

F.No.195/116/2015-RA
195/93/2016-RA,
195/96/2016-RA&
195/434/2016-RA

REGISTERED
SPEED POST



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.195/116/2015-RA
195/93, 96,434/2016-RA

17300

Date of Issue:

24.12.2021

900-903

ORDER NO. /2021-CX (WZ)/ASRA/MUMBAI DATED 22.12.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s Urvi Exim,
707, Swastik Chambers,
CST Road, Chembur,
Mumbai-400007.

Respondents: Commissioner of C. Ex (Appeals), Mumbai Zone-II, Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
CD/162/RGD/2014 dated 29.12.14, CD/291/RGD/2016 dtd
24.01.2016, CD/23/RGD/2016 dtd 21.01.2016 & CD/279/
RGD/2016 dtd 25.04.2016 passed by the Commissioner of
Central Excise (Appeals), Mumbai Zone - II.

ORDER

These Revision Applications (as given below) are filed by M/s Urvi Exim, a merchant exporter, situated at 707, Swastik Chambers, CST Road, Chembur, Mumbai-400007 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. CD/162/RGD/2014 dated 29.12.14, CD/29/RGD/2016 dtd 21.01.2016, CD/23/RGD/2016 dtd 21.01.2016 & CD/279/ RGD/2016 dtd 25.04.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.

Sr.No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Rebate claimed amount in Rs.
1	195/434/16-RA	CD/279/RGD/2016 dt 25-04-16	1632/DC(Rebate)/Raigad/15-16 dt 28-8-15	466953/-
2	195/116/15-RA	CD/162/RGD/2014 dt 29-12-14	1872/DC(Rebate)/Raigad/15-16 dt 15-10-13	64370/-
3	195/93/2016-RA	CD/29/RGD/2016 dt 21-1-16	3777/14-15/ DC (Rebate) / Raigad dt 24-03-15	955948/-
4	195/95/2016-RA	CD/23/RGD/2016 dt 21-1-16	1015/15-16/DC (Rebate) /Raigad dt 30-06-15	581612/-

2. The issue in brief is that the applicants had filed rebate claims under the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004 for the aforesaid amounts. The applicant are engaged in export of Extra Neutral Alcohol (ENA). They procure HDPE barrels on payment of duty from the manufacturer under ARE-1s and for export transport these goods to the sugar factories and after filling the same with ENA, export the goods vide Shipping Bills and Bill of Ladings. After export of the goods the applicant filed rebate

claims for the aforesaid amounts under the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended for rebate of Central Excise duty paid on the HDPE barrels used in respect of filling/packing of the export of goods. The jurisdictional office issued Deficiency Memo cum Show Cause Notices calling upon them to file written reply as to why the rebate claim should not be rejected for the deficiencies raised therein. Subsequently the Deputy/ Assistant Commissioner (Rebate), Central Excise, Raigad vide the aforesaid OIOs rejected the rebate claims of the applicant.

3. Aggrieved by the OIOs, the applicant filed appeal with the Commissioner (Appeals), Mumbai Zone - II, Mumbai. Commissioner Appeals vide the aforesaid Orders-in-Appeal rejected the appeal filed by the applicant. Aggrieved by the said Orders-in-Appeal, the applicant filed the aforesaid revision applications on the following grounds:

3.01. The applicant submitted that they are procuring HDPE barrels on payment of Central Excise duty under ARE-1 for export. These barrels are transported to the sugar factories and after getting filled with ENA (Ethyl Alcohol) are ultimately exported. The product ENA being a State Excise product does not attract Central Excise duty and hence the applicant had claimed rebate of the Central Excise duty paid on the HDPE barrels used for packing the ENA for export purposes. The ultimate product which was exported is ENA and the HDPE barrels was only used to facilitate such export. Commissioner (Appeals) failed to consider that the Shipping Bills contains a reference to the ARE-1 under which the HDPE barrels were procured and the ARE-1 contains a cross reference to the Shipping Bill, as the Shipping Bill Number is mentioned on the backside of the ARE-1 by the Customs Officer at the time of signing the same. The reference to number of packages/drums in the Shipping Bills and Bill of Lading also indicates that the product "ENA" was packed in the HDPE barrels and then exported. The goods at the time of export were examined by the Customs-authorities to establish that the goods

