

F. No. 195/686/12 - R.A.-CX  
GOVT. OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE)  
(REVISION APPLICATION UNIT

\* \* \* \*

Subject: Revision Application filed by M/S POSITIVE PACKAGING INDUSTRIES LTD. against Order- in -Appeal No. US/271/RGD/2012 DT. 25-04-12 passed by the Commissioner of Central Excise (Appeals), Mumbai- Regarding..

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The above Revision Application (RA) and other relevant documents are placed in the file. The R.A. and other related required documents have been scrutinized and found in order. The file is complete in all respects.

2. The file is put up in accordance with the seniority of pending cases of rebate claim (West Zone). The file is to be put up for grant of personal Hearing by JS (RA) as and when instructed by her. Submitted, please.

25/8/15

OSD(RA)  
26/6/15

OSD(RA) J  
26/6 JSR/RA  
Per 3/8/15 at 12:30  
26/6

US/271/RGD/2012  
25/8/15  
648/55(RA)/2015  
03-08-2015

OSD(RA)  
J S/O  
26/6  
26/6/15 Sh. M.K.  
Sh. Bhan bl. is

PU held. Gramic pl.

OSD(RA)

26/6  
3/8/15

Brief facts of the case are put up for final disposal of the case

By,

Q  
29/3

~~JS (NA)~~

Q  
31/3/16

~~OSD (NA)~~

complaint copy is returned.

