submissions and thereafter on receipt of reply and at the request of the applicant, not granting personal hearing as per the procedure by the Central Board of Excise & Customs

- i) M/s Rajaram Corn Products (Punjab) Pvt. Ltd. Vs Collr.C.Ex. reported in 1990 (45) ELT 544 (P & H
- ii) M/s Alfred Berg & Co (I) Ltd vs CESTAT, Chennai [2011 (273) E.L.T. 373 (Mad.)]
- iii) M/s Olympic Woollen Mills vs. UOI [2011(268)ELT 322(P &H)
- iv) M/s Technique Diabrasive India Ltd vs. Commr of Ex, Jaipur-II [2010(257)ELT.317 (Tri-Del)

4.2 That the applicants, who are Merchant Exporters, had cleared the goods from the manufacturer's factory premises following Self Removal Procedure and the triplicate copy and quadruplicate copy of ARE-1 No 32/12-13 dated 01.10.2012 were forwarded to the range Officer for duty verification and since the range officer did not verify and hand over the triplicate copy of said ARE-1 to the applicant in tamperproof sealed cover, it was duty of the Range Superintendent to forward such verified copy to the Adjudicating Authority and the applicant cannot be held responsible for not submitting the triplicate copy of the ARE-1's at the office of the Adjudicating Authority, especially when there is no observation that the same were handed over to the applicants by the Range Superintendent in tamper proof sealed cover.

4.3 That the applicant had not lodged any police complaint for loss of any document and there was no question about submitting any copy of the police complaint as mentioned by the Adjudicating Authority while rejecting the claim in the Order-in-Original No 747/12-13 dated 24.06.2012 on non

existing grounds that copy of the police complaint was not submitted and at no stage duty paid on the goods and its export was questioned.

4.4 That the submission of triplicate copy of ARE-1 is not mandatory but is of directive nature and the applicant had submitted all required documents as mentioned in Notification No 19/2004CE(NT) dated 06.09.2014 as amended for claiming of Rebate of duty paid on the goods exported covered under ARE-1 No 32/01.10.2012. That even Chapter 8 of the CBEC's Central Excise Manual, does not specify triplicate copy of ARE-1 as mandatory documents

The applicant has relied upon the following case laws in support of their contention.

- i) Cipla Ltd vs UOI [2014(311)ELT 852(GOI)]
- ii) M/s Zandu Chemicals Ltd vs UOI [2015(315)ELT 520(Bom)]

4.5 That the Department itself in the last para of clarification vide letter F. No. II/08-11/VIG/RGD/13 dated 16-08-2013 to the applicants in response to the grievance letter dated 08-07-2013 of the Applicants addressed to the Hon'ble Chief Commissioner has stated that *"As regards the denial of rebate claims on technical grounds such as non-submission of triplicate copy of ARE-1, this office has issued instructions to all the Rebate Sanctioning Authorities not to reject the rebate claims on technical grounds such as non-submission of triplicate copy of ARE-1."*

5. Personal hearing was scheduled in this case on 15.12.2021 and 21.12.2021. Shri Pankaj Pai, Consultant appeared for the hearing on 21.12.2021 and submitted an additional submission reiterating the grounds of the revision application. He submitted that the claim has been rejected only on the grounds of non submission of triplicate copy of ARE 1 and requested to allow the claim as the export of duty paid goods was not in doubt.

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. In the instant case, Government observes that the rebate claim has been rejected solely on the ground that the applicant had not submitted the triplicate copy of ARE 1 for evidencing payment of duty.

7.1. The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate / triplicate copy of the ARE-1, the Excise Invoice and self-attested copy of shipping bill and bill of lading etc. Further paragraph 8.4 of Chapter 8 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

7.2. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

7.3. The Government notes that the triplicate copy of the ARE 1 has not been furnished by the applicant. However, there is no doubt that the goods in question has been exported by the applicant as is evident from the endorsement of the customs authorities on the shipping bill and ARE 1.

7.4. In view of above, the government holds that the deficiencies pointed out by the Appellate authority while rejecting the appeal against Order-in-Original No 747/12-13 dated 24.06.2013 for an amount of Rs. 4,25,904/- only on the

grounds of non submission of triplicate copy of the ARE-1 are merely procedural infractions and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002.

7.5. The Government finds that in several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed that the goods were not exported.

7.6. The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "**Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)**". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

*"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong*

*to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

7.7. 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. 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.



7.8. 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".*

8. Government finds that ratios of aforesaid Hon'ble High Court orders are applicable to the instant case in so far as the matter of sanction of rebate claim of Rs. 4,25,904/- is concerned.

9. Government notes that the department has issued a clarification to the applicant to the effect that instructions have been issued to rebate sanctioning authorities not to reject claims on technical grounds such as non submission of triplicate copy of ARE-1.

10. Government notes that while there is no doubt that the goods have been exported the contentious issue is regarding the discharge of duty by the applicant as the applicant has not submitted any documentary evidence regarding discharge of duty of the goods exported. Government observes that it is necessary that the verification of the factual position of discharge of duty is required to be done by the original authority.

11. Government holds that impugned rebate claims for Rs. 4,25,904/-, rejected under Order-in-Original No 747/12-13 dated 24.06.2013, is remanded back to the original authority for the limited purpose of verification of the payment of duty on the exported goods. The original authority is also directed that the rebate claim should not be rejected on the grounds of non submission of triplicate copy of ARE 1. The applicant shall produce the documentary evidence of duty payment on the goods exported, before the original authority, for verification.

12. In view of the above, Government modifies the impugned Orders-in-Appeal in respect of the decision pertaining to Order-in-Original No 747/12-13 dated 24.06.2013 and remands the same back to the original authority for verification on the lines as discussed above.

13. The Revision application is allowed on the above terms.

*Shrawan Kumar*  
23/4/22  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER NO. 645/2022-CX (WZ) /ASRA/MUMBAI DATED 23.06.2022

To,

M/s Neptunus Power Plant Services Pvt Ltd,  
A/554, MIDC, Mhape,  
Navi Mumbai 400 710

Copy to :

- 1) The Commissioner of CGST, Belapur, 1<sup>st</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai 400 614
- 2) The Commissioner of CGST, Raigad Appeals, 5<sup>th</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai 400 614
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Notice Board.
- 5) Spare copy.