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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. 195/194/15-RA/2891

Date of Issue: 08.08.2022

ORDER NO. 672 /2022-CX (WZ) /ASRA/Mumbai DATED 30.06.2022 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. Pranav Chemicals

Respondent : Commissioner of CGST, Ahmedabad Commissionerate.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-002-APP-002-15-16 dated 16.04.2015 passed by the Commissioner (Appeals-II), Central Excise, Ahmedabad.

**ORDER**

This revision application is filed by M/s. Pranav Chemical situated at Plot No. 165, GIDC, Phase-II, Naroda, Ahmedabad-382 330 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. AHM-EXCUS-002-APP-002-15-16 dated 16.04.2015 passed by the Commissioner (Appeals-II), Central Excise, Ahmedabad.

2. Brief facts of the case are that the applicant had filed rebate claim for Rs. 5,52,039/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 dated 06.09.2004 seeking rebate of duty paid on excisable goods viz. Chemicals falling under Chapter 29 of the first schedule of Central Excise Tariff Act, 1985. The adjudicating authority passed order-in-original No. 02/AC/Demand/14-15 dated 07.08.2014 in view of the Order-in-Appeal passed by the Commissioner (Appeals-I), Ahmadabad bearing OIA No. AHM-EXCUS-002-APP-317-13-14 dated 07.03.2014 wherein the departmental appeal filed against the OIO No. 1010 to 1015/DDC/13-Rebate dated 24.06.2013 was allowed in favor of revenue with direction that wrongly sanctioned rebate may be recovered along with interest. On scrutiny of the rebate claim by the adjudicating authority, it was observed that the goods were exported vide shipping bill from ICD Khodiyar, Ahmadabad under certain container numbers which did not tally with the container numbers mentioned in the Bill of Lading & Mate receipt as appeared in the concerned shipping bills and as such there was a possibility that goods cleared for export under the concerned shipping bill had not been shipped on board or exported. Consequent to the issue of Order In Appeal by the Commissioner (Appeals-I) bearing OIA No. AHM-EXCUS-002-APP-317-13-14 dated 07.03.2014, a show cause notice bearing F.No.V/18-303 to 305/13-Rebate dated 07.08.2014 was issued for rejecting the rebate claim amounting to Rs. 2,04,378/- refunded erroneously to the applicant earlier vide OIO No. 1010-1015/DC/13-Rebate dated 24.06.2013

under Section 11A of the Central Excise Act, 1944 and for non fulfillment of Notification No. 19/2004CE(NT) under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. The same was adjudicated by the adjudicating authority vide order-in-original No: AHM-EXCUS-002-APP-317-13-14 dated 07.03.2014 wherein, the adjudicating authority rejected the rebate claim under the rules and provision proposed in the show cause notice. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals-II), Central Excise, Ahmedabad who vide his Order-in-Appeal No. AHM-EXCUS-002-APP-002-15-16 dated 16.04.2015 rejected their appeal and upheld the Order-in-Original dated 07.03.2014.

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

- i. the First appellate authority has not appreciated the facts of the case. Therefore, the OIA passed by the said authority is required to be set aside in as much as there is no dispute about export of the goods.
- ii. the Original authority has, after satisfying with all the documents submitted by the Applicant, has granted rebate but the department has aggrieved against earlier OIO bearing No. 1010-1015/DC/13-Rebate dtd. 24/06/2013 and the department had filed an appeal against the said OIO which was allowed by the Commissioner of C.Ex. (A). A bad vide OIA No. AHM EXCUS-002-APP-317-13-14 DTD. 07/03/2014. On the basis of above OIA, the deptt had. issued SCN for demanding of erroneous refund. The Applicant requested to keep this matter in abeyance as the application filed against the OIA bearing No. AHM-EXCUS-002-APP 317-13-14 DTD. 07/03/2014 before the Hon'ble Jt. Commissioner (RA), New Delhi. This request is not accepted by the adjudicating authority as well as first appellate authority which is not proper and legal. Therefore, on this count, the said OIA requires to be set aside.
- iii. that all the documents like ARE-1, Sipping Bill, mate receipt and Bill of Lading are correlated with each documents and even the

description and weight of exported goods are tallied with all the document. Therefore, the then sanctioning authority has rightly allowed the rebate but the said aspect had not been considered by Commissioner (A), A'bad while preferring the appeal by the depts. The application against earlier OIA bearing No.. AHM EXCUS-002-APP-317-13-14 DTD. 07/03/2014 is pending. Therefore, both this application may kindly be together...

