

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. 195/210/2015-RA / 1122

Date of Issue: 28/09.2022

ORDER NO. 888 /2022-CX(WZ)/ASRA/MUMBAI DATED 23.09.2022
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. Alex Grinders Pvt. Ltd.,
19, Shah Industrial Estate,
Lonavala - 410401.

Respondent : Commissioner of CGST & Central Excise, Pune-I

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against Order-in-Appeal No. P-
I/VSK/19/2010 dated 05.02.2010 passed by the
Commissioner (Appeals), CGST, Pune-I.

ORDER

This Revision Application is filed by M/s. Alex Grinders Pvt. Ltd. situated at Shah Industrial Estate, Lonavala – 410401 (hereinafter referred to as 'applicant') against the Order-in-Appeal No. P-I/VSK/19/2010 dated 05.02.2010 passed by the Commissioner (Appeals), CGST, Pune-I.

2. Brief facts of the case are that the applicant M/s. Alex Grinders Pvt. Ltd. interaila engaged in the manufacture of Investment Castings had filed Rebate Claim amounting to Rs. 78,763/- with the Office of Assistant Commissioner of CGST, Pune-I Division in terms of Section 11B of Central Excise Act, 1944 and Rule 18 of Central Excise Rules, 2002 in respect of goods cleared under Central Excise Invoice No. 28 dated 13.10.08 for export, under the cover of ARE-I No. 021 dated 13.10.08. Due to certain clarification related to DEPB declaration, the shipment was not allowed on 15.10.2008, it was delayed. However, the shipment has taken place on 22.10.2008 by obtaining fresh Shipping Bill on 21.10.2008 without DEPB and they cleared the goods under same Air Waybill issued on 15.10.2008.

3. The Assistant Commissioner Excise vide his Order-in-Original No. PN-I/CX-R/08/2009-10 dated 24.04.2009 observed that from the documents submitted by the applicant, it could not be ascertained whether the goods cleared under said ARE-1 have actually been exported out of India and rejected claim.

4. Aggrieved by the said order the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Pune-I who, vide his Order-in-Appeal No. P-I/VSK/182/2009 dated 27.07.2009 remanded the case to the adjudicating authority mentioning that the refund claim should not be rejected on procedural grounds provided the core condition of export of the goods and their duty paid character are satisfied and directed to re-examine the rebate claim after giving opportunity to the applicant to clarify the doubts raised by the department.

5. The Assistant Commissioner Central Excise, Pune-I Division vide his Order-in-Original No. PN-I/CEX-R/95/2009-10 dated 28.10.2009 rejected the rebate claim on the grounds that physical export of the goods could not be established, as when fresh Shipping Bill No. 7008591 dated 21.10.08 was prepared, the consignment could not have been exported under the old Air Waybill No. 406-6707 5326 dated 15.10.2008.

6. Aggrieved by the said order the respondent filed an appeal before the Commissioner (Appeals) who, vide Order-in-Appeal No. P-I/VSK/19/2010 dated 05.02.2010, observed that inspite of sufficient opportunity being given by the original adjudicating authority, Applicant failed to get an endorsement from the Customs Department on the Air Waybill dated 15.10.2008 to the effect that the exports made under the Shipping Bill were the same goods indicated in the Air Waybill and accordingly upheld the order of the original adjudicating authority and disallowed the appeal.

7. Aggrieved by the said Order in Appeal applicant filed an appeal before CESTAT on 24.06.2010. CESTAT admitted the appeal and disposed off the appeal vide Order No. A/1792/15/SMB dated 03/06/2015, where it was held that-

"The issue involved in present appeal is rebate of excise duty paid on clearance of exported goods, as per the Section 35B(1) proviso clause (b), under Central Excise Act, 1994 this Tribunal has no jurisdiction to entertain the appeal, where the issue relates to rebate on duty on the goods exported out of India. Therefore, the appellant has liberty to file revision application before the Revisionary Authority."

Thereafter, the appellant filed the present Revision Application before Government of India.

