



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. 195/770/13-RA/1368

Date of Issue: 24.02.2021

ORDER NO. 72/2021-CX (WZ) /ASRA/MUMBAI DATED 29.01.2021 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),  
PO- Tumb, Umbergaon, Valsad.

Respondent : Commissioner of Central Excise, Vapi.

Subject : Revision Applications filed under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No.  
SRP/46/VAPI/2013-14 dated 30.04.2013 passed by the  
Commissioner (Appeals), Central Excise, Customs & Service Tax,  
Vapi.



**ORDER**

These Revision Applications have been filed by M/s. Hindustan Pencils Pvt. Ltd., Tumb, Umbergaon, Valsad (hereinafter referred to as "the applicant") against Order-in-Appeal No. SRP/46/VAPI/2013-14 dated 30.04.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. Brief facts of the case are that the applicant are a registered warehouse under Rule 9 of Central Excise Rules, 2002 and are engaged in the export of various excisable goods viz. Pencils, Sharpeners, Scales, Art Materials, Ball pens etc. supplied by their various manufacturing units located at Kharadpad-Naroli, Athal-Silvassa, Pollachi of Tamilnadu as well as their own manufacturing units located at the same premises of the warehouse, from the said warehouse. They filed 83 rebate claims in respect of goods cleared for exports from the said warehouse for the period from March, 2011 to November, 2011 for the total rebate claim amount of Rs.26,58,308/- (Rupees Twenty Six Lakhs Fifty Eight Thousand Three Hundred Eight Only).

3. On scrutiny of the impugned rebate claims, the rebate sanctioning authority observed that :-

3.1 In some of the cases, the goods covered under ARE-1 were exported without payment of duty under UT-1 mentioning UT-1 No. 163/10-11 dated 08.03.2011 validated up to 29.02.2012 duly mentioning under claim for 'undertaking' & some were without mentioning any of the claim from the warehouse premises.

3.2 No Central Excise Invoices under Rule 11 of Central Excise Rules, 2002 showing ultimate destination, Invoice No. & date, quantity, without corresponding Invoice No. & date under which duty was initially paid with other details & registration No. of the Suppliers' manufacturing unit in respect of further clearances for export from the said warehouse had been issued in any of the case, instead commercial invoices are issued.

3.3 The invoices under which the goods were removed from the destination are found tampered / corrected / over written and the Nos. are manipulated.

3.4 No marks & Nos. in any of the invoices issued by the suppliers are mentioned and no delivery challans are attached with the rebate claims.

3.5 In some cases, full cargo removed from the manufacturers premises at the destination have not been covered under the cargo under export.

3.6 There are no evidences of movement of cargo from the subsequent destination as the dispatch place & manner / mode of transportation are blank in the invoices.

3.7 No records / register showing all entries of receipt of the goods from the supplier units including their own manufacturing unit situated in the said warehouse premises and the removals of the goods from the warehouse indicating the value, quantity of the goods removed, their marks & numbers as well as the rate of duty & amount of duty involved in terms of procedure specified under Sub Rule 20 of Central Excise Rules, 2002 are mentioned.

3.8 All the documents relating to export i.e. shipping bills, bill of lading, mate receipt, customs invoices, commercial invoices BRC etc. are issued in the name of M/s Hindustan Pencils (P) Ltd., 'Export House', 510, Himalaya House, 79, Palton Road, Mumbai whereas the ARE-1s were issued by M/s Hindustan Pencils (P) Ltd., Valsad, Gujrat from which it cannot be established the actual claimant of the rebate claims. No objection certificate was also not furnished.

3.9 The applicant had never informed the jurisdictional office about receipt of such goods supplied by their various units.

The rebate sanctioning authority rejected all the rebate claims filed by the applicant vide Order in Original No. 743 to 825/AC/REB/Div-Vapi/2012-13 dated 28.09.2012.



4. Being aggrieved, the applicant filed an appeal before the Commissioner (Appeals), Vapi. The Appellate Authority vide impugned Order in Appeal rejected the appeal and upheld the Original Order. While passing the impugned order, the Appellate Authority observed that :-

4.1 The applicant had filed only photocopies of the documents along with the claims. As such, the adjudicating authority had correctly rejected the applicant's request seeking copies of the documents.

