

REGISTERED SPEED POST AD



**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. 195/642/06-RA / 2883

Date of Issue: 18.07.2022

ORDER No. 700/2022-CX (SZ) /ASRA/Mumbai DATED 18.07.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944..

- Applicant** : M/s Caplin Point Laboratories Ltd.
(Formerly M/s. May (India) Laboratories Pvt. Ltd.)
No. 3 Lakshmanan Street,
T. Nagar, Chennai – 600 017.
- Respondents** : 1. Commissioner of Central Excise, (Appeals),
26/1, Mahatma Gandhi Road,
Chennai – 600 035.
2. Pr. Commissioner of CGST, Chennai II
Commissionerate.
- Subject** : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the following Order-in-Appeal No. 50/06(M-II) Dated 31-07-2006 passed by Commissioner of Central Excise (Appeals), Chennai

Remanded by the Hon'ble High Court of Madras for fresh decision vide its Orders in W.P. Nos. 4480 of 2009 dated 23.08.2021.

ORDER

The present proceedings are in compliance of the Orders of the Hon'ble High Court of Madras, in Writ Petition No. 4480 of 2009 dated 23.08.2021, received in this office on 14.06.2022, wherein the subject Revision Application was remanded back to the Revision Authority for fresh decision.

2. The Revision Application has been filed by M/s. Caplin Point Laboratories Ltd. (here-in-after referred to as 'the applicant') against the Orders-in-Appeal No. 50/06 (M-II) Dated 31-07-2006 passed by the Commissioner (Appeals), Chennai I.

3. Brief facts of the case are that the applicants are engaged in the manufacture of P and P medicaments falling under Chapter heading No. 3003 of the Central Excise Tariff Act, 1985. During the period under dispute the applicant had exported goods in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 under the cover of ARE I's involving excise duty of Rs. 24,48,500/- and Education Cess of Rs. 48,971/- as detailed below:

Sr. No.	ARE1 No. & Date	Excise duty involved in Rs.	Education Cess involved in Rs.
1	129/2004-05 dtd. 14.02.2005	3,43,559/-	6,871/-
2	131/2004-05 dtd. 16.02.2005	4,62,675/-	9,254/-
3	140/2004-05 dtd. 08.03.2005	3,44,140/-	6,883/-
4	142/2004-05 dtd. 14.03.2005	2,99,479/-	5,990/-
5	1/2005-06 dtd. 08.04.2005	3,13,731/-	6,275/-
6	7/2005-06 dtd. 29.04.2005	4,64,269/-	9,285/-
7	15/2005-06 dtd. 31.05.2005	2,20,647/-	4,413/-
	TOTAL	24,48,500/-	48,971/-

4. The appellants exported their goods under DEEC/Advance License Scheme, where import is allowed duty free under Customs Notification No. 43/2002-Cus dated 19.04.2002 / Notification No. 93/2004-Cus dated 19.04.2004 and paid the duty including the Education Cess through debiting the RG23 A Part II at the time of clearance of goods from the factory as per Rule 4 of the Central Excise Rules, 2002. The credit utilized being the duty on purchase of indigenous material. The applicants after export of the goods filed rebate claim for the duty including the Cess amount paid at the time of clearance of goods from the factory gate for the purpose of export.

5. The Asstt. Commissioner after issuing a Show Cause Notice rejected the said rebate claim vide his Order-in-Original No. 16/2005 dated 21.09.2005 in terms of condition (v) of the Notification No. 43/2002-Cus dated 19.04.2002 / Notification No. 93/2004-Cus dated 19.04.2004, held that, exemption will be applicable only when facility under Rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed.

