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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. 195/922/13-RA

3610

Date of Issue: 01.09.2022

ORDER NO. 826/2022-CX (WZ) /ASRA/Mumbai DATED 26.08.2022 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 Central Excise & Customs,  
Vapi Commissionerate, 2<sup>nd</sup> floor, Adarsh Dham Building,  
Opp. Town Police Station, Vapi – Daman Road, Vapi,  
Gujarat.
- Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
VAP-EXCUS-000-APP-256-13-14 dated 26.08.2013 passed  
by Commissioner (Appeals), Central Excise, Customs &  
Service Tax, Vapi.

## 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 26.08.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi which decided an appeal against the Order-in-Original dated 30.11.2012 passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division-Vapi, Vapi Commissionerate.

2. Brief facts of the case are that the applicant exported pencils, sharpeners, art material, ball pens etc., manufactured by them and 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 filed 21 rebate claims in respect of the consignments exported. The original adjudicating authority rejected the said claims totaling to an amount of Rs.6,37,845/- vide Order-in-Original dated 26.08.2013 on the grounds that the goods in question were neither exported from a factory or warehouse under Rule 20 of the Central Excise Rules, 2002; the identity of the goods exported could not be ascertained and its duty paid nature could not be established. The original authority found that the applicant had not issued any Central Excise Invoice/s to cover the export consignments and had hence failed to indicate the corresponding Invoices under which the duty was initially paid by the suppliers; the invoices under which the goods were removed from the destination were found tampered/corrected/over written and the numbers manipulated; there was no evidence of movement of cargo from the supplier units to the warehouse; no records/register showing all entries of receipt of the goods from the supplier units and the other details of the said goods was maintained; no certificate confirming the payment of Central Excise duty by the Superintendent having jurisdiction over the suppliers was furnished by the applicant; and also 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. The original adjudicating authority also observed that the ARE-1's mentioned that "*their export obligation was under Quantity based Advance Licence /Under Claim of Duty drawback under Customs & Central Excise Duties Drawback Rule, 1995*" which established the intention of the applicant to avail double benefit of Rebate & Drawback; and also, that the applicant had submitted that part of the goods exported were under Advance Licence, thus rendering the applicant ineligible for the rebate claimed by them.

3. The applicant preferred an appeal against the above Order-in-Original which was decided by the impugned Order-in-Appeal dated 26.08.2013. The Commissioner (Appeals), upheld the Order-in-Original and dismissed the appeal filed by the applicant.

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

(a) The lower authorities had failed to appreciate that the goods were cleared from the factory on payment of duty under proper Central Excise Invoices in original tact condition from their registered premises;

(b) 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 correlatable 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 Superintendent; that the duty paid nature of the goods are beyond doubt as they themselves were the manufacturer and the exporter and hence the rejection of rebate claims on technical grounds was incorrect;

In light of the above, the applicant prayed that their appeal be allowed with consequential relief.

5. Personal hearing in the matter was granted to the applicant on 31.03.2022 and Shri Raj Vyas, Advocate appeared online for the same. He reiterated their earlier submissions and further stated that the Commissioner (Appeals) had disallowed their appeal on minor technical grounds which they can demonstrate to be unfounded. He requested for remanding the matter to the original authority for appropriate consideration.

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 26.08.2013.

7. On examining the impugned Order-in-Appeal, Government notes that the Commissioner (Appeals) had rejected the appeal filed by the applicant for the following reasons :-

- The applicant had not followed the procedure and conditions prescribed by the CBEC circular dated 30.01.1997 which provided for export from registered warehouses;
- Duty paid nature of the goods exported could not be proved as the applicant failed to provide evidence to co-relate the goods cleared from the manufacturing units to those cleared for export;
- The other objections raised by the original authority, which have been detailed at para 2 above, were also upheld by the Commissioner

(Appeals) as the applicant had apparently failed to adduce any evidence to the contrary;

8. Government finds that in the present case the export was carried out under the physical supervision of the jurisdictional Central Excise officers from a warehouse registered with the Central Excise authorities. It is not in dispute that the goods cleared under the said ARE-1s have actually been exported. Government finds that the lower authority has recorded that document such as Shipping Bills, Bills of Lading, Mate receipt, Customs Invoices, Commercial Invoices, BRC etc., were submitted by the applicant, however, the same were apparently not taken cognizance of as these documents indicated the Mumbai address of the applicant, whereas the ARE-1's indicated the address of their Valsad premises. Government notes that this finding of the original authority indicates that the applicant had submitted substantial documents in support of their claim. Further, Government also notes that as regards the absence of Central Excise Invoices covering the consignments, the applicant has submitted that the goods in question have been cleared from the premises of the manufacturer under proper Central Excise Invoices on payment of proper Central Excise duty; they have also claimed that the manufacturer and the exporter were the same and hence goods, which were exported in the original condition, were clearly identifiable and co-relatable. Given the above facts and the instructions issued by the Board from time to time that rebate should not be denied on technical grounds, Government finds that there exists enough reason to cause re-verification of the claims submitted by the applicant in the present case. Government notes that certain issues raised viz., the documents bearing the Mumbai address of the applicant; and that the applicant had purportedly availed the benefit of QBAL or Drawback, could have been easily verified by the original authority, however the same was not done. The results of such verification need to be clearly recorded in the event the instant claims are rejected for this reason, unlike what has been done in the present case, where it has been restricted to bald allegations.

Government finds that the subject claims filed by the applicant need to be re-examined to determine whether the applicant is eligible to the rebate claimed by them and accordingly holds so.

9. In light of the above, Government annuls the impugned Order-in-Appeal dated 26.08.2013 and remands the case back to the original authority for fresh decision with directions that the claims shall not be denied on the basis of minor procedural infractions. The applicant is directed to produce all the necessary documents/evidence to clarify the issues raised for being verified by the original authority.

10. The subject Revision Application is disposed of in the above terms.

  
(SHRAWAN KUMAR)

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

ORDER No. 826/2022-CX (WZ) /ASRA/Mumbai dated 26.08.2022

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.