

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. 195/276/2014-RA /
F. No. 195/18/2016-RA / 1535

Date of Issue: 01.03.2021

ORDER NO. ⁹¹⁻⁹² /2021-CX (WZ) /ASRA/MUMBAI DATED 17.02.2020 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 Asian Paints Ltd.
Asian Paints House,
6A, Shantinagar,
Vakola, Santacruz(East),
Mumbai - 400 055

Respondent : Commissioner of Central Excise & Service Tax, LTU, Mumbai.

Subject: Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 & OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015 passed by Commissioner(Appeals), Central Excise, Mumbai-I.

ORDER

These revision applications have been filed by M/s Asian Paints Ltd., Asian Paints House, 6A, Shantinagar, Vakola, Santacruz(East), Mumbai – 400 055 (hereinafter referred to as “the applicant”) against OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 & OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015 passed by Commissioner(Appeals), Central Excise, Mumbai-I.

2.1 The applicant is engaged in the manufacture and distribution of paints, varnishes, thinners and allied products. The units of the applicant are located at Bhandup, Ankleshwar, Patancheru, Kasna and Rohtak and also clearing the dutiable goods on payment of excise duty to Nepal under claim of rebate in terms of Rule 18 of the CER, 2002 and the conditions, limitations and safeguards mentioned in Notification No. 19/2004-CE(NT) dated 06.09.2004. The applicant had filed several refund claims w.e.f. 01.03.2012. The Deputy Commissioner had sanctioned these claims totalling to Rs. 6,78,290/- under four(4) separate OIO's.

2.2 The Commissioner, Central Excise & Service Tax, LTU Mumbai found that the OIO's were not legal and proper and therefore directed the Deputy Commissioner, LTU to file appeal before the Commissioner(Appeals) against these OIO's. The appeals were filed on the ground that the invoices issued by the applicant did not contain the mandatory details such as description of goods, classification, rate of duty etc. as prescribed under Rule 11 of the CER, 2002 thereby rendering them improper documents to effect clearance of goods from their factory. It was therefore averred that the rebate claims had been processed on the basis of improper documents and hence the sanction of rebate claims was not in order.

2.3 On taking up the appeal for decision, the Commissioner(Appeals) found that the invoices issued by the applicant do not meet the norms prescribed under Rule 11 of the CER, 2002 and that the goods had been cleared from the factory without issuing proper invoice prescribed under the rule. The

Commissioner(Appeals) therefore vide OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 upheld the appeal filed by the Department and set aside the OIO's.

3.1 Likewise in another set of cases, the applicant had filed 36 rebate claims in respect of their various plants. On scrutiny of 34 rebate claims, it was found that the invoices did not contain the mandatory details such as description of goods, classification, rate of duty etc. as required under sub-rule (2) of Rule 11 of the CER, 2002. These invoices did not meet the norms prescribed under Rule 11 of the CER, 2002 and hence appeared to be improper documents to effect clearances of goods from the factory. The adjudicating authority therefore rejected the rebate claims by stating that the goods have been cleared by the applicant contravening the provisions of the CER, 2002 without issuing proper invoice under Rule 11 of the CER, 2002. While passing these orders, the adjudicating authority placed reliance upon the decision of the Commissioner(Appeals) in OIA No. PD/63-66/LTU/MUM/2014 dated 29.05.2014 where the Commissioner(Appeals) had set aside OIO's sanctioning rebate on the strength of such invoices which were held to be in contravention of Rule 11 of the CER, 2002. Two rebate claims out of these 36 rebate claims had been sanctioned by the rebate sanctioning authority.

3.2 The applicant was aggrieved by the sanction of the rebate claims and therefore filed appeal before Commissioner(Appeals). Similarly, the Commissioner found that the two orders sanctioning the rebate claims were not legal and proper and therefore directed appeal to be filed before the Commissioner(Appeals). Commissioner(Appeals) found that the invoices issued by the applicant do not meet the norms prescribed under Rule 11 of the CER, 2002 and that the goods had been cleared from the factory without issuing proper invoice prescribed under the rule. The Commissioner(Appeals) therefore vide OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015 rejected the appeals filed by the applicant and upheld the appeals filed by the Department.

