

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.195/229/WZ/2018-RA
F.No. 195/230/WZ/2018-RA

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02.03
Date of issue: 02.2023

ORDER NO. 97-98 2023-CX/ASRA/MUMBAI DATED 28 02.2023
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.

Sl. No	Revision Application No.	Applicant	Respondent
1.	195/229/WZ/2018-RA	M/s Excel Controlinkage Pvt Ltd	Commissioner of Customs & Central Excise, Nagpur-I Commissionerate.
2.	195/230/WZ/2018-RA	M/s Excel Controlinkage Pvt Ltd	Commissioner of Customs & Central Excise, Nagpur-I Commissionerate.

Subject: Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. NGP/EXCUS/000/APPL/158/18-19 dated 11.10.2018 and NGP/EXCUS/000/APPL/192/18-19 dated 23.10.2018 passed by Commissioner (Appeals), GST, Nagpur

ORDER

These following Revision Applications are filed by M/s Excel Controlinkage Pvt Ltd (hereinafter referred to as the "applicant") against the Orders-in-Appeal as detailed in Table below passed by Commissioner (Appeals), GST, Nagpur

TABLE

Sl. No.	Revision Application File No.	Order-In-Original No. & Date	Order-In-Appeals No. & Date	Total amount (Rs.) and period
1	2	3	4	5
1	195/229/WZ/2018-RA	29/Dn/Hingna/Reb/2017-18 dated 14.07.2017 passed by Assistant Commissioner, CGST, Division Hingna, Nagpur-I	NGP/EXCUS/000/APPL/158/18-19 dated 11.10.2018	Rs. 9,29,605/- sanctioned
2	195/230/WZ/2018-RA	132/Dn/Hingna/Reb/2017-18 dated 28.11.2017 passed by Assistant Commissioner, CGST, Division Hingna, Nagpur-I	NGP/EXCUS/000/APPL/192/18-19 dated 23.10.2018	Rs. 9,94,074/- rejected

2. The brief facts of the case are that the Applicant is a manufacturer of laminated leaf springs falling under Chapter Heading No 73201011 of the Central Excise Tariff Act, 1985. The Applicant brought excisable goods i.e Moulded Rubber Parts falling under CSH No. 40169590 from their manufacturing unit i.e M/s Excel Controlinkage Pvt Ltd, S-73 & 74, MIDC, Hingna Road, Nagpur and exported the goods without payment of duty as such and these goods were not inputs for the exporter unit.

2.1. As regards case at Sr. No. 1 of the Table above, the Applicant claimed rebate of excise duty amounting to Rs. 9,29,605/- paid by the supplier and the rebate sanctioning authority vide Order-in-Original No. 29/Dn/Hingna/Reb/2017-18 dated 14.07.2017 sanctioned the rebate claimed by the Applicant. Aggrieved by the Order-in-Original, the department filed an appeal before the Commissioner (Appeals), GST, Central Excise and Customs, Nagpur who vide Order-in-Appeal No.

NGP/EXCUS/000/APPL/158/18-19 dated 11.10.2018 allowed the departmental appeal and set aside the impugned Order-in-Original. While allowing the department appeal, the Appellate Authority has made the following observations:

(i) That the goods have been exported under Notification No. 19/2004-CE(NT) dated 06.09.2004 under Rule 18 of the CER, 2002 under rebate of duty paid.

(ii) That in the instant case, the Applicant has exported the excisable goods without payment of duty and no duty has been paid at the time of export and since the basic condition of export under Notification No 19/2004 dated 06.09.2004 i.e duty payment has not been fulfilled the question of rebate of duty paid on export of goods does not arise at all. The conditions laid down under the said Notification are of substantive nature and must be followed. That in addition to the non payment of duty on export goods but the mandatory conditions laid down under Notification No. 19/2004 –CE dated 06.09.2004 were not fulfilled.

(iii) That the rebate has been allowed by the lower authority without controverting the position that the conditions laid down for sanction of rebate were not satisfied and should have analysed whether each of the conditions which had been held to be violated by the Applicant was otherwise satisfied.

