

F. No. 195/119/SZ/2019-R.A.
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SPEED POST



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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. 07/02/2023

Order No. 47-S/2023-CX dated 07-02-2023 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 Orders-in-Appeal No. CMB-CEX-000-APP-010-19, CMB-CEX-000-APP-011-19, CMB-CEX-000-APP-012-19, CMB-CEX-000-APP-010-14-19 & CMB-CEX-000-APP-015-19 all dated 02.01.2019, passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore.

Applicant : M/s Pricol Limited, Plant-I, Coimbatore.

Respondent : The Pr. Commissioner of CGST & Central Excise, Coimbatore.

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ORDER

Five Revision Applications, bearing Nos. 195/119-123/SZ/2019-RA all dated 08.04.2019, have been filed by M/s Pricol Limited, Plant-I, Coimbatore (hereinafter referred to as the Applicant) against the separate Orders-in-Appeal all dated 02.01.2019, passed by the Commissioner of CGST & Central Excise (Appeals), Coimbatore. The Commissioner (Appeals) has, vide impugned Orders-in-Appeal, rejected the appeals filed by the Applicants herein against the Orders-in-Original issued by the Assistant Commissioner, Coimbatore-I Division rejecting the rebate claims filed by the Applicants herein.

2. Briefly stated, the Applicants herein filed rebate claims in respect of duty paid on goods exported by them, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. After following the principles of natural justice, the original authority rejected the rebate claims as time barred as well as for non-submission of requisite documents. The appeals filed have been rejected by the Commissioner (Appeals). The details are tabulated as under:

S. No.	R.A. No. & date	O-I-A No. & date	O-I-O No. & date	Exports made during	Date of filing of rebate claim/Date of resubmission	Amount claimed as rebate (in Rs.)	Amount subsequently withdrawn by the Applicant (in Rs.)
1.	195/119/SZ/2019 dated 08.04.2019	CMB-CEX-000-015-19 dated 02.01.2019	13/2018-19 dated 16.07.2018	04.05.2010 to 31.07.2010	02.05.2011	14,07,051/-	31,415/-
2.	195/120/SZ/2019 dated 08.04.2019	CMB-CEX-000-014-19 dated 02.01.2019	12/2018-19 dated 16.07.2018	26.05.2008 to 20.06.2008	29.05.2009 to 27.07.2009 to 07.09.2009	23,24,745/-	35,710/-
3.	195/121/SZ/2019 dated 08.04.2019	CMB-CEX-000-012-19 dated 02.01.2019	10/2018-19 dated 12.07.2018	06.08.2010 to 31.08.2010	28.07.2011	5,54,955/-	3,254/-
4.	195/122/SZ/2019 dated 08.04.2019	CMB-CEX-000-011-19 dated 02.01.2019	09/2018-19 dated 09.07.2018	02.09.2010 to 30.10.2010	02.09.2011	6,21,814/-	NIL
5.	195/123/SZ/2019 dated 08.04.2019	CMB-CEX-000-010-19 dated 02.01.2019	08/2018-19 dated 04.07.2018	11.09.2008 to 29.09.2008	03.09.2009 to 22.10.2010	9,98,902/-	37,125/-

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3. The Revision Applications have been filed, mainly, on the grounds that the Applicants had complied with all conditions and procedures as per Notification dated 06.09.2004; that they had produced Bank Realisation Certificates for the goods exported relating to the relevant ARE-1's; that collateral documentary evidence was available wherever the documents required as per notification had not been submitted; that non-submission of original/duplicate copy of ARE-1 is a procedural infirmity for which substantive benefit should not be denied; that the Commissioner (Appeals) has made observations without properly assessing the factual scenario for delay; and that the Applicants had filed the refund claims in time.

4. Personal hearing, in virtual mode, was held on 16.01.2023. Sh. Ganesh Iyer, Advocate appeared for the Applicants and requested that written submissions filed by email may be taken on records. He requested for further time to file additional submissions as matter is old. Accordingly, the time was granted to file submissions and the personal hearing was adjourned to 03.02.2023. In the hearing held on 03.02.2023, Sh. Ganesh Iyer, Advocate appeared for the Applicant and stated that pursuant to the hearing held on 16.01.2023, detailed Written Submissions have been filed which may be taken on record. Sheets tabulating case wise alternate documents submitted and Statutory Auditor's Certificate No. 530/2022-23 dated 02.02.2023, have also been emailed on 03.02.2023. With reference to the submissions so made, Sh. Iyer contended that substantial compliance is established in respect of the procedural infractions committed by not producing documents prescribed vide Notification No. 19/2004-CE (NT). Hence, the rebate claims should be allowed. Further, the claims were filed in time though supporting alternate documents were filed subsequently. Therefore, there is no question of time bar as well. Sh. Sharat Chandran, AC appeared for the Respondent department and supported the orders of the lower authorities. Further submissions have been made by the Applicants and copies of supporting documents have been placed on record after the hearing held on 03.02.2023.

5. The Government has carefully examined the matter. The rebate claims have been rejected on following grounds:

- (i) The claims were allegedly not filed within the time limit of one year provided under Section 11B of the Central Excise Act, 1944.
- (ii) The copies of documents specified in the Notification No.19/2004-CE (NT) dated 06.09.2004 and para 8.2 of Chapter VIII of CBEC's Excise Manual of Supplementary Instructions, 2005, were not submitted along with the claims.