4. Being aggrieved by the OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 and OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015, the applicant has filed revision applications on the following grounds :

(a) The orders passed by the Commissioner(Appeals) are non-speaking orders passed without application of mind; that no findings have been given on the submissions and evidences produced before the Commissioner(Appeals) and that there is no independent finding of Commissioner(Appeals) in the impugned orders.

(b) It was submitted that as per the provisions of Rule 18 of the CER, 2002, it was clear that for availing rebate of duty, the primary requirement was the export of excisable goods and compliance of conditions and limitations as specified in the notification. They submitted that refund application had been filed by them on the basis of the fact that the goods had been exported within the statutory time limit of six months from the date of clearance from the premises of the manufacturer; that the duty payment particulars could be verified from the relevant invoices issued under Rule 11 of the CER, 2002 and that the fact of clearance of goods from the factory, the duty paid nature of the export goods and subsequent export cannot be denied.

(c) Referring the notification no. 19/2004-CE(NT) dated 06.09.2004, the applicant submitted that none of the conditions, limitations and procedures prescribed in the notification mentions compliance of Rule 11 of the CER, 2002 and inferred that mere non-mentioning of certain details in the excise invoice cannot debar the exporter from his legal right for refund of duty which arises under Section 11B of the CEA, 1944 so long as the core aspect of export under payment of duty has been complied.

(d) By making reference to para 8 of chapter 8 of the CBEC Manual of Supplementary Instructions, the applicant submitted that they were required to file rebate claim with original copy of ARE-1, invoice issued under Rule 11 of the CER, 2002, self-attested copy of shipping bill and self-attested copy of bill of lading. The rebate sanctioning authority was to satisfy himself that the goods cleared for export under the relevant ARE-1 were actually exported as evidenced by the original and duplicate copies of ARE-1 duly certified by customs and that

the goods are duty paid as certified on the triplicate copy of ARE-1 received from the jurisdictional Range Superintendent and then sanction the rebate in part of in full. In case of any reduction or rejection of the claim, an opportunity was to be provided to the exporter to explain their case and a reasoned order was to be issued. The applicant submitted that they had filed all the required documents as prescribed in the said para of the CBEC Manual of Supplementary Instructions.

(e) The applicant submitted that the Commissioner(Appeals) had reiterated the grounds of appeal filed by the Department at para 10.2 of the OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 and in para 4 of OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015; that refund should not be allowed on the sole ground of non-compliance of Rule 11 of the CER, 2002 and that the copies of invoices submitted alongwith the rebate claims do not contain the mandatory details such as description of goods, classification and rate of duty. In this regard, the applicant submitted that they had complied with all the requirements as mentioned under sub-rule (2) of Rule 11 of the CER, 2002 and that all the details in respect of classification and description of goods had been clearly stated in consignment challan which formed an integral part of the applicants excise invoices referred to as "Consignment Challan Cum Excise Invoice".

(f) The applicant stated that the CET headings for the goods are mentioned in the excise invoice alongwith description of the product. The rates of education cess and secondary and higher education cess are also reflected in the consignment challan cum excise invoice. They stated that the rate of duty had not been mentioned in the consignment challan cum excise invoice due to system error. However, the amount of excise duty applicable was clearly shown in the consignment challan cum excise invoice and that the goods had been cleared charging excise duty of 12.36% which could be verified from the consignment challan cum excise invoice.

(g) The applicant placed reliance upon the judgments/decisions in the case of Dish TV India Ltd. vs. Commissioner of Customs, New Delhi[2013(298)ELT 563(Tri-Del)], Chamunda Pharma Machinery Pvt. Ltd. vs. CCE, Ahmedabad-I,

