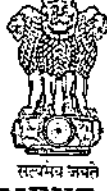


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**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. 195/81-87/WZ/2018-RA / 2933

Date of Issue: 03 .07.2022

ORDER NO. <sup>676-682</sup> /2022-CX (WZ) /ASRA/Mumbai DATED 12 .07.2022 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 Hindustan Pencils Pvt. Ltd.,  
Survey No.90 (P), P.O.- Tumb,  
Umbergaon, Dist. Valsad,  
Gujarat.

Respondent : Commissioner of CGST & Central Excise,  
Surat Commissionerate, New Central Excise Building,  
Chowk Bazaar, Surat - 395001.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
VAD-EXCUS-001-APP-010-016-2017-18 dated 07.03.2018  
passed by Commissioner (Appeals), GST & Central Excise,  
Vadodara.

**ORDER**

The subject Revision Application has been filed by M/s Hindustan Pencils Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 07.03.2018 passed by the Commissioner of Central Excise (Appeals), GST & Central Excise, Vadodara which decided appeals against the Orders-in-Original dated 30.09.2015 and 30.11.2015, both passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division-Umbergaon, Valsad.

2. Brief facts of the case are that the applicant exported pencils, sharpeners, art material, ball pens etc., part of which were manufactured by them and the rest by other units from their premises at Valsad, which was registered as a 'Warehouse' having registration no.AAACH0401REM009 under Rule 9 of the Central Excise Rules, 2002. The applicant was granted stuffing permission bearing no. Hindustan Pencil/84/2010/FSP/JNCH dated 03.05.2011 by the Commissioner of Customs, JNCH in terms of Board's Circular No.952//13/2011 dated 08.09.2011 allowing them to stuff containers for export from the said premises. The applicant filed several rebate claims in respect of the consignments exported. The original adjudicating authority rejected the said claims for Rs.1,00,57,817/- and Rs.2,13,622/- vide Orders-in-Original dated 30.09.2015 and 30.11.2015, respectively, on the grounds that the commercial invoices issued by the applicant for the consignments did not indicate payment of central excise duty or other details of the suppliers; there was no evidence of movement of cargo from the supplier units to the warehouse; that all the documents viz. Shipping Bills, Bills of Lading, Mate receipt, Customs Invoices, Commercial Invoices, BRC etc. indicated the Mumbai address of the applicant, whereas the ARE-1's issued had the address of their Valsad premises and hence "*it cannot be established the actual claimant of the rebate claims*"; further the fact that the applicant's manufacturing unit owned the premises at Valsad

was also found objectionable; that the description of the goods mentioned in the invoices and packing list did not match with that in the ARE-1's. Further, the original adjudicating authority also observed that the ARE-1's mentioned that the goods were cleared under "*discharge of obligation under Quantity based Advance Licence or under claim of duty drawback*" and hence the exporter was not eligible to claim rebate under Rule 18 of the Central Excise Rules, 2002 in terms of notification no.93/2004-CUS dated 10.09.2004. Moreover, the original adjudicating authority also observed that the warehouse from which the goods were exported was not established and registered as an export warehouse at the places specified by the CBEC under Rule 20 of the Central Excise Rules, 2001 read with notification no.46/2001-CE (NT) dated 26.06.2001, thus rendering the applicant ineligible for the rebate claimed by them.

3. The applicant preferred appeals against the above Orders-in-Original which was decided by the impugned Order-in-Appeal dated 07.03.2018. The Commissioner (Appeals), upheld the Order-in-Original and dismissed the appeal filed by the applicant.

4. Consequently, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The findings of lower authorities that the exports were made in terms of notification no.93/2004-Cus was incorrect as they had not availed the benefit of the said notification under any ARE-1 for which rebate claims had been filed; that the lower authorities had failed to appreciate that neither the show cause notice nor deficiency memos had alleged that the goods were exported claiming notification no. 93/2004-Cus and therefore both the lower authorities have travelled beyond the scope of show cause notice and deficiency memo;

(b) The Commissioner (Appeals) had failed to appreciate that the provisions of Rule 20 of the Central Excise Rules, 2002 are not applicable to them as the provisions of the said rule was for the movement of goods from one warehouse to another warehouse without payment of duty, whereas the goods in question had been exported on payment of duty;