6. The said Order-in-Original was challenged by the applicant before the Commissioner (Appeals), who held that the order dated 21.09.2005 of the Asst. Commissioner rejecting the claims related to ARE1 Sr. No. 1 to 6 mentioned above is supported by law, since the intention of the Government was not to grant the benefit rebate of duty paid on such excisable goods, prior to the date of amendment i.e. 17.05.2005. However, he allowed the rebate claim of Rs. 2,20,647/- (BED) and Rs.4,483/- (Education Cess) pertaining to ARE1 No. 15/2006 dated 31.05.2005, since the export in this case has been made subsequent to the amendment dated 17.05.2005. Aggrieved, the applicant filed Revision Application before the Government of India under Section 35EE of the Central Excise Act, 1944 and the same was decided by the Joint Secretary (Revision Authority) to the Government of India, vide Order No. 05/08 dated 31.07.2008. The Revisionary Authority

found the said Revision Application to be devoid of merits and rejected the same. In response, the applicant filed Writ Petition bearing no. 4480 of 2009 before the High Court of Madras challenging the Order of the Revision Authority. The Hon'ble High Court found that the Joint Secretary (Revision Authority) was of the same cadre as the Commissioner (Appeals) and hence was not permitted by law to decide an appeal against the order of the Commissioner (Appeals). The Hon'ble Court vide its Order dated 23.08.2021 quashed the Order passed by the Revisionary Authority and remanded the case back to the Competent Authority for being decided afresh.

7. The grounds on which the applicant had filed the Revision Application against the Order-in-Appeal dated 31.07.2006 passed by Commissioner (Appeals), Chennai are as follows:-

7.1 The operative finding of the CCE(A) in the OIA No. 50,2006 (MII) dtd. 31.07.2006 impugned herein, is as follows:

... if rebate under rule 18 of Central Excise is availed, the importer becomes ineligible to avail facilities under Advance Licence Scheme. I find that the link between Rule 18 of Central Excise Rules and Notification No. 93/2004 Cus. (NT) is made to deny double benefit by availing facilities under Advance Licence Scheme and rebate of duty paid on export of goods under Rule 18 of Central Excise Rules simultaneously in such cases.

....

The above view is also supported by the amendment dated 17.05.2005 to Para (1)(v) of Notification No. 93/2004 Cus dated 10.09.2004 since the intention of the Govt. was not to grant the benefit of rebate of duty paid on such excisable goods, prior to the date of amendment dated 17. 05.2005. The substantive right can be created prospectively and not retrospectively, until unless retrospective effect is specifically given...."

7.2 Accordingly, the CCE(A) allowed only the rebate claim dated 31-May-05 in Sl. No. 7 (of the above said table) which was made after the 17-May-05 i.e. the date of the corrigendum. Thus, the sole ground on

which the 6 rebate claims made before 17-May-05 have been rejected is that the corrigendum dated 17-May-05 took effect only prospectively [this was the view of the Joint Secretary as well, as expressed in the earlier Order-in-Revision dated 31.07.2007].

7.3 It is submitted with regard to the above findings that the corrigendum dated 17-May-05 relates back to, and is effective from, the date of customs notification (No. 93/2004) it seeks to correct, i.e. 10-Sep-04. This is for the following reasons:

i. Corrigendum dated 17.05.2005 relates back to, and is effective from, the date of Customs Notification (No. 93/2004) it seeks to correct, i.e. 10.09.2004. A corrigendum by its very nature, is one which is issued when some error has crept in to a document which has been made public, and the authority issuing such document seeks to rectify that error. Thus, by its very nature, a corrigendum will have effect from the date of original document.

ii. It could be seen in the instant case, the corrigendum specifically uses the word "*corrected*". It does not state "amended" or "substituted" or any such term.

iii. When a notification is sought to be amended, it is always done through another notification with a specific number assigned to such amending notification. Notifications (be they original or amending) are serially numbered. However, in the instant case, it could be seen that the corrigendum does not bear any notification number. It is thus clear that the Ministry did not intend the corrigendum to be an amendment effective prospectively, but only as a correction of an error that had crept in inadvertently in the notification dated 10-Sep-04.

iv. It is telling that on the same date on which the corrigendum in question was issued (i.e. 17-May-05), an amendment notification too was issued (bearing Notf. No. 46/2005-Cus.) The said Notification No. 46/2005 dtd. 17-May-05 is clearly titled "*Amendments to Notification Nos.*", and uses the words "*shall be amended or further amended*". That the Ministry makes a clear distinction between an amendment and corrigendum is thus very clear.