Q  
31/3

~~JS (NA)~~

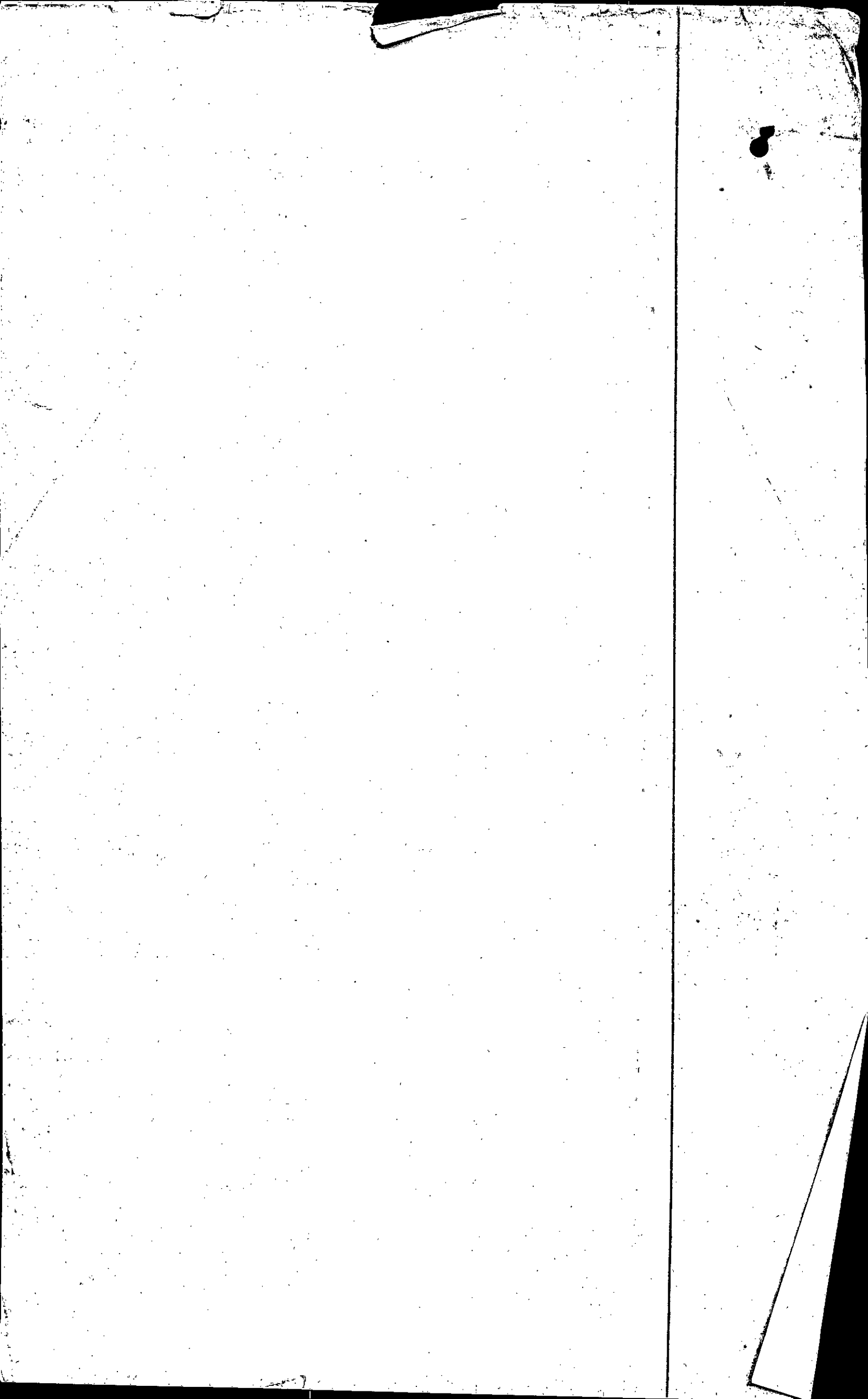
Q  
31/3/16

~~OSD (NA)~~

MS 1/882.

Q  
1/4

Sh. Bhanu



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REGISTERED  
SPEED POST



**F.No. 195/686/2012-RA-CX**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue 6/4/16

**ORDER NO. 53/2016-CX DATED 31.03.2016** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No.US/271/RGD/2012 dated 25.04.2012 passed by Commissioner of Central Excise, (Appeals)-II, Mumbai

Applicant : M/s Positive Packaging Industries Ltd.

Respondent : Commissioner of Central Excise, Raigad

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**ORDER**

This Revision Application is filed by M/s Positive Packaging Industries Ltd, (hereinafter referred to as applicant) against the Order-in-Appeal No. US/271/RGD/2012 dated 25.04.2012 passed by Commissioner of Central Excise, (Appeals), Raigad with respect to Order-in-Original No. Raigad/KPL/RC/3210/11-12 dated 31.05.2011 passed by the Deputy Commissioner of Central Excise Khopoli Division, Raigad.

2. Brief facts of the case are that the applicant have filed the rebate claims in Central Excise, Khopoli Division, Raigad on 09.02.2011. During scrutiny of aforesaid claims it was noticed that:-

- (i) there was no endorsement from Customs on the reverse side of ARE-1s
- (ii) there was no endorsement on shipping bill from Customs
- (iii) copy of mate receipt not submitted

2.1. Accordingly, above discrepancies were conveyed to the applicant vide Deficiency Memo Cum Show Cause Notice (DM)

2.2. The Show Cause Notice was adjudicated. Original authority in impugned Order-in-Original observed that the vessel in which the goods covered in both rebate claims were loaded colluded with another vessel immediately after leaving the port and as such the goods cannot be treated as exported. Hence rebate claims are not admissible.

3. Aggrieved by the said order the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. US/271/RGD/2012 dated 25.04.2012 rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1. The department is erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods and receipt of export sale proceeds in foreign exchange. That the said certificate was enclosed to the rebate claim, the department merely brushed aside the said submission of the applicants. That the department also erred in stating that for payment of rebate under Rule 18, export is a pre-condition to be fulfilled. That the goods have been exported under FOB contract which stipulates that the responsibility of the exporter is to handover the goods Free On Board (FOB) under the International Contract

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Terms (INCOTERMS). That once the goods are handed over to the ship, the title in goods is transferred to the customer and any loss in transit is sole responsibility of the overseas buyer. That in the instant case the goods were exported under FOB terms and the export proceeds are also realized in foreign exchange, which completes the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. That once the said condition is complied with, rebate on the said goods cannot be denied and therefore the order of department is liable to be quashed and set aside.