2.2. As regards the case at Sr. No 2 of the Table above, the Applicant claimed rebate of duty amounting to Rs. 9,94,074/- which was rejected by the rebate sanctioning authority vide Order-in-Original No.132/Dn/Hingna/Reb/2017-18 dated 28.11.2017. Aggrieved by the Order-in-Original, the Applicant filed an appeal before the Commissioner (Appeals), GST, Central Excise and Customs, Nagpur, who vide Order-in-Appeal No. NGP/EXCUS/ 000/ APPL/ 192/18-19 dated 23.10.2018 rejected the appeal and upheld the impugned Order-in-Original. The Appellate Authority has made the following observations;

(i) That the goods have been exported under Notification No. 19/2004-CE(NT) dated 06.09.2004 under Rule 18 of the CER, 2002 under rebate of duty paid.

(ii) That the fundamental condition of export under Notification No 19/2004-CE (NT) dated 06.09.2004 is that the duty must have been paid by the exporter of the

goods and in the instant case no duty has been paid by the exporter at the time of export and thus the basic condition of the Notification has not been fulfilled.

(iii) That the Applicant should have followed each and every condition of the Notification which has not been adhered to by the Applicant.

3. Aggrieved by the Orders-in-Appeals, the Applicant filed separate Revision Applications on the following grounds:

3.1. that the Appellate Authority has illegally denied the export rebate claims in spite of the admitted fact that the goods exported has suffered the payment of excise duty which is not in dispute;

3.2. That the AA failed to appreciate that the original adjudicating authority has categorically observed that both the jurisdictional Superintendent of Central Excise having jurisdiction over the applicant's unit from where captioned goods are exported and the Unit No. 3 of the Applicant from where duty is paid while sending the goods to Applicant's and duty has been paid by Unit No. 3 and the jurisdictional Superintendent has confirmed the correctness of the same;

3.3. That the OAA has also observed that he has verified all the three copies viz., original, duplicate and triplicate copies of ARE-1 and that they match, they are duly endorsed by Customs officers, that shipping bill mentioned in ARE-1 tallied with self-attested copy of shipping bill and that the shipping bill no given in the bill of lading also tallied with self-attested copy of bill of lading;

3.4. That the AA has illegally interpreted the provisions of Notification No.19/2004-CE (NT) dated 6.9.2004 issued under Rule 18 to hold that it is the fundamental condition of the said notification that the duty must have been paid by the exporter of the goods which is totally erroneous. As per condition No. 2(a) of the said Notification, the excisable goods can be exported after payment of duty directly from the factory or warehouse except as otherwise permitted by CBEC by a general or specific order.

3.5. That the CBEC vide Circular No. 294/10/97-CX dated 30.1.1997 has clarified that the rebate can be claimed on exportation of duty paid goods which are in original factory packed condition from outside godown with intimation to department and the same has been relied upon in the following that the export rebate is permissible on exportation of duty paid goods when exported from outside the factory premises.

- (i) IN RE: Ashok Leyland Ltd [2012 (284) E.L.T. 150 (G.O.I.)]
- (ii) IN RE: Pidilite Industries Ltd [2014 (311) E.L.T. 965 (G.O.I.)]
- (iii) IN RE: Neptunes Power Plant Services Pvt Ltd [2015 (321) E.L.T. 160 (G.O.I.)]

3.6. That export oriented schemes like rebate/drawback not deniable for mere technical interpretation of procedure;

3.7. That failure to comply with requirement of examination by jurisdictional Central Excise Officer in terms of Circular No. 294/10/97-CX dated 30.1.1997 is condonable if export goods are co- relatable with goods cleared from factory of manufacturer or warehouse and in Applicant's case (in RA No ---), they failed to give prior intimation to the Central Excise Officers and exported the goods under self supervision;

3.8. That as per endorsement on ARE-1 that goods were exported under supervision of Customs officers and that all the particulars i.e. quantity Nos/ corresponding kg/description of products/ excise invoice of manufacturer/ date/ duty amount was totally in conformity with export documents and the duty paid goods procured from Unit No. 3 is exported as it is without carrying out any process and exported in the same packed condition;

3.9. That both the Units are belonging to Applicants and therefore duty on exportation of goods is paid by the Applicants only. The Applicant has relied upon the following orders of the RA in support of their contention

- (i) IN RE: Indo Euro Textiles Pvt Ltd [1998 (97) ELT 550 (GOI)]
- (ii) IN RE: Hebenkraft [2001 (136) ELT 979 (GOI)]