- iv. that there is no fault on applicant side. The mistake had been happened at the time of re stuffing of the container and the duty of the officer at customs port is that they have to mention container number which was re-stuffed in their port. Therefore, in absence of malafide intention on part of applicant, the demand for erroneous refund does not arise.
- v. that in the appeal filed by the depts before Commissioner of C.Ex. (A), A'bad against O10. bearing No. 1010-1015 /DC/13-Rebate,, there is no ground that the said container has not been exported and the said container is received back by the applicant. Therefore, being procedural mistake in port for not putting restuff container number does not mean that the goods sent through ICD passing through formalities to Dronagiri for export is doubtful. Therefore, the demand of erroneous rebate is not proper and legal.
- vi. that when the goods are at the area of Port and under the supervision by the Customs officer. it is very less chance that the goods are not exported and there is no evidence with the depts except the container number which is not mentioned at Dronagiri port. Therefore, being crystal clear fact of export of the goods, the demand of rebate granted vide earlier O10 bearing No.. 1010-1015 /DC/13-Rebate may kindly be restored.
- vii. that in number of judgment it is held that rebate claim is not deniable mere on procedural deviation but in this case, there is no breach of procedure on the part of Applicant. Therefore, the said OIA rejecting the rebate on the basis of earlier OIA which is pending is not proper and legal. Therefore, in absence of decision from higher forum, this

matter may kindly be kept pending and not to enforce the demand for refund granted as rebate for earlier period.

viii. in view of the above, interest is also not recoverable. Applicant further requested to allow the appeal and set aside impugned OIO and oblige.

4. Personal hearing in this case was fixed for 21.12.2021, Shri Naimesh Oza, Advocate appeared online on behalf of the applicant and submitted that only ground of rejection is mismatch in container Number. An explanation for the same has been made in additional written submissions. He requested to allow claim as there is no dispute on export of duty paid goods.

5. They further made additional submissions along with the export documents vide their letter dated 17.12.2021 and email dated 28.06.2022. The additional grounds are :

- i. the issue involved in RA is that the rebate claim of Rs. 2,04,378/- is denied on the ground that container number mentioned in shipping Bill and Bill of lading is different and thereby the goods are not exported.
- ii. the contention of the Applicant is that there is no dispute about the export of goods and no where it is disputed even in show cause notice as well as appeal is filed by the Assstt. Commissioner before the Commissioner of C.Ex. (A), A'bad and the Appeal authority has allowed the appeal filed by the depts which is not proper and legal when there is no dispute about export of goods.
- iii. that each documents for export of goods are matched with all documents. The shipping Bill number is tallied in ARE-1, Bill of lading and Mater receipt. Further, in mate receipt qty of goods as well as description is also matched with shipping Bills. Therefore, there is no dispute that the goods are not exported. (Copy enclosed)
- iv. that there is no fault on applicant side. The Commissioner (A), A'bad in his para 10 found that the certification by the Customs officers of

ICD on the reverse of ARE-1 clearly mention the container number at the time of stuffing of goods at ICD and also mention of sealing of the container by a distinct seal/ one time lock number. The shipping Bills mention that this container was not opened for physical examination by Customs. Further the said authority found in his order that goods were stuffed again at Dronagiri Port. When the said goods were stuffed at Dronagiri port again, the concerned officer should have mentioned the container number in relevant documents. Therefore, when there is no fault of Applicant, substantive benefit of rebate claim is not denied. Reliance is placed on the judgment reported in 2013 ( 297) ELt 476 (GOI) in the case of Shreyas Packaging and judgment reported in 1991 (55) ELT 437 (SC) in the case of Manglore Chemicals & Fertilizers Ltd wherein the Hon'ble SC held that substantial benefit of rebate claim can not be denied on ground of such procedural lapses. Therefore, in view of the above, Ruling, Rebate is not deniable in as much as where there is no lapses on Applicant side.