4.2. The department erred in rejecting the claim only on the ground that the goods have actually not exported. That the department failed to appreciate that the goods have actually been taken on board in the ship and the necessary Bill of Lading is issued by the shipping agency and the ship was physically moved from the port. That there is no dispute to the fact that necessary duty has been paid on the said goods and a certificate is issued by Superintendent of Central Excise verifying the said duty payment details. That the applicants have completely discharged their obligation on their part and therefore the burden of duty paid on the said goods exported should not fall on the exporter having completed and discharged the obligation on their part therefore the order of department is liable to be quashed and set aside.

4.3. The adjudicating authority rejected the rebate on the ground that there is no endorsement of the Customs officers on the reverse side of the ARE-1, shipping bill and copy of mate receipt is not submitted. That the Commissioner (Appeals) failed to extend his independent finding on this order but traversed beyond the finding of the adjudicating authority. That the Commissioner (Appeals) simply rejected the appeal filed by the applicant on the grounds that the goods have not been exported. That in the present case the goods have been lost after the vessel left the port, the applicants have recovered the sales proceeds in the convertible foreign exchange and therefore the rebate is legally eligible to the applicant.

4.4. The Commissioner(Appeals) erred in rejecting the claims only by relying upon the word 'exported' used in the text of Rule 18, Notification No. 19/2004-CE(NT) dated 06.09.2004 and para 8.4 under Chapter 8 of the CBEC Manual. That the present case relates to accidental loss of export goods which requires different look at rules framed. That physically the goods have been cleared from the factory under supervision of Central Excise Officer by following all the procedures laid down for export. That the export was on FOB terms and the sale was complete and the ownership of goods was transferred to buyer once the goods were delivered on board for delivering the goods to overseas buyer.

4.5. The Commissioner (Appeals) erred in rejecting the claim relying upon the definition of word 'export' as given under Section 2(18) of the Customs Act, 1962. That the applicants submit that the goods were removed from the factory and loaded

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on the ship for taking the same to a place outside India. That the definition does not envisage that goods must reach in the hands of overseas buyer. That because of accident, goods did not reach the destination. That because of accident the goods did not reach the destination. That despite the accident, the ownership of goods was transferred to the overseas buyer, export was complete and therefore the overseas buyer claimed the insurance and remitted the proceeds in convertible foreign currency. That the inference of the definition of export as drawn by the Commissioner (Appeals) is wrong and is not capable of handling the situation of accident.

4.6. The Commissioner (Appeals) erred in rejecting the rebate claim without considering the various representation made by the Federation of Indian Export Organisation and the Chairman of CBEC to issue necessary directions and clarification so that the exporters are not put to financial loss for no mistake of theirs. That the applicants have also directly written to CBEC requesting to consider their case in view of the recovery of sale proceeds in convertible foreign exchange.

4.7. The department erred in not considering that the Customs officer has not signed on the ARE-1. That it is factually incorrect as the jurisdictional Central Excise officers have signed the ARE-1 on the reverse side of the document at the time of stuffing the container at the factory and the said ARE-1 is also signed by Customs Preventive officers at the port of shipment.

4.8. The department erred in rejecting the rebate claim on the ground that the goods are lost within the Indian territorial waters and hence goods are not exported consequently no rebate. That under FOB contract the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.07.2010 itself who have issued the bill of lading confirming goods on board. That the overseas customer in terms of FOB contract accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. That the main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the applicant and the sale proceeds were realized in view of the FOB contracts and applicants have produced the BRC and are legally eligible for the export incentive by way of rebate. That realization of sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the applicant. Therefore they are legally eligible for the rebate claim which is required to be paid.