8. The applicant has filed this Revision Application mainly on the following grounds :-

8.1. The Commissioner (Appeals) has rejected Claim of Rebate by upholding Order In Original, with technical grounds like, -

"The Appellant should have produced certificate from Customs Department on Airways Bill"

The Applicant submits that, due to certain clarification related to DEPB declaration, the shipment was not allowed on 15.10.2008, it was delayed by a week time. However, the shipment has taken place on 22.10.2008 by obtaining fresh Shipping Bill on 21.10.2008 without DEPB and they cleared the goods under same Air Waybill issued on 15.10.2008. Without considering this their Claim of Rebate was rejected on the sole grounds that dates of Shipping and Air Waybill cannot be different. The applicant produced all documentary evidences like Original and duplicate copies of ARE-1 received from Customs, Duplicate copy of Invoice, Self attested Shipping Bill, Air Waybill, Commercial Invoice, packing list and monthly CENVAT return for the month of October, 2008. The ARE-1 No. 21 dated 13.10.2008 clearly indicate reference of Excise Invoice number, Commercial Bill number details of goods and its weight. The same has been certified by the Customs Officer and made endorsement stating that " The consignment has been exported under his supervision on 22.10.2008. The ARE-I shows endorsement of Air Craft Authority stating that "The consignment has been forwarded on UPS 0017 dated 22.10.2008, Export General Manifest(EGM) No. 68181. Customs EDI system captured certain information incorporated on the Shipping Bill such as "House AWB No. 0460180027", "Invoice No. AG 08-09-33-AOT", weight of the shipment etc. the shipping bill was submitted by the applicant with their claim of Rebate. The applicant also produced the Bank Realisation Certificate(BRC).

8.2 While issuing Order In Appeal, the Hon'ble Commissioner Appeal has given findings that-

"I find that inspite of sufficient opportunity being given the original adjudicating authority, they had failed to get endorsement from the Customs Department on Air Waybill dated 15.10.2008 to effect that the export made under the Shipping Bill were the same goods indicated in Air Waybill (Which was received for export made under the Shipping Bill dated 22.10.08)"

In this connection the Applicant stated that neither original adjudicating authority asked such certificate/endorsement neither in Notice to Show Cause nor in Order In Original issued by him, nor by the Appellate authority during his earlier Order In Appeal. The findings made by the Appellate authority for upholding the Order In Original is totally new and does not permit to reject the legitimate Claim of Rebate.

9. A Personal hearing was held in this case on 21.12.2021 Shri Sadashiv Hawaldar, Advocate of the applicant company appeared for hearing. He submitted that fresh Shipping Bill was issued as earlier Shipping Bill got purged in 7 days. He submitted that there is no dispute on export of duty paid goods. He requested to allow their claim.

10. Government has carefully gone through the relevant case records available in case files and perused the Orders-in-Original and impugned Order-in-Appeal, CESTAT Order.

11. Government observes that the applicant initially filed appeal against the impugned Order before Tribunal, Mumbai. The Tribunal Mumbai, vide Final order Order No. A/1792/15/SMB dated 03/06/2015 dismissed the appeals filed against Order-in-Appeal No. P-I/VSK/19/2010 dated 05.02.2010 on the ground of non-maintainability. On receipt of the said CESTAT order, applicant filed the instant Revision Applications and pleaded therein that since the appeals were inadvertently filed before the Tribunal,

there was a delay in submitting the Revision Application, which may be condoned.

12. Government first proceeds to discuss issue of delay in filing Revision Applications where the Tribunal Mumbai, vide Order No. A/1792/15/SMB dated 03/06/2015 dismissed the appeals filed against Order-in-Appeal No. P-I/VSK/19/2010 dated 05.02.2010, on the ground of non-maintainability. The chronological history of events is as under:-

Sl. No.		
1.	Date of Receipt of Order in Appeal by the Respondent	20.02.2010
2.	Date of filing of appeal before Tribunal	24.06.2010
3.	Time taken in filing appeal before Tribunal	4 months & 8 days
4.	Date of receipt of Tribunal order	03.07.2015
5.	Date of filing of Revision application	27.07.2015
6.	Time taken between date of receipt of Tribunal order to date of filing of Revision application	24 days
7.	Time taken for filing Revision Applications when the time period spent in proceedings before CESTAT is excluded.	5 months 1 day

As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are good reasons to explain such delay.