- v. the Suraj Forwarders & Shipping Agent has certified that the said consignment is cleared from ICD Khodiyar, A'bad and the same is de-stuffed and stuffed again at Dronagiri in another container for loading to ship to the destination of the overseas consignee. Therefore, in view of the declaration/ certificate is given by Suraj Forwarders & Shipping agent regarding export of goods, rebate is not deniable for not matching container number in shipping bills and bill of lading.
- vi. the revision application filed against OIA bearing No. AHM EXCUS-002-APP-317-13-14 dated 07.03.2014 is not traceable at their end. Therefore , they requested to ignore that earlier RA and to take up the present RA alone for the final outcome.

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. The Government observes that the impugned rebate claims were rejected due to mismatch in the container numbers in which goods were exported vide shipping bill from ICD Khodiyar, Ahmadabad with that of the container number mentioned in the Bill of Lading & Mate receipt as appeared in the concerned shipping bills and as such there was a possibility that goods cleared for export under the concerned shipping bill had not been shipped on board or exported. The applicant informed that the export of goods are not disputed.

8. In this regard, the Government notes that rebate cannot be denied merely on the basis of mismatch in container numbers mentioned in the shipping bills and in their concerned bill of lading and mate receipt. It is noticed that no efforts were made by the Department to establish the identity of goods exported by looking into other aspects such as to correlate documents like ARE-1, Shipping Bill, mate receipt and Bill of Lading etc. Government observes if the facts like the description, weight of exported goods etc. are tallied with all the documents then there would be no reason left other than to believe that the goods cleared for export under the concerned shipping bill and the goods exported were one and the same. Government further notes that the applicant has submitted a letter dated 21.04.2014 in support of change of container wherein he stated that the container number ESPU8008500, ESPU8008500 and GESU4173591 was mentioned in Shipping Bill as per the actual loading from ICD and the same is de-stuffed and stuffed again at Dronagiri in another container BMOU2855120, MOU2855120 and KTNU3612462. Thus, mismatch in container numbers is due to a procedural mistake and to deny rebate only on the ground of mismatch in containers numbers is not correct.

9. In view of above discussion, the Government holds that since the export of duty paid goods is not in dispute, the rebate claim in question cannot be denied merely on technical/procedural lapses. Government sets aside the impugned Orders-in-Appeal No. AHM-EXCUS-002-APP-002-15-16 dated 16.04.2015 passed by the Commissioner (Appeals-II), Ahmedabad and

the case is remanded back to the original authority for denovo adjudication for a limited purpose of verification in order to correlate documents like ARE-1, Shipping Bill, Mate Receipt and Bill of Lading etc. for establishing the fact of export of duty paid goods and to pass a well-reasoned order. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of this Order.

10. Revision application is disposed off in above terms.

*Shrawan*  
*30/6/22*  
(SHRAWAN KUMAR)

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

ORDER No. 672/2022-CX (WZ) /ASRA/Mumbai DATED 30.06.2022

To,

M/s. Pranav Chemical  
Plot No. 165, GIDC, Phase-II,  
Opp. Lathiya Industries, Naroda,  
Ahmedabad-382330.

Copy to:

1. The Commissioner of CGST, Custom House, Near All India Radio, Navrangpura, Ahmedabad-390009.
2. The Commissioner (Appeals-II), Central Excise Ahmedabad, 7<sup>th</sup> Floor, Central Excise Bldg., New Polytechnic Ambevadi, Ahmedabad-380015.
3. The Assistant Commissioner, Central Excise, Division -I, Ahmedabad -II, Gr. Floor-Jivabhai Mansion, Ashram Road, Ahmedabad-380009.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file