

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.195/354/2015/4422

Date of Issue:- 04.10.2022

ORDER NO. 912 /2022-CEX (WZ) /ASRA/MUMBAI DATED 28.09.2022 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.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NGP/EXCUS/000/APPL/239/15-16 dated 27.07.2015 passed by the Commissioner (Appeals), CGST, Nagpur.

Applicant :- M/s. Videocon Industries Limited, 14th KM Stone, Aurangabad Paithan Road, Chitegaon, Aurangabad-431105.

Respondent :- Commissioner, GST & CX, Aurangabad.

ORDER

This Revision Application has been filed by M/s. Videocon Industries Limited, 14th KM Stone, Aurangabad Paithan Road, Chitegaon, Aurangabad - 431105 (hereinafter referred to as "the applicant") against Order-in-Appeal NGP/EXCUS/000/APPL/239/15-16 dated 27.07.2015 passed by the Commissioner (Appeals), CGST, Nagpur.

2. The brief facts of the case are that the applicant M/s. Videocon Industries Limited, holding Central Excise Registration No. AABCV4012HXM002 for manufacturer of excisable goods falling under chapter No. 84 & 85 of Central Excise Tariff Act, 1985. The said noticee also exports the excisable goods on payment of duty and claims the rebate on such export made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004

3.1 The applicant filed 10 rebate claims amounting to Rs. 8,41,583/- on the grounds that goods were cleared for export on payment of duty. The applicant submitted these rebate claims and informed in their forwarding letter dated 08.12.2013 that they have filed rebate claims application against ARE No.364/2012-12 dt. 08.01.2013, 367/2012-13 dt, 10.01.2013, 370/2012-13 dt. 14.01.2013, 374/2012-13 dt. 22.01.2013, 391/2012-13 dt, 31.01.2013, 400/2012-13 dt. 07.02.2013, 404/2012-13 dt. 12.02.2013 & 407/2012-13 dt. 13.02.2013 along with all relevant documents along with FIR Copy filed by M/s First Flight Courier Agency in Kolkata Police Station, stating that the original (White) and duplicate (Buff) copies of said ARE-1 Nos. have been misplaced in transit, hence they were unable to produce the same for sanction of rebate claims. They submitted the photo copies endorsed by Land Customs Station for refund claim purpose. Further they submitted that they undertake to submit the original and duplicate copies of these ARE-1s to the office, if found and they will not claim rebate claims on basis of these ARE-1s. They also informed vide letter dt. 19.03.2014 that original & duplicate copy of ARE No.396/2012-13 dt. 04.02.2013 &

500/2012-13 dt. 24.03.2013 misplaced in transit & FIR filed in Bidkin Police Station. The noticee submitted along with these rebate claims the self attested photo copies of following documents.

- i) First Information Report bearing printed page No.80750 dated 07.03.2013 lodged in the Metiabruz Police Station, Kolkata (Original Carbon copy and also photo copy) by M/s First Flight Courier Company's FIR dated 06.01.2014 filed with Bidkin Police Station. The Original Buff copy of ARE-1 No.500/2012-13 dt. 24.03.2013
- ii) Photo copy of ARE-1 (Pink copy) duly endorsed by the Land Customs Station Officers Sonauli and Raxaul Land Customs Stations in ARE-1 Part-B, which reads as "Certified that the above mentioned consignment has been duly identified and has passed the land frontier today at (given date) in its original conditions under Bill of Export No. (given Bill of Export No. and date) under their office seal and stamp respectively.
- iii) Lorry Receipt/Consignment note.
- iv) Factory Invoice / Packing list.
- v) Proforma/Customs Invoice
- vi) Duty debit particulars.
- vii) Bank Realization Certificate issued by DGFT.

3.2 Deputy Commissioner, Central Excise, Customs & Service Tax, Aurangabad Division-IV rejected the 10 rebate claims vide Order-in-Original No.02/CEX/DC/2014 -15 dated 31.10.2014 due to non submission of original copy of ARE-1.

3.3 Being aggrieved, the applicant preferred appeal against the Order-in-Original No.02/CEX/DC/2014-15 Dated 31.10.2014 passed by Deputy Commissioner, Central Excise, Customs & Service Tax, Aurangabad Division-IV before Commissioner (Appeals). The Commissioner (Appeals) vide Order in Appeal NGP/EXCUS/000/APPL/239/15-16 dated 27.07.2015 upheld the Order-in-Original while observing that:-

"11. I find that the appellant has filed rebate claim of Rs. 8,41,583/- without submission of original ARE-1s, being the Central Excise duty paid on the goods exported by them. It is also on record that the duplicate copy of the said ARE-1 also has not been received. They appeared to have submitted photocopies of the same. I find that rebate claim of Rs. 8,41,583/- has been rejected by the Adjudicating Authority due to non-submission of original copy of ARE-1 required as per para 8.3 of Part-1 of CBEC Central Excise Manual of supplementary instructions.