Ford India Pvt. Ltd. vs. Assistant Commissioner of Central Excise, Chennai[2011(272)ELT 353(Mad)], UK Paints (India) Pvt. Ltd. vs. CCE, Delhi, Modern Process Printers[2006(204)ELT 632(GOI)], Jumbo Mining Ltd. vs. CCE, Hyderabad, Cosmonaut Chemicals vs. UOI, CCE, Allahabad vs. Hindalco Industries Ltd.[2013(293)ELT 208(All)], Aditi Foods (I) Pvt. Ltd. in OIA No. PII/PAP/208/2008 dated 21.10.2008, Sanket Industries Ltd.[2011(268)ELT 125(GOI)], Formica India vs. Collector of Central Excise[1995(77)ELT 511(SC)], CCE, Vapi vs. Unimark Remedies Ltd.[2009-TIOL-357-CESTAT-MUM = 2009(15)STR 254(Tri-Ahmd)], CST, Delhi vs. Convergys India Pvt. Ltd.[2009-TIOL-888-CESTAT-Del = 2009(16)STR 198(Tri-Del)], CBAY Systems (India) Pvt. Ltd. vs. CCE, Mumbai[2011(21)STT 668(Tri-Mum)], Parameswari Textiles vs. CCE, Tirichurapalli[2011(22)STR 625(Tri-Chen)], CCE, Kolkata vs. Krishna Traders[2007(216)ELT 379(Tri-Kol)], Birla VXL Ltd. vs. Commissioner[1998(99)ELT 387(Trb)], GOI vs. Bajaj Electricals Ltd.[2012(281)ELT 146], Kamud Drugs Pvt. Ltd. vs. Commissioner(Appeals), Pune-II, Kosmos Healthcare Pvt. Ltd. vs. Asstt. Commr. of C. Ex., Kolkata-I[2013(297)ELT 345(Cal)], UOI vs. Suksha International[1989(39)ELT 503(SC)], Union of India vs. A. V. Narasimhalu[1983(13)ELT 1534(SC)], Ran's Pharma Corporation[2014(314)ELT 953(GOI)], Cotfab Exports[2006(205)ELT 1027(GOI)], UM Cables Ltd. vs. UOI[2013(293)ELT 641(Bom)] & Madhav Steel and R. J. Virwadia vs. UOI[2010-TIOL-575-HC-MUM-CX].

(h) The applicant submitted that it was settled law that substantive benefit cannot be denied for procedural lapses and that procedures have been prescribed to facilitate verification of substantive requirement. They stated that the total excise duty of Rs. 6,78,290/- and Rs. 2,77,54,726/- respectively under the two impugned orders was actually not payable on the exported goods but the duty was paid at the time of clearance of goods for export and refund of such duty was claimed. The fact of the goods having been exported out of India was not under dispute. The applicant averred that they should not be denied the benefit available on export of goods to Nepal. It was submitted that by denying the rebate claim, the Department was trying to withhold such duty without authority of law and any amount collected without authority of law had to be

refunded as per the judgments in the case of Commissioner of Sales Tax, UP vs. Auriaya Chamber of Commerce, Allahabad[1986(25)ELT 867(SC)], Commissioner vs. Suncity Alloys Pvt. Ltd.[2006(205)ELT 1093(GOI)] & Shreeji Colours Chemicals Industries vs. CC, Vadodara[2009(233)ELT 367(Tri-Ahmd)].

(i) The applicant averred that sub-rule (2) of Rule 11 of the CER, 2002 was a procedural provision. The substantive right to claim rebate arises under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Since they had fulfilled the conditions under the said notification while clearing the goods for export, rebate cannot be denied as sub-rule (2) of Rule 11 of the CER, 2002 does not affect substantive or vested rights of the applicants.

(j) The applicant pointed out that they had filed revision application against OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 which had been numbered as F. No. 195/276/2014-RA and requested that the revision application against OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015 be taken up simultaneously alongwith the said revision application.

5.1 The applicant was granted a personal hearing in the matter on 18.04.2018. Shri Ajay Patel, Sr. Manager(Taxation), Shri Rohit Gupta, Sr. Manager(Accounts) and Shri Junaid Shaikh, Officer(Taxation) appeared on their behalf. They reiterated their submissions in the revision application, written submissions filed by them, cited case laws and submitted sample copies of invoices. It was pleaded that substantial relief of rebate cannot be denied for mere technical infraction. On change in the Revisionary Authority, the applicant was again granted personal hearing in the matter on 09.12.2019. Shri Rajmohan Asokan, Manager Taxation and Shri Junaid Shaikh, Senior Officer, Taxation appeared on behalf of the applicant. They submitted that both RA's had been filed on the same issue and filed written submissions reiterating their grounds for revision. It was stated that although all particulars were not appearing on the front page of the invoice, the SKU level details were mentioned in the attachment. They submitted that the invoice and the consignment challan could be correlated. They further stated that they had received favourable orders in cases involving the same issue in other locations.