brought in the Customs area for export are the same which was cleared under the ARE-1 and only after being satisfied, the Customs authorities affixed his signature on the reverse of the ARE-1 and also subscribed the shipping bill number thereon indicating that the goods contained in the ARE-1 were actually exported. Commissioner (Appeals) also failed to consider that since the ARE-1 bears the endorsement of the Customs Officer indicating export of the goods, it is sufficient to conclude that the identity of the goods under the ARE 1 was established by the Customs Officer at the time of export.

3.02. The authority sanctioning rebate claims have to only ensure that the ARE-1 bears the endorsement of the Customs authorities to conclude that the goods contained in the ARE-1 have been duly exported. In the instant case, it is not in dispute that the goods have been examined by the Customs at the Place of export of port as per provision of paras 12.3 and 12.4 of the Chapter 7 of CBEC's Central Excise Manual of Supplementary Instructions. The Customs Officer has duly endorsed the original and duplicate copy of the ARE-1s, after satisfying himself about the fact that the goods intended for export are the same which were cleared on the relevant ARE-1s. The Shipping Bills submitted along with the rebate claims also refers to the ARE-1s under which the excisable goods exported were removed from the factory. In this regard reliance is placed on the ruling of the Government of India in RE: Pidilite Industries Ltd - 2014 (311) ELT 965 (GOI) and on the case of Tablets India Ltd - 2010 (259) ELT 191 (Mad).

3.03. The applicant submitted that the Commissioner (Appeals) in para 5 of the impugned order held that as the applicant is regularly exporting the goods and filing rebate claim, it is imperative for them to file the reconciliation/comparative statements indicating the capacity of barrels in which ENA is packed and exported and the tare weight thereof exactly corresponds with the capacity and tare weight of HDPE barrels cleared on payment of duty from the factory of manufacturer and they should also obtain

the necessary permission from the jurisdictional Commissioner to export the goods with HDPE Barrels obtained from another manufacturer and exporting the same with their goods. The learned Commissioner (Appeals) further held that in the instant case they had not submitted any reconciliation/comparative statements to substantiate their contention that the same HDPE barrel with specific capacity has been exported by them. The learned Commissioner (Appeals) also held in the same para that as there is no proof that the product ENA which has been exported has been packed in the same HDPE Barrels which have been mentioned in the ARE-1 and on which duty has been paid. The learned authority also held that since it cannot be established that the goods on which duty has been paid have actually been exported, the claim of rebate has rightly been denied. In this regard the applicant submits that such a comparative statement was filed along with the appeal filed before the Commissioner (Appeals) and copy of the same were submitted during the course of personal hearing. In view of the above the applicant submits the learned Commissioner (Appeals) grossly erred in stating that no such comparative statement was submitted by the applicant. The applicant submits that for this reason alone the impugned being non-speaking in nature, cannot be sustained. The same comparative statement is attached with this application.

3.04. The applicant further submitted that the Commissioner (Appeals) failed to consider that HDPE barrels were cleared on payment of duty for export from the factory of its manufacture. At the time of removal no identification marks were put on the barrels, being packing material. Also there is no statutory requirement or trade requirement to put any identification mark/number on such barrels as in the Legal Metrology Act, 2009. Therefore, the only possible way of identification of these barrels from the export documents can be by correlating its size, capacity or weight.