12. Para 8.4 of the same supplementary instructions, read with Notification 19/2004-CE(NT) dated 06/09/2004 stipulates that the Assistant Commissioner shall satisfy himself that the goods cleared for export under the relevant ARE-1 were actually exported by comparing the original and the duplicate copies of the ARE-1 duly certified by Customs, and

that the goods are of duty paid character as certified by the triplicate copy of the ARE-1 received from the Range Superintendent, and thereafter shall sanction the rebate.

13. I find that the appellant has not produced original copy of the ARE-1 along with the rebate claim and the duplicate copy also was not received with the signature of the Customs Officer as proof that goods have been exported. Mere submission of the triplicate copy would not conclusively prove the fact of export of the goods in as much only examination and sealing of the container details are available as certified by the officers of the Central Excise range and not the signature of the Customs Officer of the port of export. In this case as very crucial and relevant documents are not available, the lower authority has rightly rejected the claim under Section 11B of the Central Excise Act, 1944 and Rule 18 of the Central Excise Rules, 2002 read with Notification No-19/2004-CE(NT)dt 6-9-2004. 14. It is also observed that the Appellant has not filed any copies of the Shipping Bills, Bill of Lading and Invoices along with the Appeal Memorandum depriving the undersigned to verify even the basic facts. The only documents filed are a copy of the statement of Bank Realisation without any supporting documents which is no way a conclusive proof of export of goods, In view of the above, I am constrained to reject the appeal as unsubstantiated. In the absence of these basic documents no further verification is possible and hence the case laws quoted by the Appellant have no relevance and reject the appeal accordingly."

4. Aggrieved by the said Order in Appeal applicant has preferred Revision Applications mainly on the following grounds-

4.1. LEARNED COMMISSIONER(APPEAL) WAS IN SERIOUS ERROR IN REJECTING THE APPEAL ON GROUND THAT SUPPORTING DOCUMENTS WERE NOT SUBMITTED WITH APPEAL WHEREAS ALL THE SUPPORTING DOCUMENTS WERE FILED WITH REFUND CLAIMS

4.1.1 No opportunity was granted by Learned Commissioner(Appeal) and no letter was issued to the Applicant by Learned Commissioner(Appeal) calling for the supporting documents. It was already mentioned in the Appeal and in the Order-in-Original No. 02/CEX/DC/2014-15 dated 31.10.2014 that the evidence of original certification by Customs Officers of Sonauli/ Raxual Customs Station on photocopy of ARE-1, Bills of Export, BRC, excise invoice, export invoice, evidence of payment of duty, transport documents, copy of FIR for loss of Original & Duplicate copy of ARE-1 and Undertaking were filed by the Applicant along with the Rebate claims. Further, in some cases the certificate from Customs Officers of Land Customs Station in India about the actual export of goods and the certificate from Nepal Customs regarding import of goods in Nepal were also submitted with the Refund claims.

4.1.2 It was open for the Commissioner(Appeal) to call for the case file/record from the Deputy Commissioner, Central Excise, Division IV, Aurangabad if the supporting documents were required to be examined.

4.1.3 At the time of personal hearing in written Submissions it was submitted that all the supporting documents were filed before the Deputy Commissioner of Central Excise. Further, no such directions were issued by the Commissioner (Appeal) for production of copies of supporting documents before him.

4.2. LEARNED COMMISSIONER(APPEAL) WAS PATENTLY WRONG ON FACTS IN CONCLUDING THAT THE SIGNATURES OF CUSTOMS OFFICER OF PORT OF EXPORT ARE NOT AVAILABLE ON RECORD

The Applicant had with the Refund claims filed in all cases the Original Certificates by the Customs Officer of Land Customs Station at Indo-Nepal Border on Photocopy of ARE-1 and/or separate certificate about the actual crossing of the goods from the Indian Border by Indian Customs and in some cases the certificate from Nepal Customs certifying the import of goods in Nepal. The copies of the same are also enclosed with the Application. Therefore, the finding of Commissioner(Appeal) that signatures of Customs Officer of Port of Export are not available is patently wrong as it is contrary to record. The Jurisdictional Range Inspector & Superintendent has certified on part 'A' of the said ARE-I's that duty has been paid on the goods and that the goods has been examined as well as the Jurisdictional Land Customs Stations Officers Sonauli Raxual Land Customs Stations has certified on part 'B' of the said ARE-I's that the goods have been passed into the territory of Nepal under his supervision. Also, a xerox copy of said Original ARE-I's has been duly attested by the Jurisdictional Land Customs Stations Officers Sonauli Raxual Land Customs Stations & the said ARE I Forms were submitted along with rebate claim application.