13. Government notes that Hon'ble High Court of Gujarat in the case of M/s. Choice Laboratory [2015 (315) E.L.T. 197 (Guj.)] , Hon'ble High Court of Delhi in the case of M/s. High Polymers Ltd. [2016 (344) E.L.T. 127 (Del.)] and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in [2013 (290) E.L.T. 364 (Bom.)] have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgements is squarely applicable to these cases. Government therefore keeping in view the above cited judgments holds that revision application R.A.No. 195/210/2015-RA is condonable. Government,

in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up these Revision Application for decision on merit.

14. Government observes that in the instant case, the issue involved is whether the applicant is entitled to the rebate claim when the purported dates of the Shipping Bill and Air Waybill, of the exported goods, are different.

Government observes that an Air waybill (AWB) serves as a receipt of goods by an airline (the carrier), as well as a contract of carriage between the shipper and the carrier. Air Waybill is a document made out by the consignor of goods, by air freight, giving details of the goods and the name of the consignee. Air Waybills are non-negotiable documents, unlike Bills of Lading, they do not transfer the goods' ownership and are just proof of receipt. Since Air Waybill is not a negotiable document, it cannot be issued "to order and blank endorsed" or "to order of an issuing bank". An Air Waybill can be issued and signed by a carrier or an agent on behalf of the carrier. The applicant has explained circumstances under which the subject export shipment was delayed. Further, in the instant case the veracity of the Air Waybill has not been challenged. There is no case that the goods cleared have not been exported. The only allegation is that the date of the Shipping Bill and Air Waybill is different, which has been clarified by the applicant.

15. Government observes that in the case, M/s Kaizen Plastomould Pvt. Ltd., Bhayander (E), the applicant in that case, had exported their goods under Bond without payment of duty. Show cause notices were issued to said M/s Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time. The Original Authority subsequently confirmed the duty and imposed penalty on M/s Kaizen Plastomould Pvt. Ltd. The appeal filed by M/s Kaizen Plastomould Pvt. Ltd. against the Orders in Original confirming the duty and

imposing penalty were rejected by the Appellate Authority. Revision Applications filed against such Orders in Appeal were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide judgment dated 03.03.2014 [2015(330) E.L.T.40 (Bom)] observed as under :-

11. While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.

12. We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited v. Union of India*. In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :

16.....

17.....

13. In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited v. Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom.)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the

claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.

14. As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 is quashed and set aside. The Revision Application is restored to the file of respondent No. 2 for a decision afresh on merits and in accordance with law.

15. The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court.

16. GOI while deciding the said Revision Applications in remand vide Order No. 274-277/14-CX dated 20.06.2014 (para 9.2 of the Order) observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of original documents either available with M/s Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s Kaizen Plastomould Pvt. Ltd.

17. On perusal of Orders in original, Order-in-Appeal and as also CESTAT Order. The applicant has produced all documentary evidences like Original and duplicate copies of ARE-1 duly endorsed by the Customs Officer, Duplicate copy of Invoice, Self attested Shipping Bill, Airways Bill, Commercial Invoice, packing list and monthly CENVAT return for the month of October, 2008, the Bank Realisation Certificate(BRC) to substantiate the factum of the goods being exported and cleared outside country and to substantiate the realization of the export remittance through the bank.

18. Respectfully following the aforesaid Orders/Judgements (discussed at para 15 & 16 supra) Government sets aside Order-in-Appeal No. P-I/VSK/19/2010 dated 05.02.2010 passed by the Commissioner (Appeals), CGST & Central Excise, Pune-I and allows the instant Revision Application.

Shrawan
23/9/22
(SHRAWAN KUMAR)
Principal Commissioner (RA) & Ex-Officio
Additional Secretary to the Government of India

ORDER No. 888 /2022-CX (WZ) /ASRA/Mumbai

Dated 23.09.2022

To,

M/s. Alex Grinders Pvt. Ltd.,
19, Shah Industrial Estate;
Lonavala - 410401.

Copy to:

1. Commissioner of CGST & Central Excise, Pune-I, GST Bhavan (ICE HOUSE), 41/A Sassoon Road, Opp. Ness Wadia College, Pune-411001.
2. Commissioner (Appeals), CGST & Central Excise, Pune-I, GST Bhavan (ICE HOUSE), 41/A Sassoon Road, Opp. Ness Wadia College, Pune-411001.
3. Assistant Commissioner of CGST & Central Excise, Pune-I Division, GST Bhavan, Dr. Ambedkar Marg, Near Akurdi Railway Station, Akurdi-411044.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.