- (iii) CCE Jamshedpur vs. Tisco (Tube Div.) [2003 (156) E.L.T. 777 (Tri.- Kolkata)]
- (iv) IN RE: Akansha Metals Pvt. Ltd [2003 (158) ELT 797 (GOI)]
- (v) I.O.C. Ltd. vs. CCE, Calcutta [2004 (178) ELT 834 (Tri-Kolkata)]
- (vi) IN RE: Barot Exports [2006 (203) ELT 321 (GOI)]
- (vii) IN RE: Modern Process Printers [2006 (204) ELT 632 (GOI)]
- (viii) IN RE: Cotfab Exports [2006 (205) ELT 1027 (GOI)]
- (ix) IN RE: CCE, Bhopal [2006 (205) ELT 1093 (GOI)]
- (x) IN RE: Audler Fasteners [2007 (216) ELT 465 (GOI)]
- (xi) IN RE: GSL (India) Ltd. [2012 (276) E.L.T. 116 (G.O.I.)]

3.10. That the AA has erred in denying the rebate claim by accepting the department's appeal by placing reliance on judgement of the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd., vs Deputy Commissioner, [1991 (55) ELT 437 (S.C.)] as this judgement help the applicant's case and the applicant's have submitted all the documents supporting their claim for rebate. The Applicant has further relied upon the following case law where the above judgement has been relied upon

- (i) Madhav Steel vs. UOI [2016 (377) ELT 518 (Bom.)]
- (ii) Bramhos Aero Space Pvt. Ltd., vs. CC, C.EX. & ST, Hyd, [2016 (342) ELT 127 (Tri.- Hyd)]
- (iii) Coromandel Stampings & Stones Ltd., vs. CCE & ST, Hyd-II, [2016 (43) STR 221 (Tri. - Hyd.)]
- (iv) Ford India Pvt. Ltd., vs. AC, CEx., Chennai [2011 (272) ELT 353 (Mad.)]

3.11. that there is no dispute about exportation of goods by following the self-sealing procedure of exportation of goods and about the payment of duty which is paid by Applicant's own other unit. The complete co-relation of goods cleared on payment of duty and goods exported is available on record and has been verified by original adjudicating authority. The goods were exported in original packed condition therefore, the rejection of rebate claim merely on the ground that duty should have been paid at the time of exportation of goods is patently illegal and beyond the provision of rebate notification and relied upon pronouncements.

3.12. Under the circumstances the Applicant prayed that the OIA No NGP/EXCUS/ 000/ APPL/158/18-19 dated 11.10.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nagpur, may be set aside and the OIO passed by the Asst. Commissioner, CGST & Central Excise, Division- Hingna, Nagpur-1 may be held legal and proper;

b) That the above application be tagged up with another application against OIA No NGP/EXCUS/ 000 / APPL/158 /18-19 dated 23.10.2018, on the same issue, in respect of different ARE-1 and different period;

4. Personal hearing was held in this case on 09.11.2022 or 22.11.2022 or 13.12.2022 or 10.01.2023. Shri Dinesh H. Mehta, Advocate appeared online for hearing on 13.12.2022 on behalf of the Applicant. He submitted that the goods manufactured and the duty paid by their Unit III has been exported by Unit I as the exports are centralized at Unit I. He further submitted that duty payment and the identity of goods have been certified by the jurisdictional officer. He requested to allow their claims.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. The issue involved in the two Revision Applications being common, are taken up together vide this common order.

6. Government observes that of the two OIO's involving the same issue but for different periods, the rebate sanctioning authority rejected one rebate claim and sanctioned the similar other rebate claim. Pursuant to appeals filed by the department in case where rebate claim was sanctioned and appeal filed by the Applicant where the rebate claim was rejected, the Appellate Authority, in both the appeals, held in favour of the department and rejected the sanction of the rebate claims. The Appellate Authority held that the Applicant was not eligible for the rebate claims on the sole ground that the Applicant has not paid the duty but the duty has been paid by the unit No 3 of the Applicant and thus the conditions of Notification No 19/2004 CE(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, had been violated. The relevant provisions of Notification No 19/2004-CE(NT) dated 06.09.2004 are reproduced as under

Notification No. 19/2004-Central Excise (N.T.)

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

(2) Conditions and limitattons :-

(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 Customs by a general or special order;

(b)

(c)

(d).....

(e)

(f)...

(g)....