4.3. NO ENQUIRY WAS DONE FROM CUSTOMS OFFICERS OF LAND CUSTOMS STATION WHO CERTIFIED EXPORT OF GOODS

The Customs Officers of Land Customs Station Sonauli/Raxaul certified the actual export of goods by making Original endorsement on ARE-1 Forms/giving separate certificates of export of goods under dispute. The certificates were produced before the Deputy Commissioner. If there was any doubt about the export of goods; the Department could have made enquiry from the Customs Officers of Land Customs Station. No enquiry was done as there was no dispute about the export of goods. On this ground alone the impugned Order is not sustainable.

4.4. THERE IS NO CONTRAVENTION OF RULE 18 OF CENTRAL EXCISE RULES

There is no dispute about the export of goods which have been exported and the BRC has also been received and was filed with the Refund claim. Further, there is no dispute that the excise duty was paid by the Applicant and the excise invoices were also issued by the Applicant.

4.5. ISSUE INVOLVED HAS ALREADY BEEN DECIDED BY JURISDICTIONAL HIGH COURT IN FAVOUR OF APPLICANT WHEREIN IT HAS BEEN RULED THAT REBATE CLAIMS CANNOT BE REJECTED MERELY ON GROUND OF NON SUBMISSION OF ORIGINAL & DUPLICATE COPIES OF ARE-1 FORMS, IN THE FOLLOWING CASES-

4.5.1 Jurisdictional High Court of Bombay in case of ZANDU CHEMICALS LTD. Versus UNION OF INDIA 2015 (315) E.L.T. 520 (Bom.).

4.5.2 Jurisdictional High Court of Bombay case of Um Cables Limited vs Union Of India And Others AIT-2013-152-HC.

4.5.3 Reliance is also placed on Jurisdictional Bombay High Court Ruling in case of M/s Madhav Steel Versus Union of India.

4.5.4 The issue is also settled in favour of Applicant by Punjab & Haryana High Court Ruling in case of SPL INDUSTRIES LTD For UNION OF INDIA-2013(294)ELT 188(PID) C.W.P. of 2012, decided on 31-1-2013.

4.5.5 The Applicant further relies on Jurisdictional Bombay HC Ruling in case of CUMMINS INDIA LTD. Versus UNION OF INDIA 2013 (288) EL.T. 330 (Bom.).

4.5.6 Hon'ble Gujarat High Court in the case of Cosmonaut Chemicals VUOI 2009 (233) ELT 46 (Guj. HC).

4.6. ISSUE INVOLVED HAS ALSO BEEN DECIDED BY REVISIONARY AUTHORITY IN FAVOUR OF APPLICANT. IN THE FOLLOWING CASES-

4.6.1 Revisionary Authority in case of UNITED PHOSPHORUS LTD. 2015 (321) ELT. 148 (G.O.I.) Order No. 358/2014-CX dated 26-11-2014 in F. No. 195/192/2012-RA-CX.

4.6.2 Revisionary Authority in the case of M/s GSL (India) Ltd reported in 2012(276)ELT 116(G.O.1.).

4.6.3 Joint Secretary(RA) in case of SHALINA LABORATORIES PVT. LTD. 2014 (312) E.L.T. 868 (G.O.I.) Order No. 396/2013-CX., dated 17-5 2013 in F. No. 198/142/09-RA-De novo.

4.6.4 IN RE: SHANTILAL & BHANSALI 1991 (53) E.L.T. 558 (G.O.I.) it has been held by the Revisionary Authority that procedural lapses and technical deficiencies are to be condoned so long as there is substantial compliance with the provision.

4.6.5 The Hon'ble Revisionary Authority In Re: NON-FERROUS MATERIALS TECHNOLOGY DEVELOPMENT CENTRE 1994 (71) E.L.T. 1081 (G.O.I.).