5.2 The applicant was granted a personal hearing on 23.12.2020 on change in Revisionary Authority. Shri A. Rajamohan, Manager Taxation and Shri Junaid Shaikh, Senior Officer, Taxation appeared on behalf of the applicant. The applicant submitted separate written submissions in respect of the revision applications. They submitted that their invoice alongwith consignment challan accompaniment(CCA) fulfils the requirement of Rule 11 of the CER, 2002, that the duty paid nature and export of the goods was not in dispute therefore the rebate claim should not have been rejected.

5.3 The written submissions filed by the applicant at the time of personal hearing reiterated the grounds for revision in the Revision Applications filed. The applicant also relied upon the orders passed in OIA No. HYD-EXCUS-MD-AP2-0042-18-19 dated 31.07.2018 and OIA No. NOI-EXCUS-001-APP-727-20-21 dated 28.09.2020 in their own case whereby those Commissioner(Appeals) had held that the rebate claims in respect of goods exported to Nepal on payment of excise duty would be admissible to them even where it had originally been denied on the ground of contravention of Rule 11 of the CER, 2002 in similar circumstances.

5.4 The applicant made further submissions vide letter dated 16.02.2021. The applicant submitted that the format of excise invoice cum consignment challan(CCA) used by them for exports of excisable goods to Nepal and other countries was the same format which they use for domestic clearances of excisable goods. They attached sample copies of such excise invoices cum consignment challan(CCA) issued for domestic clearances of excisable goods for the relevant period. They stated that the format of excise invoice used by them for exports, as well as for domestic excisable goods was a valid document under Rule 11 of the CER, 2002 as it fulfilled all the conditions of the said rules. The applicant therefore contended that they would be eligible for the benefit of refund of excise duties paid on export of goods to Nepal.

6. Government has carefully gone through the case records, the written submissions made by the applicant, their submissions at the time of personal hearing, the additional submissions filed by them, the revision applications, the impugned orders and the orders passed by the adjudicating authority. Government finds that the single issue for decision in these revision applications is whether the applicant would be eligible for rebate of duty paid on goods exported to Nepal without issuing proper invoice under Rule 11 of the CER, 2002. The factual matrix of the case is that the Department has found the "Consignment Challan Cum Excise Invoice" issued by the applicant to be deficient as it does not contain mandatory details such as description of goods, classification, rate of duty etc.

7.1 The Departments case is primarily based on the interpretation of sub-rule (2) of Rule 11 of the CER, 2002. The text thereof is reproduced below.

"(2) The invoices shall be serially numbered and shall contain the registration number, address of the concerned Central Excise Division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon."

Government observes that the excise invoice titled as "Consignment Challan Cum Excise Invoice" issued by the applicant bears a pre-printed serial no., mentions the name and address of the consignee, registration no., details a summary of the quantity of the goods, the kind of packing in which the goods are being transported (drums, cartons, jars, tins, sacks etc.) and their numbers, their total value, gross weight, assessable value, excise duty and cess. This Consignment Challan Cum Excise Invoice also contains the vehicle no. and date and time of removal of the goods. It contains the address of the jurisdictional Central Excise formation. The said document also records the CCA No. (Consignment Challan Accompaniment No.) and many contain a statement to the effect that "S.K.U. Level details & rate of Excise duty are as per consignment challan Accompaniment (CCA) No.". On perusal of the relevant "CCA", it is observed that it bears cross reference with the relevant

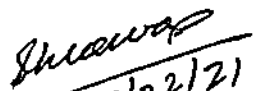
Excise Invoice. In effect, what is lacking in the document titled "Consignment Challan Cum Excise Invoice" is the description and classification of the goods.