(c) The lower authorities had failed to appreciate that the goods in original packing, in the condition received from various locations were exported under physical supervision and signature of the Central Excise officers for which they had also paid MOT charges; that there was no question of any technical deviation or non-compliance of the conditions; that they had observed all the conditions prescribed under Rule 18 of the Central Excise Rules, 2002; and the findings of lower authorities was without appreciating the evidences on record;

(d) Both the lower authorities had failed to appreciate that in terms of para 4 of Circular No. 952/13/2011-CX dated 08.09.2011, the examination, stuffing and sealing of export container by Central Excise officers was permitted at 'any other approved premises'; that in their case the premises at Tumb was granted stuffing permission vide letter LoFSP No. Pencil/84/2010 /FSP/JNCH dated 03.05.2010 by the Commissioner of Customs, JNCH;

(e) The lower authorities had failed to appreciate that the discrepancies, which were technical in nature, were clarified by them along with evidence with respect to the transportation of the goods from various locations to the Tumb unit and that the Central Excise duty was paid on the said goods from PLA account; that the details of transporters were produced to establish the transportation of goods; that, however, the lower authorities rejected their claims without verifying these facts;

(f) The lower authorities had ignored the Circular No. 294/10/97-CX dated 30.01.1997 wherein it was clarified as under:-

*"6. It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and co-relatable with the goods cleared from factory on payment of duty, the*

*condition of exports being made directly from the factory/warehouse should be deemed to have been waived, Other technical deviations not having revenue implications, may also be condoned."*

They submitted that in their case, the goods had been exported under the physical supervision of the Central Excise officers after verifying the particulars of payment etc.; that proof of export had been received and produced and hence the rejection of rebate claims on technical grounds was incorrect;

(g) The findings of the lower authorities was incorrect with respect to the duty paid nature of the goods exported, as at para 24(ii) of the adjudication order it has been stated that the JRO had submitted the duty payment certificate in respect of the goods cleared under various invoices from M/s. HPPI, Umbergaon and M/s. HPPL, Sarigam vide letter F. No. UBR-I/Misc. Certificate/2014-15 dated 30.07.2014 and F. No. SRGM II/Misc./2015-16 dated 06.07.2015;

(h) The Commissioner (Appeals) had failed to appreciate that condition (2)(a) of the notification No.19/2004-CE(NT) dated 06.09.2004 specified that excisable goods shall be exported after payment of duty directly from factory or a warehouse, except as otherwise permitted by the Central Board of Excise and Customs by general or special order and that this was to be read along with procedures (3)(xi) of the said notification which speaks about "*any approved premises*"; they further submitted that the Board's Circular No. 952/13/2011-CX dated 08.09.2011 stated that :-

*"4. In view of above existing instructions, it is reiterated that the facility/option of examination and sealing of export containers by the Central Excise Officers at the place of dispatch is available to both manufacturer- exporters (except when the export is on free Shipping Bill) and merchant exporter in respect of the goods exported in terms of Rule 18 or 19 of the Central Excise Rules, 2002. Such examination, stuffing and sealing of export containers by the Central Excise Officers are permitted at the factory or warehouse or any other approved premises."*

They submitted that they had exported the goods from the premises which approved and for which stuffing permission was granted by the Customs

Authorities and that they had followed the correct procedure for export and hence the findings of the lower authorities was incorrect on this aspect;

(i) The Commissioner (Appeals) had failed to appreciate that the Assistant Commissioner had got the duty paid nature of the goods exported verified by the Superintendent of Central Excise, Umbergaon and Superintendent, Central Excise Tumb; that the Commissioner (Appeals) had failed to appreciate the explanation and evidence tendered by them to indicate that the exported goods were duty paid and that they were exported in accordance with law;

(j) The Commissioner (Appeals) had failed to appreciate that the Assistant Commissioner had not granted them the opportunity to cross examine the officers who had physically examined the goods and permitted the export; and

(k) The applicant finally submitted that the explanation tendered in appeal memo filed before the Commissioner (Appeals) may be treated as part of the present Revision Application.

In light of the above, the applicant prayed that the orders of the lower authorities be set aside, their appeal be allowed and directions be issued to sanction their rebate claims.

5. Personal hearing in the matter was granted to the applicant on 11.01.20221 and Shri Raj Vyas, Advocate appeared online for the same. He reiterated their earlier submissions and further submitted that the goods were stuffed under the physical supervision of officers before being exported. He submitted that minor procedural infractions should not take away their substantive right of rebate once export of duty paid goods is not in dispute.