4.6.6 The Hon'ble Tribunal in the case of ALPHA GARMENTS Vs COLLECTOR OF CENTRAL EXCISE, NEW DELHI 1996 (86) E.L.T. 600 (Tribunal).

4.6.7 The Hon'ble Tribunal in the case of ATMA TUBE PRODUCTS LTD. COLLECTOR OF C. EX., CHANDIGARH 1998 (103) E.L.T. 270 (Tribunal).

4.6.8 The Hon'ble Revisionary Authority IN RE: HARISON CHEMICALS 2006 (200) E.L.T. 171 (G.O.I.).

4.6.9 The Hon'ble Revisionary Authority Government of India RE: COMMISSIONER OF CUS. & C.EX., NAGPUR 2006 (200) E.L.T. 175 (G.O.I.).

4.6.10 That the Hon'ble Revisionary Authority Government of India : RE: MODERN PROCESS PRINTERS 2006 (204) E.L.T. 632 (G.O.I.).

4.6.11 That the Hon'ble Revisionary Authority IN RE: COTFAB EXPORTS 2006 (205) E.L.T. 1027 (G.O.I.).

4.6.12 Joint Secretary(Revisionary Authority) in case of 2012 (281) E.L.T. 477 (G.O.I.) SHRENIK PHARMA LTD. 2012 (281) E.L.T. 477 (G.O.I.) Order No. 723/2011-CX., dated 3-6-2011 in F.No. 195/797/2009-RA-CX.

EVEN IN THOSE CASES WHERE GOODS WERE EXPORTED WITHOUT ARE-1 FORM; THE REBATE CLAIM HAS BEEN ALLOWED AND THE APPLICANT IS STANDING ON A HIGHER FOOTING AS THE APPLICANT EXPORTED GOODS UNDER ARE 1 FORMS

4.6.13 In case of Commissioner of Central Excise, Bhopal [2006 (205) ELT 1093 (G.O.I.)] decided by Joint Secretary (Revision Application), Government of India; which was a case where the goods were exported without ARE Form; the Rebate claim was allowed and the Revision Application of Commissioner Central Excise Bhopal was rejected

4.7. SUBSTANTIAL BENEFIT CANNOT BE DENIED ON PROCEDURAL LAPSE

4.7.1 Reliance is placed on the decision of the Supreme Court dated 20th November 2008 in case of Sambhaji & Ors. Versus Gangabai & Ors reported by allindiantaxes site vide AIT-2008-428-SC.

4.8. Reliance is placed on CEGAT, NORTHERN BENCH, NEW DELHI Ruling in case of BIRLA VXL LTD. Versus COLLECTOR OF CENTRAL EXCISE, CHANDIGARH 1998 (99) E.L.T. 387 (Tribunal) Final Order No. A/916/97-NB, dated 29-7-1997 in Appeal No. E/1842/95-NB

4.9. Hon'ble Tribunal in the following cases have allowed rebates claims in the absence of ARE-Is when other documents such as, shipping bills/bill of lading etc. were available on record proving the duty paid nature of the goods and actual export of the said goods.

- (i) CCE v. Kanwal Engg. 1996 (87) EL.T. 141
- (ii) Wonderseal Packing v. CCE-2002 (147) E.L.T. 626
- (iii) Home Care (1) P. Ltd. v. CCE-2006 (197) E.L.T. 110
- (iv) G.T.C. Industries Ltd. v. CCE-2003 (162) E.L.T. 109 &
- (v) Model Buckets & Attachments Pvt. Ltd. - 2007 (217) EL.T. 264
- (vi) 2006 (204) E.L.T. 632 (GOI)- In RE- Modern Process Printers.
- (vii) 1994 (71) E.L.T. 1081 (GOI)- In RE - Non Ferrous Materials Technology Development Centre,
- (viii) 2001 (136) EL.T. 467 (Tri.-Del.) - Kansal Knitwears v. CCE, Chandigarh,
- (ix) 2005 (183) E.L.T. 277 (Tri.-Del.) - Murli Agro Products Ltd. v. CCE, Nagpur.
- (x) 2006 (73) RLT 240 (CESTAT-Delhi) - 2006 (196) E.L.T. 295 (Tri.-Del.)- Rajasthan Industries v. CCE, Jaipur,
- (xi) 2005 (71) RLT 268 (CESTA-Delhi) - 2006 (205) E.L.T. 619(Tri.-Del.)- Eyes Fashions v. CCE, Delhi I,
- (xii) 2004 (169) ELT 240 (Tri.- Mumbai) - Upkar International v. CCE, Rajkot.
- (xiii) Barot Exports-2006 (203) ELT 321 (GOI)

4.10. In the case of UOI, Suksha International and Nutron Gems & Others, 1989 (39)ELT 503 (S.C.). Hon'ble Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. Further, in the case of Mangalore Chemicals and Fertilizers Ltd. v. DCCE, 1991 (55) ELT 437 (S.C.), Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions.

