

SPEED POST



F. No. 195/28-34/SZ/2019-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 05/01/23

Order No. 15-21/2023-CX dated 05-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications, filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal Nos. 846-852/2018 dated 26.11.2018, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru.

Applicant : M/s Unilever India Exports Limited, Bengaluru.

Respondent : The Commissioner of CGST, Bengaluru South.

ORDER

07 Revision Applications, bearing Nos. 195/28-34/SZ/2019-RA all dated 27.02.2019, have been filed by M/s Unilever India Exports Limited, Bengaluru (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 846-852/2018 dated 26.11.2018, passed by the Commissioner of Central Tax (Appeals-I), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld 07 separate Orders-in-Original passed by the Assistant Commissioner of Central Tax, SD-8 Division, Bengaluru (South) CGST Commissionerate.

2. Briefly stated, the Applicants herein filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 claiming rebate of duty paid on the goods exported by them. The original authority allowed the rebate claims. However, the sanctioned rebate claims were treated as cases of erroneous refund proportionate to the extent the Applicants herein failed to submit Bank Realisation Certificates (BRC), as required under Board's Circular No. 354/70/97-CX dated 13.11.1997. The original authority, accordingly, confirmed the demands of the erroneous refund along with the interest applicable thereon. The details are tabulated herein below:

SI. No.	OIO No. & Date in appeal	Period involved	ARE-1 No./date	Shipping Bill No./date	Amount sanctioned as rebate originally (Rs)	Amount confirmed as erroneous rebate out of that sanctioned/appealed against (in Rs.)
1	09/2017-18 SD 8 dated 12.03.2018	07/2014 to 08/2014	66/14-15 dt.29.07.2014	4154346 dt. 30.07.2014	85,38,452/-	2,70,498/-
2	10/2017-18 SD 8 dated 12.03.2018	08/2014 to 09/2014	(i) 82/14-15 dt.21.08.2014 (ii) 87/14-15 dt.27.08.2014	(i)4552770 dt. 22.08.2014 (ii) 4658034 dt. 27.08.2014	64,50,041/-	4,91,253/-
3	11/2017-18 SD 8 dated 12.03.2018	10/2014, 11/2014, 03/2015, 04/2015, 05/2015, 06/2015	118/14-15 dt.29.10.2014	5790061 dt. 30.10.2014	92,19,185/-	6,22,268/-
4	12/2017-18 SD 8 dated 12.03.2018	03/2014, 10/2014, 11/2014	(i) 112/14-15 dt.21.10.2014 (ii) 114/14-15 dt.25.10.2014 (iii)143/14-15 dt.29.11.2014	(i)5695925 dt. 24.10.2014 (ii) 5727002 dt. 27.10.2014 (iii) 6365016 dt. 30.11.2014	1,10,37,175/-	8,56,379/-
5	13/2017-18 SD 8 dated 14.03.2018	06/2014, 11/2014, 12/2014, 01/2015, 02/2015, 03/2015	(i) 156/14-15 dt.29.12.2014 (ii) 161/14-15 dt.09.01.2015 (iii) 197/14-15 dt.20.03.2015	(i)6943903 dt.30.12.2014 (ii) 7514845 dt. 30.01.2015 (iii) 8577931 dt. 25.03.2015	1,25,37,899/-	5,92,336/-
6	16/2017-18 SD 8 dated 14.03.2018	03/2016, 04/2016, 05/2016	(i) 163/15-16 dt.24.03.2016 (ii)165/15-16 dt.28.03.2016	(i)6662147 dt. 24.03.2016 (ii) 6727255 dt. 29.03.2016	88,08,716/-	3,73,519/- BRC for Sl. No. (ii) & (iii) submitted/ accepted

			(iii)003/16-17 dt.14.04.2016	(iii) 7087456 dt. 15.04.2016		
7	17/2017-18 SD 8 dated 14.03.2018	11/2014, 03/2015, 04/2015	(i) 207/14-15 dt.28.03.2015 (ii)208/14-15 dt.30.03.2015	(i) 8726869 dt. 31.03.2015 (ii) 8741141 dt. 31.03.2015	89,11,346/-	2,87,376/- BRC for Sl. No. (ii) submitted/accepted

The appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 26.11.2018.

3. The Revision Applications have been filed, mainly, on the grounds that rebate is not deniable only for not submitting the BRC; that the Board's Circular dated 13.11.1997 would not apply to the Central Excise Rules, 2002; that CBEC's Excise Manual of Supplementary Instructions, at para 8.3, has not specified BRC as the mandatory document for claiming rebate under Rule 18; that the Circular dated 13.11.1997 was issued by the Board as there were inordinate delays in acceptance of proof of exports where the goods were exported through ICD/CFS because of the delayed/non-receipt of the Transference copies from the customs formations at the port of exit; that as per para 2.3.1 of the said Circular the BRCs are required only if the TR copy is not received within 120 days; that the Hon'ble Allahabad High Court has, in the case of Jubilant Life Sciences Ltd. vs. UOI. {2016 (341) ELT 44 (All)}, held that BRC is not a mandatory document for claiming of rebate of duty on export goods; and that, therefore, there is no question of erroneous refund involved herein.

4. Personal hearing, in virtual mode, was held on 04.01.2023. Sh. BG Chidananda Urs, Advocate appeared for the Applicants and reiterated the contents of the RAs. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. In all these cases the rebate already sanctioned and paid has been held to be erroneously paid/refunded to the extent the proof of realisation of export proceeds, in form of BRC, has not been produced before the original authority within 160 days of date of sanction of rebate claim, as per Board's Circular No. 354/70/97-CX dated 13.11.1997. Therefore, the question that arises for consideration is whether a rebate claim sanctioned in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) can be held to have been erroneously paid/refunded, if the proof of realisation of export proceeds is not submitted within 160 days of the date of sanction thereof.