7. From the records, Government observes that the Applicant has filed the following documents along with the claims

- (i) Original and duplicate copies of the ARE 1
- (ii) Self attested copies of the shipping bill
- (iii) Self attested copies of Bill of lading
- (iv) Copies of the invoice issued under Rule 11 of the Central Excise Rules, 2002
- (v) Self Attested copy of PLA and GAR-7 Challans

7.1. Further, the jurisdictional Range Superintendent in charge of the manufacturing unit has certified that the same goods which were cleared from the manufacturing unit of the Applicant has been exported from the Applicant.

7.2. Government notes that the rebate claim has been rejected only on the sole ground that the duty paid is not by the Applicant who is the exporter but by the manufacturer who supplied the goods to the Applicant. Government notes that there is not an iota of dispute about the export of the goods or payment of duty. Government further observes that the duty has been paid by another unit i.e Unit No 3 of the Applicant and exported by Unit No 1, i.e the Applicant. No other lacuna regarding the eligibility of claim has been noticed or discussed by the lower authorities.

8.1 The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate / triplicate copy of the ARE-1, the Excise Invoice and self-attested copy of shipping bill and bill of lading etc which in the instant cases have been admittedly filed by the Applicant. Further paragraph 8.4 of Chapter 8 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

8.2 The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

8.3. The Government notes that in the instant cases the duty has been paid, albeit, by the Applicant's manufacturing unit No.3 and cleared to the Applicant and exported. However, there is no doubt that the goods in question has been exported

by the applicant as is evident from the endorsement of the customs authorities on the shipping bill and ARE 1.

8.4. In view of above, the government holds that the deficiencies pointed out by the Appellate authority while rejecting the appeals against only on the grounds of non-payment of duty by the exporter, are merely procedural infractions, particularly in view of the fact that the duty has been paid by the manufacturer, which is the Unit No. 3 of the Applicant company and the same should not result in the deprivation of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions, and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002.

9. The Government finds that in several decisions of the Union Government in the Revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non-production of such forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed that the goods were not exported.

9.1. The Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in **"Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)"**. The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to

the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

“The mere fact that, it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.”

9.2. Further, Government observes that the Hon'ble High Court of Bombay in its judgment dated 24.04.2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) [TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.)], at para 16 and 17 of its Order observed that the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character.

10. Government notes that the CBEC vide Para 6 of Circular No. 294/10/97-CS dated 30.01.1997 has issued a clarification to the effect that instructions have been issued to rebate sanctioning authorities not to reject claims on technical grounds. The relevant para 6 is reproduced below:

“6. It has, therefore, been decided that the cases where exporters submit the proof that goods have actually been exported to the satisfaction of the rebate sanctioning authority, and that where goods are clearly identifiable and correlatable with the goods cleared from factory on payment of duty, the condition of exports being made directly from the factory/warehouse should be deemed to have been waived. Other technical deviations not having revenue implications, may also be condoned.”

11. Government observes that in the instant cases, the rejection of the rebate claims by the Appellate Authority merely on the grounds that the duty has not been paid by the Applicant but by the manufacturing unit, which is itself a Unit No. 3 of the Applicant, would result in the depravity of justice towards the Applicant.

12. In view of the above discussions, Government sets aside the Orders-in-Appeal Nos. NGP/EXCUS/000/APPL/158/18-19 dated 11.10.2018 and NGP/EXCUS/000/APPL/192/18-19 dated 23.10.2018 and allows the Revision Applications.

13. The Revision Applications are allowed on the above terms.

Shrawan
28/2/22
(SHRAWAN KUMAR)

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

ORDER No. *97-98*/2023-CX (WZ) /ASRA/Mumbai Dated *28* 02.2023

To,

Excel Controlinkage Pvt Ltd,
W-67,68B, 69, 70, MIDC,
Hingna Road, Nagpur.

Copy to :

1. The Principal Commissioner of CGST, Nagpur-I, GST Bhavan, Telangkhedi Road, Civil Lines, Nagpur- 440 001.
2. The Commissioner of CGST, Nagpur Appeals, GST Bhavan, P.B. No 81, Telangkhedi Road, Nagpur 440 001.
3. Shri Dinesh H Mehta, Vivek Enclave, Shop No. 4, Shivaji Nagar, Borivali (West), Mumbai - 400 103.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board
6. Spare Copy