4.11. THE APPLICANT IS ALSO ENTITLED TO INTEREST ON DELAYED PAYMENT OF REBATE AMOUNT UNDER SECTION 11BB OF CENTRAL EXCISE ACT WHICH MAY BE GRANTED TO THE APPLICANT

4.11.1 Section 11BB of Central Excise Act, 1944 provides that if any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section(1) of that section, there shall be paid to that applicant interest at such rate as is for time being fixed, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

4.11.2 Explanation to Section 11B of Central Excise Act, 1944 clarifies as under:

Explanation-For the purposes of this section

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India

4.11.3 The rate of interest at six per cent per annum has been notified under Section 11BB of Central Excise Act, 1944.

4.11.4 Since the payment of refund has been delayed beyond three months from the date of filing of Rebate Applications; the Applicant is also entitled to interest @6 per cent after the expiry of three months from the date of receipt of Rebate Application till the date of actual payment of Rebate of duty amount.

5.1 Personal hearing in this case was scheduled on 13.08.2021, 20.08.2021, 15.12.2021, 21.12.2021. Shri Deepak Gangurde, Assistant Commissioner duly authorized, appeared online on 13.08.2021 on behalf of the respondent. He stated that the applicant had not submitted the original records and that is why the rebate claims were rejected. He requested to uphold Commissioner(Appeals) Orders. However, the respondent did not appear for the personal hearing on the appointed dates or did not make any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA.

7. Government observes that the applicants exported goods vide various ARE-1s. The original authority rejected their claim mainly on the ground that the applicants failed to produce the Original/Duplicate copies of ARE-1. On appeal being filed by the applicant, Commissioner (Appeals) vide impugned Orders rejected the appeal(Para 3.3 supra).

8. Government observes that in an identical 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 :

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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.

9. 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.

10. On perusal of Orders in original, Order-in-Appeal and as also claimed by the applicant, they have provided copies of original certification by Customs Officers of Sonauli/ Raxual Customs Station on photocopy of ARE-1, Bills of Export, BRC, excise invoice, export invoice, evidence of payment of duty, transport documents, copy of FIR for loss of Original & Duplicate copy of ARE-1 and Undertaking were filed by the Applicant along with the Rebate claims. Further, in some cases the certificate from Customs Officers of Land Customs Station in India about the actual export of goods and the certificate from Nepal Customs regarding import of goods in Nepal were also submitted with the Refund claims, evidencing the actual export have taken place to substantiate the factum of the goods being exported and cleared outside country. There is no case that the goods cleared have not been exported. The Rebate claim cannot be rejected due to only non-submission of original/duplicate ARE-I. Substantive benefit cannot be denied for procedural lapses.

11. Respectfully following the aforesaid Orders/Judgements (discussed at para 8 & 9 supra) Government directs the original authority to examine the aspect of proof of export in all these cases on the basis of collateral evidences available on records or submitted by the applicant.

12. In view of above position, Government sets aside Order-in-Appeal No. NGP/EXCUS/000/APPL/239/15-16 dated 27.07.2015 passed by the Commissioner (Appeals), CGST, Nagpur which has upheld the rejection of the rebate claims.

13. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the

issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be accorded to the applicant to present their case.

14. The Revision applications are disposed off on the above terms.


2-8/9/22
(SHRAWAN KUMAR)

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

ORDER No. 912 /2022-CEX (WZ) /ASRA/Mumbai Dated 28.09.2022.

To,

M/s. Videocon Industries Limited,
14th KM Stone,
Aurangabad Paithan Road,
Chitegaon,
Aurangabad- 431105.

Copy to:

1. Commissioner, GST & CX, Aurangabad. N-5, Town Centre, CIDCO, Aurangabad-431003.
2. Commissioner (Appeals), CGST & Customs, Nagpur GST Bhawan, P.B. Telanghedi Road, Nagpur - 440001.
3. Assistant/Deputy Commissioner, Central Excise & Customs, Aurangabad-IV Division.
4. SLP.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.