7.2 On going through the CCA corresponding with the respective copies of Consignment Challan cum Excise Invoice, it is observed that amongst other details which correlate these two documents, the CCA mentions the description and classification of the goods. The CCA bears reference of the corresponding Consignment Challan cum Excise Invoice No., consignee name and address, classification of the goods, description, quantity, volume, MRP, assessable value, excise duty, cess and the summary of packages (drums, cartons, jars, tins, sacks etc.). When the Consignment Challan cum Excise Invoice and the CCA are seen together, Government finds that the stipulation under Rule 11 of the CER, 2002 has been fully adhered to. With regard to the Department's contentions that the Consignment Challan cum Excise Invoice is not a valid document under Rule 11 of the CER, 2002 is concerned, Government finds that Rule 11 does not specify that all the required details must find mention on a single page. So long as the central excise invoice and the CCA can be harmonized without any conflict between these two documents, the provisions of Rule 11 of the CER, 2002 can be said to have been adhered to. Contention of the Department could perhaps have been given some credence if the "Consignment Challan Cum Excise Invoice" was not accompanied by the CCA No. (Consignment Challan Accompaniment No.). Orders of the rebate sanctioning authority record the submissions of the applicant regarding the CCA which is attached to the invoice. Therefore, Government holds that the CCA is an integral part of the central excise invoice and these documents together fulfil the mandate of Rule 11 of the CER, 2002.

8. The applicant has made alternative submissions to the effect that domestic clearances are also effected in the same manner under the cover of the same set of documents. Since Rule 11 of the CER, 2002 applies to both domestic clearances and export clearances, it stands to reason that if the procedure of issuing "Consignment Challan Cum Excise Invoice" along with a "CCA (Consignment Challan Accompaniment)" was not consistent with the

provisions of Rule 11 of the CER, 2002, the Department should also have objected to domestic clearances of excisable goods under such documents. However, neither the impugned orders, the orders of the adjudicating authorities nor the grounds of appeal before the Commissioner(Appeals) in the cases where rebate had been sanctioned by the original authority contained reference to any case made out by the Department regarding the invoices being issued by the applicant for domestic clearances. It is relevant to note that in many of the rebate claims involved under the impugned orders, the rebate sanctioning authority had originally sanctioned the rebate claims. Since the Department has not found anything objectionable in the procedure being followed by the applicant for domestic clearance of their excisable goods, ergo the same procedure when followed for export clearance of excisable goods cannot be found fault with. Surely, there cannot be two different interpretations of Rule 11 of the CER, 2002 for domestic clearances and export clearances. In addition to these findings on the legitimacy of the central excise invoices, Government notes that there is no dispute about the duty paid character or the factum of export of the excisable goods. It has been reiterated time and again in the judicial fora that technical breaches cannot be ground for the denial of substantial benefit of rebate.

9. In the result, Government modifies the OIA No. PD/63 to 66/LTU/MUM/2014 dated 04.06.2014 & OIA No. SK/06 to 41/LTU/MUM/2015 dated 30.10.2015 passed by Commissioner(Appeals), Central Excise, Mumbai-I by holding that the rebate claims filed by the applicant are admissible and allows the revision applications with consequential relief.


17/02/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ⁹¹⁻⁹² /2021-CX (WZ) /ASRA/Mumbai DATED 17.02.2021

To,
M/s Asian Paints Ltd.
Asian Paints House,
6A, Shantinagar,
Santacruz(E),
Mumbai 400 055

Copy to:

1. The Commissioner of CGST & CX, Navi Mumbai Commissionerate
2. The Commissioner of CGST & CX, Vadodara-II Commissionerate
3. The Commissioner of CGST & CX, Medchal Commissionerate
4. The Commissioner of CGST & CX, Gautam Buddh Nagar Commissionerate
5. The Commissioner of CGST & CX, Panchkula Commissionerate
6. The Commissioner of CGST & CX, (Appeals), Raigad
7. Sr. P.S. to AS (RA), Mumbai
- ✓ 8. Guard file
9. Spare Copy