3.05. The applicant submitted that the capacity of barrels exported corresponds with the barrels procured from the manufacturer indicates that the HDPE Barrels cleared on payment of Central Excise duty for export under claim of rebate were exported under the said shipping bills. The applicant further submits that on dividing the collective weight of the barrels with the number of barrels, it can be observed that the weight of each empty barrel is 9 kgs. If the difference between the gross weight and net weight of the export consignment as appearing in the shipping bill is divided by the number of packages (again appearing in the shipping bill) it can be observed that the tare weight of each package is exactly 9 kgs, which is nothing but the weight of empty HDPE barrels used for packing of ENA. Hence there can be no doubt that ENA was exported packed in the HDPE Barrels in respect of which the applicant had claimed rebate. Hence, for this reason alone the impugned order cannot be sustained.

3.06. The applicant further submits that the learned Commissioner (Appeals) failed to consider that the Invoices received by the applicant from the manufacturers of HDPE Barrels indicate the delivery address as the factory address of the manufacturer of ENA, which also conclusively establish that the HDPE Barrels were delivered in the factory of ENA manufacturers for filling of ENA and subsequent export. Copies of Invoices received from the manufacturers of HDPE Barrels along with Bill of lading, Escort Order, Form B (Transport Pass) and Form II (Transport in Bond Pass) was also submitted before the Commissioner (Appeals) along with the appeal memorandum. The applicant submits all these documents indicate that the HDPE Barrels procured on payment of duty was used for packing of the ENA and its subsequent export under the relevant Shipping Bills. Hence, the impugned order rejecting the appeal of the applicant cannot be sustained.

3.07. The applicant further submits that in para 6 of the impugned order the learned Commissioner (Appeals) held that Notification No. 19/2004-CE (NT)

dated 06.09.2004 provides a clear condition that the goods shall be exported after payment of duty directly from a factory or warehouse except as otherwise permitted. The procedure for-export-under claim of rebate is laid down in Notification No. 19/2004-CE(NT) dated 06.09.2004 wherein the Condition No. 2(a) has to be necessarily read with Condition No. 2 (b), which states that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture. This condition implies that the goods after removal has to be exported within six months whereas the Condition No. 2 (a) states that the goods have to be exported directly from the factory. A combined reading of these two conditions implies that the goods after removal from the factory can be stored at some place and thereafter exported, however the period elapsed from the date of clearance from the factory should not exceed six months. If both the conditions are mutually exclusive, the condition requiring direct export of goods from the factory would render the Condition No. 2 (b), which states that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture, redundant, inoperative or otiose.

3.08 It is an established principle of interpretation that if two views are possible one which validates a provision and the second which renders a provision nugatory or otiose, harmonious construction requires adoption of the view which allows a provision to survive. The idea underlying the principle of harmonious construction is that the law maker never intends to contradict itself by providing two repugnant provisions in the same statute. This rule postulates that when two or more provisions of the same statute are repugnant, it should be interpreted in such a manner that so as to give effect to both by harmonizing them with each other. In this regard reliance is placed on the following rulings of Hon'ble Supreme Court

a. M/s Suksha International - 1989 (39) E.L.T. 503 (S.C.).

- b. Union of India v. A.V. Narasimhalu - 1983 (13) ELT. 1534 (S.C.).
- c. Formica India v. Collector of Central Excise 1995 (77) E.L.T. 511 (S.C.).
- d. Mangalore Chemicals and Fertilizers Ltd.-1991 (55) E.L.T. 437 (S.C.).

3.09 The applicant relied on the decision of Hon'ble Supreme Court in RE: Vinergy International Pvt Ltd 2012 (278) ELT 407 (GOI) held that as regards rebate specifically, it is now a trite law that the procedural infraction of Notification, circular, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders.

3.10 The applicant also submitted that the Commissioner (Appeals) in the applicant's own case in Order in Appeal No.CD/567 to 569/RGD/15 dated 04.06.2015, relying on para 6 of the Board Circular No. 294/10/97-CX dated 30.01.1997, the judgement in the case of RE: Vinergy International Pvt Ltd - 2012 (278) ELT 407 (GOI) and the ruling of Hon'ble High Court at Madras in the case of Ford India Pvt. Ltd - 2011 (272) ELT 353 (Mad) allowed the appeals of the applicant by setting aside the Order in Original of the adjudicating authority rejecting their rebate claims. A similar view was also held by the learned Commissioner (Appeals) in the applicant's own case in Order in Appeal No. CD/738/RGD/15 dated 05.11.2015.