5.2 The Government observes that as per Rule 18 *ibid*, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Notification No. 19/2004-CE(NT) dated 06.09.2004 has been, accordingly, issued prescribing the 'conditions and limitations' as well as the 'procedure' for grant of rebate. The said notification dated 06.09.2004 does not prescribe realisation of export proceeds and

submission of BRC to evidence the same as a condition for sanction of rebate claim. In the present case, the original authority has proceeded on a premise that the proof of realisation of export proceeds and submissions of BRC is a post-facto condition for sanction of rebate and, accordingly, held the rebate already sanctioned as erroneous to the extent of such proof /BRC was not produced. There is nothing in Rule 18 or the notification dated 06.09.2004 to even read the realisation of export proceeds and submission of BRC as a post-facto condition.

5.3 The rebate claims have been found to be erroneously sanctioned solely on the basis of aforesaid Board's Circular dated 13.11.1997. The Government observes that the lower authorities have totally misapplied the instructions of the Board in as much as the Circular dated 13.11.1997 has been issued to address the issue of "*inordinate delays in acceptance of proof of export where goods are exported through an Inland Container Depot/Customs Freight Stations (ICDs/CFSS) because of delayed receipt/non-receipt of the Transference Copies from the Customs formations at the port of exit. This causes delay in getting rebate claims or in fulfillment of conditions of bonds executed for exports without payment of duty*". In this light, the Board had directed the field formations to use the TR copy as a corroborative evidence for acceptance of proof of export. Where the TR copy is not received within 30 days of the LEO (Let Export Order) the exporter may present the relevant Mates Receipt and Bill of Lading and the file for acceptance of proof of export shall be closed. It is only in case the TR copy is not received within 120 days that "*the exporter may submit the Bank Realisation Certificate of export receipts in Original along with certified copy of this certificate*". Therefore, it is evident that as per Circular dated 13.11.1997, where TR copy is not received from the Port of Shipment, the exporter may produce:

- (i) Mates Receipt and Bill of Lading, if TR copy is not received within 30 days of LEO; and
- (ii) BRC, if TR copy is not received within 120 days of LEO.

As such, there is no doubt that the Circular dated 13.11.1997 specifies the BRC to be submitted as proof of export where other documents required to do so are not available. There is nothing on record to indicate that the TR copy or Bill of Lading & Mates Receipt were not available towards the proof of export in the present case. In such a case, it was incorrect of the authorities to make the production of BRC as a condition subject to which rebate was sanctioned or to treat BRC as a primary proof of export.

5.4 This Circular, in para 2.3.2 and 2.3.3, also states that where BRC is not received within 160 days of the date of sanction of rebate or within 180 days of clearance of exports, action for recovery of rebate should be initiated within the limitation period. However, Government finds that in absence of any condition in Rule 18 or in notification dated 06.09.2004 to this effect, the rebate sanctioned cannot be sought to be recovered only on the basis of executive instructions which have been, as brought out above, issued to address the issue of inordinate delays in acceptance of proof of exports. It would be relevant to highlight here that in the case of Drawback of duties in respect of export goods, there are specific provisions made in Section 75 of the Customs Act, 1962 and the Rules framed thereunder (i.e. Rule 16 A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995) empowering the Customs officers to recover the drawback

paid where export proceeds are not realised within the time allowed under the FEMA, 1999. Such provisions are conspicuous by their absence under Rule 18 or the notification dated 06.09.2004. Thus, the action, if any, for non-realisation of the export proceeds, where exports were made under claim of rebate, can only be taken by the authorities competent under FEMA and relevant RBI notification etc., and not by the Central Excise Authorities.

5.5 Further, as rightly pointed out by the Applicants, the judgment of the Hon'ble Allahabad High Court in the case of Jubilant Life Sciences Ltd. (supra) supports this view. The Government has also taken similar view earlier in several cases, including in the case of Salasar Techno Engineering Pvt. Ltd., {2018 (364) ELT 1143 (GOI)}, and the Order No. 66/2021-CX dated 31.03.2021 in the case of M/s Taurus Agile Technology Pvt. Ltd., New Delhi etc.

5.6 In view of the above, the Government holds that the orders of the authorities below cannot be sustained and are, accordingly, set aside.

6. The Revision Applications are allowed in above terms.


(Sandeep Prakash)

Additional Secretary to the Government of India

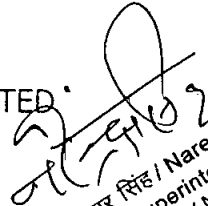
M/s Unilever India Exports Limited,
19/3, 9th Mile,
Hosur Road,
Electronic City Post,
Bengaluru-560100.

G.O.I. Order No. 15-21/23-CX dated 05-01-2023

Copy to:

1. The Commissioner of Central Goods & Services Tax (South), C.R. Building, Queen's Road, Bengaluru-560001.
2. The Commissioner of Central Tax (Appeals-I), Traffic Transit Management Centre, BMTC Building, 4th Floor, Above BMTC Bus Stand, Domluru, Old Airport Road, Bengaluru-560071.
3. Sh. B.G. Chidananda Urs. Advocate, No. 520, 7th Main, 13th Cross, RMV II Stage, Dollars Colony, Bengaluru-560094.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED


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