v. More tellingly, the above said Notification No. 46/2005-Cus. dtd. 17-May2005 amends (by entry no. 12 thereof) certain portions of the very customs Notification No. 93/2004-Cus. dated. 10-Sep-04 in question. It is very obvious that if the Ministry merely wanted to amend customs notf. no. 93/2004 prospectively, it would have incorporated the change mentioned in the corrigendum dated. 17-May-05 in Notification No. 46/2005 dated 17-May-05 itself, instead of issuing a separate corrigendum on the said date. It is thus explicit that the intention was always to correct the error that had crept into Notification No. 93/2004 with effect from the date of its issue.

vi. It may be noted that besides Rule 18 of CE Rules, 2002 under which an exporter can claim rebate of duty paid on final products and raw materials consumed therein, an exporter can make terminal excise-duty-free exports under Rule 19(1), and procure inputs duty free for use in the export product under Rule 19(2), of the CE Rules, 2002.

vii) Discrimination apart, it would be illogical and unreasonable to consider the corrigendum to be effective only from 17-May-05, since as an amendment, since this would mean that an exporter who paid terminal excise duty upfront on the final product exported and sought rebate later under Rule 18 would be denied the rebate (for the period from 10-Sep-04 to 17-May-05), but that an exporter could export without payment of Central Excise duty [under Rule 19(1) of CE Rules, 2002].

viii) It may be mentioned here that prior to the Customs Notification No. 93/2004 dated 10-Sep-04 being corrected by Corrigendum dated 17-May-05, the earlier Customs Notification on the same subject (Notf. No. 43/2002-Cus. dated 19-Apr-02) had fallen into similar inadvertent error, and was corrected by corrigendum dated 29-Nov- 02. Condition (v) in Notf. No. 43/2002-Cus. as originally drafted.

ix) Above all, the question whether the corrigendum is effective only from 17-May-05 is no more *res integra* and has been settled in

favour of exporters, by the Hon'ble Karnataka High Court. It may be mentioned here that prior to the Customs Notification No. 93/2004 dated 10-Sep-04 being corrected by corrigendum dated 17 May-05, the earlier Customs Notification on the same subject (Notf. No. 43/2002-Cus. dated 19-Apr-02) had fallen into similar inadvertent error, and was corrected by corrigendum dated 29-Nov-02. The Karnataka High Court in *Jubilant Organosys Ltd v. Asst. Commissioner of Central Excise, Mysore* 2012 (276) EL T 335 has, with respect to corrigendum dated 29-Nov-02, had held that it would have effect from the date of notification it seeks to correct i.e. from 19-Apr-02. It follows inescapably that the corrigendum dated 17-May-05 would have effect from the date of the notification it seeks to correct i.e. from 10-Sep-04.

x) Besides, revision authorities themselves have allowed rebate claims u/r. 18 of Central Excise Rules, 2002 where the claims related to rebate of duty paid on the final product *Shubhada Polymers* (16-Jan-09), *Wolfra Tech P. Ltd.* (06-Jun-13).

xi) In any case, the corrigendum is clearly clarificatory in nature, since the Customs Notf. No. 93/2004-Cus dated 10-Sep-04 as originally drafted was, for the reasons mentioned above, discriminatory, illogical and unreasonable, and it was to correct to this apparent error that the corrigendum dated 17-May-05 was issued. Where an instrument is clarificatory, it follows inexorably that it takes effect from the date of the document it seeks to clarify.

8. Personal hearing was held in this case on 09.02.2022 Shri D. Muralidharan, Shri P.R.Renganath, Advocate & Shri M. Kannan, Advocate duly authorized by the applicant appeared online and reiterated their submissions. They submitted that only issue to be decided is the effective date of a Corrigendum to a Notification. They pleaded that it should be from the date of Notification- No. 43/2002-Cus-dated 19.04.2002 / Notification No. 93/2004-Cus dated 19.04.2004.

9. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the Order of the Hon'ble High Court.
10. Government notes that the Hon'ble High Court in its Orders while remanding the subject Revision Application filed by the applicant back to the reconstituted Revision Authority, has quashed the earlier order of the Revision Authority and has ordered that all the issues involved should be decided afresh on merits. Pursuant to the said Order of the Hon'ble High Court, Government takes up the subject Revision Application for fresh decision.
11. Government takes up the Revision Application against the Order-in-Appeal dated 31.07.2006 which decided an appeal against the Order-in-Original dated 21.09.2005 passed by the Asst. Commissioner Central Excise, Division -V, Chennai – II Commissionerate. The facts of the case have been detailed above. Government observes that the dispute arose as the applicant after the export of goods claimed rebate for the duty including the cess amount from the date of the Notification No. 43/2002-Cus dated 19.04.2002 / Notification No. 93/2004-Cus dated 19.04.2004 and not from the amendment dated 17.05.2005 to Para (1)(v) of Notification No. 93/2004 Cus dated 10.09.2004. Purportedly since the intention of the Govt. was not to grant the benefit of rebate of duty paid on such excisable goods, prior to the date of amendment dated 17.05.2005, as the substantive right can be created prospectively and not retrospectively
12. 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.
13. Government notes that in impugned Order-in-Appeal, it has been observed by the Appellate authority that since the

respondents had imported the goods against Advance licence, they could not have availed Cenvat Credit on inputs and the goods exported were wholly exempted from payment of Central Excise duty, the payment made cannot be considered to be payment of Central Excise duty. While arriving at the said conclusion, the Commissioner (Appeals) relied on condition No. (v) of the Notification No. 93/2004-Cus dated 10.09.2004 which read as follows-

" v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed."

14. In this regard Government observes that on 17th, May, 2005 corrigendum was issued by the Board to above Notification which is reproduced below:

CORRIGENDUM

In condition (v) of opening paragraph of the Notification of the Government of India, in the Ministry of Finance (Department of Revenue) Nos.93/2004-Customs, dated the 10th, September, 2004, published in the Gazette of India (Extraordinary), vide GSR 606(E), the words & figures "under Rule 18" shall be corrected to read as "under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)"

F.NO. 605/ 50/2005-DBK

(H. K. PRASAD)

UNDER SECRETARY TO GOVERNMENT OF INDIA

15. Government observes that vide corrigendum dated 17th,

May 2005 the rebate of duty paid on materials was restricted under Rule 18 of the Central Excise Rules, 2002 and not the duty paid on the finished products.

16. In this regard Government places its reliance on GOI Order IN RE Garden Silk Mills reported under 2014 (311) E.L.T. 977 (G.O.I.) wherein while deciding the issue of "Duty paid on final product, final product exported - Condition No. (viii) of Notification No. 96 /2009-Cus. debars only the facility of rebate of duty paid on inputs used in the manufacture of exported goods, condition not violated - Export of duty paid goods not disputed - Rebate claims admissible - Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) the Revisionary Authority at paras 9 to 9.3 observed as under:

9. Government notes that in this issue to be decided is whether rebate of duty paid on exported goods is not admissible for violation of Condition No. (viii) of Customs Notification No. 96/2009-Cus., dated 11-09-2009.

9.1 In order to examine the issue in the context of Notification No. 96/2009-Cus., dated 11-9-2009, it would be proper to peruse the Condition No. (viii), which reads as under :

"that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:

Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;"

The said Condition No. (viii) debars availment facility of rebate claim on duty paid on materials used in manufacture of resultant product under Rule 18 and also the facility of duty free procurement of raw materials under Rule 19(2) of Central Excise Rules, 2002. The applicant has claimed rebate of duty paid on final product and not

of duty paid on raw materials/ inputs used in manufacture of final resultant product exported as is evident from the order-in-original. There is a categorical declaration in the ARE-1 form that no facility of Notification 21/2004 C.E. (N. T.), dated 6-9-2004 i.e. input rebate claim and under Notification No. 43/2001-C.E. (N.T), dated 26-6-2001 i.e. duty free procured of raw material under Rule 19(2) was availed.