4. A Personal hearing the matter was held on 08.09.2021, Mr Prasannan Nambodiri, Advocate, appeared online and reiterated earlier submissions. In respect of remaining claims, he submitted that goods exported were ENA in HDPE barrels that is why claim is made for barrels. He submitted that Commissioner (A) had earlier allowed his claims and comparative statement

clearly establishes correlation between ARE-1 and Shipping Bill. He submitted that procedural infractions should not result in denial of benefit where duty paid goods were exported.

5. Government finds that in the instant four cases, the adjudicating authority had rejected the rebate claims on two grounds:

- (i) that the goods cleared under ARE-1 were "HDPE Barrels whereas the goods exported (as per the description in Shipping Bill and Bill of Lading) was Extra Neutral Alcohol i.e. "ENA" ;
- (ii) The goods were not exported directly from the factory of the manufacturer as prescribed under Notfn No. 19/2004-CE(NT)dated 06-09-2004.

The appellate authority while rejecting the applicant's appeals had held that:

"As the appellant is regularly exporting the goods and filing the rebate claim, it is imperative from them to file the reconciliation/comparative statements indicating the capacity of barrels in which ENA was packed and exported and the tare weight thereof exactly corresponds with the capacity and tare weight of HDPE barrels cleared on payment of duty from the factory of manufacturer and they should also obtain the necessary permission from the jurisdictional Commissioner to export the goods with HDPE barrels obtained from another manufacturer and exporting the same with their goods. In the instant case they had not submitted any reconciliation/ comparative statements to substantiate their contention that the same HDPE barrel with specific capacity has been exported by them".

6. Government finds that the main reason that Commissioner Appeal had rejected the impugned appeals was due to non-submission of reconciliation by the applicant. The applicant has submitted the impugned ARE-1s, Manufacturer's invoice, Shipping Bills, Bill of Lading, Escort Order and pass for Transport in Bond certified by the State Excise Authorities, reconciliation statement of the HDPE barrels procured from the factory of manufacture and used for the export of goods etc. along with the Revision Applications filed with the Revisionary Authority. On going through these documents Government finds:

- (i) The ARE-1s are certified by the Customs Authorities indicating that the Barrels described in the ARE1s are exported;
- (ii) The invoice of manufacturer of HDPE barrels shows that the said barrels were delivered at the factory of ENA manufacturer.
- (iii) The shipping bill refers to the ARE-1 under which the HDPE barrels were procured on payment of duty from the manufacturer and even on the reverse side of the ARE-I, there is a cross reference to the shipping bill as endorsed by the Customs authorities;
- (iv) The weight of each Barrel is 9 Kg is seen from the ARE-1. The shipping bill indicates the gross weight of ENA, net weight of ENA and the difference is tare weight which is the weight of the HDPE barrels as shown in the ARE-1. The correlation between the HDPE Barrels cleared from the factory of manufacture as shown in the ARE-1 and the quantity of Barrels (Filled with ENA) exported as shown in the Shipping Bill, is thus verifiable.

7. Government further finds the same Appellate authority in another two cases of the same applicant for the same goods allowed the rebate claim, when the applicant had submitted the reconciliation/comparative statement vide his OIA No. CD/567 to 569/RGD/15 dated 04/06/2015 and CD/738/RGD/2015 dated 30-09-2015. Commissioner Appeal's decision in respect of the two points are as follows:

".....5.2. The reconciliation/comparative statements submitted by the appellant indicates that the capacity of barrels in which ENA was packed and exported and the tare weight thereof exactly corresponds with the capacity and tare weight of HDPE barrels cleared on payment of duty from the factory manufacturer. Hence, the contention of appellant that the consignment of ENA was exported packed in such duty paid HDPE barrels is not devoid of any merits. Furthermore, I also find also merit in the contention of the appellant that Extra Neutral Alcohol being in liquid form cannot be exported without being packing in a container. Consequently, the rebate claims the appellant also cannot be denied to them.