4.2 The export is allowed to be made from premises other than the factory and warehouse premises provided the procedure and conditions prescribed in the CBEC Circular No. 294/10/-97-CX dated 30.01.1997 are followed strictly. In the instant case the applicant had not followed the procedure and conditions prescribed under said circular.

4.3 The applicant had not been able to justify through documentary evidences that the export was made on payment of duty.

4.4 The other discrepancies noticed by the adjudicating authority do exist in the rebate the rebate claims filed by the applicant.

4.5 The duty payment particulars were not shown on the reverse side of ARE-1s. It is also found the same invoice had been filed in respect of many claims.

4.6 The marks and numbers as well as description of the goods do not tally to each other and packing also vary largely.

4.7 It had not been established that the goods were exported in the original packing.

4.8 In all the relevant ARE-1s, the applicant had mentioned that the 'export was in discharge of Export Obligation under Quantity Based Advance Licence / under claim of duty drawback under Customs / Central Excise Duties Draw Back Rules, 1995'.

5. Being aggrieved by the impugned order in appeal, the applicant filed instant Revision Application on the following grounds:-

5.1 The Commissioner (Appeals) has no power to remand the case. The appellate authority had passed order rejecting rebate claims without

considering that the fact that the adjudicating authority had passed ex-parte order without granting sufficient opportunity of hearing and without granting time for filing the reply to the Show Cause Notice.

5.2 The Commissioner (Appeals) has failed to appreciate that there was violation of principles of natural justice for the purpose of verification of records and also for the purpose of granting opportunities of personal hearing in terms of Section 33A of the Central Excise 1944 and therefore the said order of the adjudicating authority was not maintainable and was required to be set aside remanding the case back to the original adjudicating authority with proper direction. In view of this, the action of the Ld. Commissioner (Appeals) upholding the order of the adjudicating authority is not sustainable in law.

5.3 the goods were duty paid and at the time of stuffing the range superintendent had seen all the invoices received from the manufacturing units of the applicant which shows that duty was paid on the goods exported.

5.4 The goods were received from the applicant's units on valid Central Excise Invoices in the registered premises of the applicant for the storage of the goods and from the said place the goods were exported which can be considered as merchant exporter and as a merchant exporter, the duty paid was required to be rebated after verifying the genuineness of duty paid nature of the goods.

5.5 The technical reasons shown in the show cause notice were rectifiable mistakes and the duty paid nature of goods were beyond doubt proved as the goods were received from manufacturing units under proper Central Excise Invoices to the register premises (warehouse).

5.6 The show cause notice dated 30.08.2012 was received by the applicant in the first week of September, 2012 and hearings were fixed on 20.09.2012, 21.09.2012 and 24.09.2012 by single communication letter without granting even 30 days' time for filing reply to the SCN.



5.7 The findings of the appellate authority is nothing but reaffirmation of the findings of the adjudicating authority which is not sustainable in law.

5.8 The Ld. Commissioner (Appeals) have not taken into consideration the Supreme Court judgement in the case of Baby Marine Exports reported in 2007 (211) ELT 12 (SC) wherein it is clarified that the object of granting incentive to foreign exchange earners- Object of the act must always be kept in view while interpreting the Section- Legislative intention must be the foundation of judicial interpretation.

5.9 If the assessee was not required to pay duty for export of the goods then duty collected without authority of law is required to be refunded as held by the Supreme Court in the case of M.K. Chipkar & others Vs. Collector- 1999 (113) ELT A116.

6. A Personal hearing in this case was held on 20.01.2021 through video conferencing and Shri Kaushik I Vyas, Advocate appeared online for hearing on behalf of the applicant. He reiterated his submissions dated 15.01.2021.