9.2 Commissioner (Appeals) has relied upon G.O.I. Revision order in the case M/s. Omkar Textiles - 2012 (284) E.L.T. 302 (G.O.I). Government notes that in the said case exporter M/ s. Omkar Textile has purchased inputs i.e. Linear Alkyl Benzene (LAB) and Sulphuric Acid and used the same in the manufacture of exported goods. They had claimed rebate of duty paid on inputs (LAB) used in the manufacture of exported goods. Government had denied the input rebate claim in the said case since final goods were exported in discharge of export obligation under Advance License Scheme in terms of Notification No. 93/2004-Cus., dated 10-9-2004 as there was similar Condition No. (v) in the said notification which was exactly similar to Condition (viii) of Notification No. 96/2009-Cus., which debarred the exporter from claiming input rebate claim i.e. rebate of duty paid on inputs/raw materials used in the manufacture of exported goods. In that case the inputs rebate claim was disallowed, whereas in the instant case applicant has claimed rebate claim of duty paid on (finished) exported goods. As per Condition (viii) of Notification No. 96/2009-Cus. or Condition No. (v) of Notification 93/2004-Cus. relating to advance licence scheme, there is no restriction on availing the facility of rebate claim of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. In the instant case issue relates to rebate of duty paid on (final) exported goods and therefore ratio of above said G.O.I. Revision Order is not applicable to this case.

9.3 Government notes that in the case of M/s. Shubhada Polymers Products Pvt. Ltd. reported as 2009 (237) E.L.T. 623 (G.O.I) this revisionary authority has held that rebate of duty paid on goods exported (finished) in discharge of export obligation under advance licence scheme in terms of Notification No. 43/2002-Cus., dated 19-4-2002 as amended vide corrigendum dated 29-11-2002 is admissible since the amended Condition (v) of said notification debarred only the availment of rebate of duty paid on inputs/ raw materials used in the manufacture of finished exported goods. The said Notification No. 43/2002-Cus. was subsequently replaced by Notification No. 93/ 2004- Cus., dated 10-9-2004. In view of the position, the rebate claim of duty paid on export goods (finished goods)

cannot be rejected on this ground since there is no violation of Condition (viii) of Notification No. 96/2009 Cus., dated 11-9-2009 which debars only the facility of rebate of duty paid on inputs used in the manufacture of exported goods.

17. Government observes that the ratio of the above case is applicable to the issue involved in the instant revision application. Further, in the case of Jubilant Organosys Ltd.(2012 (276) ELT 335 (Kar)) Hon'ble High Court of Karnataka observed that Condition No. (v) of Notification No. 43/2002-Cus., dated 19-4-2002 corrected by corrigendum dated 29-11-2002 clarifying that under Rule 18 of Central Excise Rules, 2002 shall be corrected to read as 'under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) and held that

"a corrigendum in question has been issued for correction of the notification and it relates back to the date of the notification corrected. It ceases to be a correction if it is effective from the date of its issuance. It then becomes an amendment. A correction relates back to the date of the notification itself. If that is so, the order of the appellate authority as also the revisional authority are contrary to the notification dated 29-11-2002."

Therefore, following the ratio of above judgement, Government holds that rebate of duty paid on goods exported (finished) in discharge of export obligation under Advance licence scheme in terms of Notification No.93/2004-Cus dated 10.09.2004 as amended vide corrigendum dated 17.05.2005 is admissible to the applicant as the amended condition (v) of the said notification restricted only the availment of rebate of duty paid on inputs /raw materials used in the manufacture of resultant product. Government also notes that the original authority on scrutiny of rebate claims had not found any other discrepancy in the rebate claim and found the same to be correct and admissible to the applicant. As such, it is clear that rebate claims were found in order and there was no dispute about the export of duty paid goods. As such the fundamental condition

for allowing rebate claims that duty paid goods are exported, already stands satisfied in this case. Hence the Revision Application is liable to be allowed and the impugned Order in Appeal is liable to be set aside.

18. In view of the above Government holds that the said rebate claims are admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Hence, the impugned Order in Appeal is set aside.

19. Revision Application thus succeeds in above terms.

----- =

Shrawan
15/07/22
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 700/2022-CX (SZ) /ASRA/Mumbai

Dated: 15.07.2022

To,

M/s Caplin Point Laboratories Ltd.
(Formerly M/s. May (India) Laboratories Pvt. Ltd.)
No. 3 Lakshmanan Street,
T. Nagar, Chennai - 600 017.

Copy to:

1. Pr. Commissioner of CGST & CX, Chennai II Commissionerate.
2. Commissioner of CGST & CX, (Appeals), 26/1, Mahatma Gandhi Road, Chennai - 600 035.
3. Assistant / Deputy Commissioner, CGST & CX, Division-V, Chennai-II
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file