6. Government has carefully gone through the relevant case records available in case file, the oral and written submissions and also perused the

impugned Order-in-Original and the impugned Order-in-Appeal dated 07.03.2018.

7. On examining the impugned Order-in-Appeal, Government finds that the same is a non-speaking order inasmuch as it has dismissed the appeal filed by the applicant with the observation "*I find the impugned order had elaborately discussed the issue with respect to the deficiencies noticed in the ARE-1s as well as the reliance on the notification no.93/2004-CUS which was evident from the ARE-1s and rightly concluded that the appellants were not entitled for refund of excise duty either under Rule 18 or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002*". There is neither any discussion nor any findings on the elaborate submissions made by the applicant negating the allegations against them. The above observation is followed by a statement upholding the order of the Assistant Commissioner with regards to the premises of the applicant not being a 'warehouse', followed by the bald conclusion the applicant had "*convincingly failed to establish the goods exported were the one which was cleared from the factory of manufacture to the warehouse*". The impugned Order-in-Appeal fails to indicate as to how the said conclusion was arrived. Government finds that the impugned Order-in-Appeal deserves to be set aside on these grounds alone.

8. Government finds that in the present case –

- the applicant exported the goods from a premises which was registered with the Central Excise authorities as a 'Warehouse';
- they had maintained registers in respect of the goods received by them in the said 'warehouse';
- they were granted the requisite permission to stuff the containers from the said premises by the Customs authorities;
- the stuffing of the containers was carried out under the physical supervision of jurisdictional Central Excise officers;

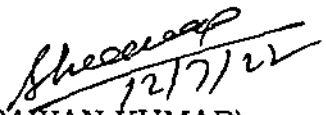
- the Order-in-Original has recorded that the jurisdictional Range Superintendent has verified that duty was paid on the goods which were exported;
- Not only was the submission of the applicant that they have availed drawback only to the extent of the Customs duty allocation not verified; their claim was rejected on the grounds that they had violated the conditions of notification no.93/2004-CUS dated 10.09.2004 as ~~the exports were in discharge of their export obligation under an~~ Advance Licence, an allegation which has not been substantiated by either the original adjudicating authority or the Commissioner (Appeals); and an allegation which has been denied by the applicant;

Given the facts of the case detailed above, Government observes that it is clear that the applicant has made every attempt to follow the procedures mandated by the law while exporting the goods in question. Government notes that in the event of them falling short on this count, it was for the Department to have guided them, which apparently was not done in this case. Further, Government finds the original authority has failed to take cognizance of the documents/evidence available on record and those produced by the applicant indicating the identity of the goods, its duty paid nature and also the fact that the goods were exported under the supervision of Central Excise officers. Government finds that the rebate claims have been rejected on grounds which border on the frivolous, particularly the finding of the original authority that the actual claimant of the rebate claim could not be established because all documents related to export, viz. Shipping Bills, Bill of Lading, Mate Receipt, Customs Invoices, Commercial Invoices, BRC & etc. indicated the Mumbai address of the applicant, whereas the ARE-1's indicated the address of their Valsad premises. Government notes that this issue is of no consequence to the rebate claimed and that if the original authority still harbored any doubts on this count, it was not beyond him to get the issue clarified. Government finds that there has been a miscarriage of justice in the present case inasmuch as the orders



of the lower authorities have failed to follow the instructions issued time to time by the Board that rebate should not be denied on technical grounds. Government finds merit in the submission of the applicant that minor procedural infractions should not take away their substantive right of rebate. In light of the above, Government annuls the impugned Order-in-Appeal dated 07.03.2018 and remands the case back to the original authority for fresh decision with directions that the verification of the rebate claims in question shall be limited to the extent of verifying the payment of Central Excise duty on the goods exported.

9. The subject Revision Application is allowed in the above terms.

  
(SHRAWAN KUMAR)

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

676-682  
ORDER No. /2022-CX (WZ) /ASRA/Mumbai dated 12.07.2022

To,

M/s Hindustan Pencils Pvt. Ltd.,  
Survey No.90 (P), P.O.- Tumb,  
Umbergaon, Dist. Valsad,  
Gujarat.

Copy to:

1. Commissioner of CGST & Central Excise, Surat Commissionerate, New Central Excise Building, Chowk Bazaar, Surat - 395001.
2. The Commissioner (Appeals), GST & Central Excise, Vadodara, GST Bhavan, 1<sup>st</sup> floor Annexe, Race Course Circle, Vadodara - 390 007.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.