5.3. Since the Custom Officer has affixed his signature and written the shipping bill number on the reverse of the ARE-1's produced by the appellant, the lower authority had no scope for doubting the fact of export of goods in the said ARE-1. It is also an established practice that such stamped and signed copy of ARE-1 is accepted as proof of export of the goods contained therein.

Hence, the impugned orders which have rejected the rebate claims of the appellant on the ground that the fact of export of HDPE barrels have not been proved, cannot be sustained.

6.....The second reason for rejection is that the goods have not been directly exported from the factory of manufacture. It has been accepted by the appellant himself that the goods i.e. HDPE Barrels were taken to sugar factories, filled with ENA and then exported. On going through the Notification No. 19/2004-CE (NT) dated 6.09.2004, I find that the relevant portion reads as under:

"(1).....

(2) Conditions and limitations:

(a) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Custom by a general or special order,"

6.1 From the above, it is amply clear that the said Notification provides a condition that the goods shall be exported after payment duty, directly from a factory or warehouse except as otherwise permitted. I find that in para 6 of the Board Circular No.294/10/97-CX dated 30.01.1997 it was clarified that such condition can be condoned provided proof that goods have been actually exported is produced.....

6.2.....From the records of this appeal I have come to the conclusion that fact of export of HDPE barrels cleared on payment of duty is established beyond doubt. Hence keeping in views the contents above para in the said circular the condition to export goods directly from the factory should be deemed to have been waived. I also find that when the fact of export of goods cleared on payment of duty under claim of rebate is conclusively established failure to export the goods directly from the factory would be a mere procedure. Failure to comply with such procedure would not have any bearing on the rebate claims of the appellant."

8. Commissioner Appeal has thus held that the applicant is eligible for rebate claim. Government finds the present revision applications are identical and the facts of the case are the same. The documents submitted by the applicant indicates that the goods shown in the ARE1 are exported. In view of the above Government holds that the applicant is eligible for the rebate claim in the instant revision applications except the following Rebate Claims are not allowed as the same are found to be time barred viz RC Nos.(i) 22606/6-01-

2015 for an amount of Rs.56559/-; (ii) 22607/6-01-2015 for an amount of Rs.67871/-; (iii) 22608/6-01-2015 for an amount of Rs.11312/-; (iv) 22888/9-01-2015 for an amount of Rs.22980/- & (v) 22889/9-01-2015 for an amount of Rs.68939/-. The applicant has also admitted that there was delay in filing the said claims at the time of the personal hearing.

9. Accordingly, Government sets aside the Orders in Appeal No. CD/162/RGD/2014 dated 29.12.14, CD/29/RGD/2016 dtd 21.01.2016, CD/23/RGD/2016 dtd 21.01.2016 & CD/279/ RGD/2016 dtd 25.04.2016 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II and allows Revision Applications filed by the applicant

10. The Revision Applications Nos. (i) 195/116/2015-RA; (ii) 195/93/2016-RA except to the Rebate claims mentioned at Para8; (iii) 195/96/2016-RA & (iv) 195/ 434/ 2016-RA are allowed.

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

900-903
ORDER No. /2021-CX (WZ)/ASRA/Mumbai DATED 22.12.2021.

To,
M/s Urvi Exim,
707, Swastik Chambers,
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Mumbai-400071

Copy to:

1. The Commissioner of GST & CX, Appeals, 1st Floor, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
2. The Deputy Commissioner (Rebate), GST & CX Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.

~~22/12~~ Sr. P.S. to AS (RA), Mumbai

4. Guard file.
5. Notice board.