6.1 It is observed that the rebate claims filed by the Applicants had certain deficiencies, due to which the claims were either returned along with the Deficiency Memo or the Applicants were advised to submit the requisite documents. The original authority has considered the date of resubmission or the date of submission of documents/reply, as the

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case may be, as the date of submission of the claims. The Government observes that there is no provision in law to return refund/rebate claims, and, therefore, date of original filing has to be considered as the date of filing of the rebate claim. Hon'ble Gujarat High Court has, in the case of United Phosphorus Ltd. vs. Union of India {2005 (184) ELT 240 (Guj.)}, held that once any refund application is filed before the concerned authority, it becomes a part of the record of that authority. Such an authority can, therefore, not part with the refund application by returning the same. The Hon'ble High Court, accordingly, held that returning the claim, without making an order thereon by the Assistant Commissioner, amounts to refusal to perform the statutory duty imposed on him and such return of claim is, therefore, illegal and void. Similarly, in the case of Apar Industries (Polymer Division) vs. Union of India {2016 (333) ELT 246 (Guj.)}, the Hon'ble Gujarat High Court has held that in case of resubmission of a rebate claim, the date of original filing should be taken for computing the time limit under Section 11B of the Central Excise Act, 1944 even if the rebate claim was submitted originally in wrong format. Following the ratio of the aforesaid judgments of the Hon'ble Gujarat High Court, it has to be held that, in the present case, the limitation has to be computed with reference to the original date of filing of rebate claims.

6.2 It is further observed that each rebate claim covers a number of ARE-1s. The original authority appears to have computed the limitation period of one year with reference to the export date of the earliest ARE-1s in respect of each claim. In terms of Clause (B) of the Explanation to Section 11B *ibid*, the 'relevant date' for computing the period of one year in case goods are exported by sea or air, is the date on which the ship or aircraft on which such goods are loaded, leaves India. Therefore, in respect of the rebate claims covering more than one ARE-1, the time limit of one year would have to be computed with reference to each ARE-1 individually, in accordance with the provisions of the said Explanation.

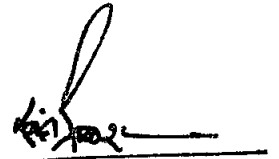
7. The rebate claims have also been found to be not admissible as original and duplicate copy of the ARE-1s and some other documents specified in the CBEC's Excise Manual of Supplementary Instructions, 2005 were not submitted. It is the contention of the Applicants that many of these documents were mis-placed and, therefore, collateral documentary evidence was submitted to substantiate the factum of export and duty paid nature of the goods. The Government observes that the requirement of producing the original and duplicate copies of the ARE-1 is a part of the 'procedure' prescribed under para (3) of the notification no. 19/2004 CE (NT), which lays down the conditions, limitations and the procedure governing the claims of rebate under Rule 18 *ibid*. The Hon'ble Bombay High Court has, in the case of UM Cables Ltd. vs. UOI {2013 (293) ELT 641 (Bom.)}, held that the conditions and limitations for the grant of rebate are mandatory whereas matters of procedure are directory. Several other Hon'ble High Courts have taken a similar view and followed the judgment in UM Cables Ltd. (*supra*) [Ref. Jubilant Life Sciences Ltd. {2016 (341) ELT 44 (Allahabad)}, Raj Petro Specialties {2017 (345) ELT 496 (Gujarat)}, Triputi Steel Traders {2019 (365) ELT 497 (Chhattisgarh)} &

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Haldia Petrochemicals Ltd. {(2019 (368) ELT 502 (Calcutta))}. It is further observed that another Division Bench of the Hon'ble Bombay High Court has, in the case of Zandu Chemical Ltd. vs. UOI {2015 (315) ELT 0520 (Bom.)}, held that the procedural provisions are capable of substantial compliance. Therefore, a rebate claim is not liable to rejection merely because the claimant has not produced the documents as per para (3) of the Notification 19/2004-CE (NT) as well as those required as per CBEC's Excise Manual of Supplementary Instructions, 2005. In absence of such documents, it is open to the claimant to produce other documents to show substantial compliance with the requirements of the procedure specified. In the cases under consideration, the Applicants have placed on record a large number of collateral documents to establish substantial compliance.

8. In the facts and circumstances of the case and the detailed averments made by the Applicants herein bringing out the submission of collateral documents to establish substantial compliance, it would be in the interest of justice that the matter is remanded to the original authority for de-novo consideration, after following the principles of natural justice, and keeping in view the observations/directions in paras 6.1, 6.2 & 7 above. Further, as the rebate claims are 13 to 14 years old, the original authority is further directed to complete the de-novo proceedings within a period of three months from the date of receipt of this order.

9. Revision Applications are allowed by way of remand to the original authority with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Pricol Limited, Plant-I,
132, Mettupalayam Road,
Perianilckenpalayam,
Coimbatore-641020.

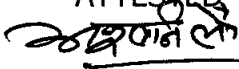
G.O.I. Order No. 47-51/23-CX dated 07-02-2023

Copy to: -

1. The Pr. Commissioner of CGST & Central Excise, 6/7, A.T.D. Street, Race Course, Coimbatore-641018.

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2. The Commissioner of CGST & Central Excise (Appeals), 6/7, A.T.D. Street, Race Course, Coimbatore-641018.
3. The Assistant Commissioner of CGST & Central Excise, Coimbatore-I Division, 1441, Trichy Road (ELGI Building), Coimbatore-641018.
4. M/s Swamy Associates, 18, rams flats, Ashoka Avenue, Directors colony, Kodambakkam, Chennai-600024.
5. PPS to AS (RA).
6. Guard File.
7. Spare Copy.
8. Notice board.

ATTESTED

अश्वनी कुमार लौ / Ashwani Kumar Lau
अधीक्षक / Superintendent (R.A. Unit)
राजस्व विभाग / Department of Revenue
पित्त मंत्रालय / Ministry of Finance
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