6.1 In his submissions dated 15.01.2021, the applicant mainly contended as under :-

6.1.1 In this case, the manufacturer and registered person are one and the same i.e. M/s. Hindustan Pencils Pvt. Ltd. and the duty is discharged under PLA. This can be simply verified from the invoices of the manufacturer M/s. Hindustan Pencils Pvt. Ltd. Thus, keeping in view para 6 of the Circular No. 294/10/97-CX dated 30.01.1997:-

*"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".*

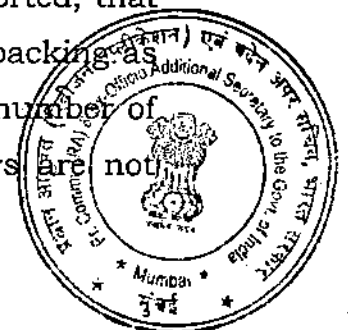
6.1.2 They have complied with all conditions of the Circular No. 294/1097-CX dated 30.01.1997.

6.2 In view of above, it is requested to remand the case to the original authority to examine that whether the goods are exported in original tact condition as merchant exporter and duty is paid by the original manufacturer or not and also to waive all technical deviations in terms of the various circulars issued by the Board.

7. 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.

7.1 Government observes that 83 rebate claims for Rs.26,58,308/- (Rupees Twenty Six Lakhs Fifty Eight Thousand Three Hundred Eight Only) filed by the applicant were rejected by the Original Authority as the exporter failed to fulfill the conditions prescribed under the basic Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 -CE(NT) dated 06.09.2004 and also Board's instruction in respect of Export Warehousing procedures (discussed at Page 9 of the Order in Original No. 743 to 825/AC/REB/Div-Vapi/2012-13 dated 28.09.2012), they failed to furnish the certificate confirming the payment of CE duty in respect of the clearances made to warehouse premises at Tumb-Umbergaon issued by the jurisdictional Range officer of the supplier unit at the destination in any of the case, failed to furnish the required documents / records in warehoused goods, failed to issue Central Excise Invoices under Rule 11 of Central Excise Rules, 2002 showing the quantity/description/marks & Nos. Assessable value of the goods exported and also particulars of the Central Excise duty paid thereon in support of their rebate claim.

7.2 Commissioner (Appeals) at para 8 & 9 of Order in Appeal No. VAP-EXCUS-000-APP-477-13-14 dated 22.01.2014 has interalia observed that the entire consignment of goods received from the manufacturers were never exported under the ARE-1s but only part consignments were exported; that RO has nowhere certified that the consignment were in original packing as cleared from the manufacturer's premises; that the marks and number of the packing received from the various supporting manufacturers are not



indicated in the ARE-1s which establishes that the goods were not exported in original packing as received for export from the manufacturer; that the identity of the goods exported vis-à-vis those cleared by the manufacturers and the duty paid nature of the goods cannot be verified; that the duty paid nature has not been certified by the RO in the relevant portion of the ARE-1s, which otherwise also does not show any duty particulars at all; that the applicant has not indicated any intention of claiming rebate of duty paid by their manufacturer at the time of clearance from the warehouse which is evident from the column 11 of the ARE-1s, show no figure of rebate claimed; that central excise officer has not verified the identity of the goods and more particularly duty paid nature of the goods at the time of clearance from the warehouse. Similarly, Commissioner (Appeals) at para 8 of Order in Appeal No. SRP/46/VAPI/2013-14, dated 30.04.2013 has also observed that regarding duty payment on the export goods, the appellant has not been able to justify through documentary evidence that the export was made on payment of duty, as they failed to correlate the goods cleared from the manufacturing units to those cleared from the warehouse. He also observed in this order that the officer supervising the export had stated in his report dated 24.08.2012 that the appellant had not intimated about the receipt of goods from various units and thus were not verified physically for the marks and numbers and identity of the exports goods for establishing duty paid nature of the goods; that the goods were exported in the original packing has not been established by the appellant at all by cogent evidences and on this ground alone it is sufficient to reject the claim of rebate in the instant case.

7.3 In view of his aforesaid findings Commissioner (Appeals) has arrived at a conclusion that the exporter has not followed the procedure set out in many of the paras of the Circular No. 294/10/1997-CX dated 30.01.1997 and has further observed that on these grounds, the rebate claims filed by the appellant have been rightly rejected by the jurisdictional authority.

8. Government observes that in the impugned Order in Appeal the Commissioner (Appeals) has confirmed existence of discrepancies (already observed by the original Adjudicating authority in detail in the respective





the goods were duty paid and at the time of stuffing the range officers had seen all the invoices, Government notes that the Range Officer could not have halted the export. The applicant had not followed the procedures prescribed under Circular No. 294/10/97-CX dated 30.01.1997 and therefore the requirement of co-relating the goods cleared from the manufacturer with the exported goods could not be satisfied. The fact whether the goods were duty paid could not have been ascertained by the Range Officer. It must be borne in mind that the circulars dated 30.01.1997 and 08.09.2011 issued by the Board were issued in exercise of the powers vested in it to set out a procedure which was consistent with the provisions of the Act and the rules. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018 (362) ELT 404 (Mad)] would be relevant here. The relevant text is reproduced.

*"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. ...."*

11. Government also observes that the applicant had not intimated about the receipt of goods from various units and thus goods received from various units were not verified physically for the marks and numbers and identity of the exports goods for establishing duty paid nature of the goods. Therefore, in the instant case, the export of the goods in the original packing has not been established by the applicant.

12. As regards the applicant's contention about violation of principles of natural justice by the adjudicating authority, Government observes that the applicant had submitted copies of 83 ARE-1s which showed that the goods had been exported as indicated in the said ARE-1s which had been physically verified and stuffed in the presence of Central Excise officers who had signed the said ARE-1s, duty amount was indicated in the ARE-1s. Export of goods was not in dispute and that they had followed CBEC Circular for export from warehouse/godown and hence the rebate sanctioning authority had wrongly rejected the rebate claims. It is found that, the Appellate Authority thereafter, not only granted personal hearing to the applicant but also examined the documents submitted before him by the

applicant. Moreover, the Appellate Authority upon verification of documents did notice discrepancies that existed in the rebate claims and mentioned the same in tabulated form at para 11 of Order in Appeal and thereafter has given his assessment of the same to arrive at a specific conclusion. CBEC vide its Instructions issued under F. No. 275/34/2006-CX.8A dated 18.02.2020 has informed that Hon'ble Supreme Court in the case of MIL India Ltd.[2007(210)ELT.188(SC)], while noting that the powers of remand had been taken away, has also categorically stated that the Commissioner (A) continues to exercise the power of adjudicating authority in the matter of assessment and the Commissioner( A) can add or subtract certain items from the order of assessment made by the adjudicating authority and the order of Commissioner (A) could also be treated as an order of assessment. As such, the Order in Appeal in the present case has to be treated as just and fair Order passed in accordance with the provisions of the Act and therefore, the applicant's claim regarding violation of principles of natural justice by the adjudicating authority is rendered baseless.

13. In view of above position, Government holds that the lower authorities have rightly concluded that export of duty paid goods is not established in this case. As such, the rebate claims are not 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.

14. Government, therefore, does not find any reason to modify Orders in Appeal SRP/46/VAPI/2013-14 dated 30.04.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi and therefore refrains from exercising its revisionary powers in these Revision Applications.

15. The revision applications are disposed off in the above terms.

**ATTESTED**

अधीक्षक

Superintendent  
रिवीजन एप्लीकेशन

Revision Application

मुंबई इकाई, मुंबई

Mumbai Unit, Mumbai



*Shrawan Kumar*  
29/01/21  
(SHRAWAN KUMAR)

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

ORDER No. 72/2021-CX (WZ) /ASRA/Mumbai DATED 29.01.2021

To,  
M/s Hindustan Pencils Pvt. Ltd.,  
Survey No. 90(P). P.O.-Tumb,  
Umbergaon, Dist. Valsad-396 150

Copy to:

1. The Commissioner of GST & CX, Surat, New Central Excise Building, Chowk Bazaar, Surat-395001,
2. The Commissioner of GST &CX, (Appeals), 3<sup>rd</sup> Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Center, Althan, Surat-395007.
3. Assistant Commissioner, Division XII (Umbergaon), Pooja Park, First floor, Opp Bank of Baroda, Bhilad, Distt Valsad-396105.
4. Sp. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.