5. Personal hearing scheduled in this case on 03.08.2015 was attended by Shri P.K. Shetty, Advocate on behalf of the applicant who reiterated the grounds of revision application and also stated that once the goods were shipped on board the ownership stood transferred to the buyer particularly as the sale is on FOB basis and that the

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Therefore, they should not be penalized for circumstances beyond their control. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that during the scrutiny of the rebate claims filed by the applicant, it was noticed by the original authority that there was no endorsement from Customs on the reverse side of ARE-1s, that there was no endorsement on shipping bill by Customs and that copy of mate's receipt not submitted. Accordingly Deficiency Memo Cum Show Cause Notice (DM) was issued. The Deputy Commissioner vide impugned Order-in-Original rejected the rebate claims as the goods had not been 'exported'. The applicant filed appeal before the Commissioner (Appeals) who rejected the same. Now the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the grounds stated at para 4.

8. Government observes that the issue to be decided is whether the impugned goods can be said to have been 'exported' for the applicant to be entitled for rebate in terms of Rule 18 of Central Excise Rules, 2002. The lower authorities have held the rebate claim as inadmissible inter alia on the ground that as the vessel on which the impugned goods were loaded, collided with another vessel immediately after leaving the port, the goods were not actually exported. The applicant on the other hand has contended that as the export was on FOB terms the ownership of the goods has been transferred and remittance received, the export was complete. In view of the rival contentions, Government first proceeds to examine the issue on the basis of prevalent statutory provisions.

8.1. Rule 18 of Central Excise Rules, 2002 deals with rebate of duty which reads as follows:-

*"Where any goods are exported the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure as may be specified in the notification.*

**Explanation-** *Export includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft".*

8.2. Further, the word export is defined in Section 2 (18) of the Customs Act, 1962 as under:

*"(18) 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India".*



8.3 As per Section 11B of Central Excise Act, 1944 the rebate claim is to be filed within one year of relevant date. Explanation B defines relevant date as under:-

*"(a) In the case of goods exported out of India where a refund of excise duty paid is available in respect of goods themselves or as the case may be the excisable material used in the manufacture of such goods :-*

*(i) If the goods are exported by sea or air, the date on which the Ship on the aircraft in which such goods are loaded leaves India or"*

8.4. Further, the sanction of rebate claim under the aforesaid provisions is governed by paragraph 8.4. of CBEC Manual of Departmental instructions which states as follows:-

*"8.4. After satisfying himself that the goods cleared for export under the relevant ARE1 applications mentioned in the claim were actually exported as evident by the original and duplicate copies of ARE 1 duly certified by Customs and that the goods are of duty paid character as certified on the triplicate copy of ARE1 received from the jurisdictional Superintendent of Central Excise, the rebate sanctioning authority will sanction the rebate in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued".*

9. The harmonious reading of the above said provisions reveals that export takes place when goods leave India to a place outside India. It is abundantly clear that the goods have to be exported and rebate shall be paid subject to conditions and limitations set by the Central Government upon fulfilment of prescribed procedures. The CBEC Manual of Departmental Instructions further clarifies that goods have to be actually exported for rebate to be admissible.

10. Government further draws support from the ruling of the Hon'ble Supreme Court in an identical case of Union of India vs. Rajinder Dyeing and Printing Mills 2005 (180) ELT 433 (SC) where the goods had been dispatched through ship for export but due to accident, the ship sunk and goods were destroyed. The exporter claimed drawback on the ground that goods were actually exported. The Apex Court placing reliance on the concept of movement of goods outside the territorial waters of India to complete the export, held the claim of drawback as inadmissible. It was observed as under:

*"3. "Drawback" is defined by Rule 2(a) of the said Rules. Drawback is available to 'goods manufactured in India and exported'. For the purposes of the Rules, 'export' is defined to mean, 'taking out of India to a place outside India.....'.*

*4. Learned counsel for the appellants contends that, in the instant case, there was no export as contemplated by the said Rules in as much as the said cargo had not been taken out of India to a place out of India; in fact, the vessel had sunk and*

*the said cargo was destroyed within the territorial waters of India. Our attention was drawn to the judgment of this Court in Collector of Customs, Calcutta vs. Sun Industries, 1988 (35) ELT 241. This was a case where goods had been loaded on to a vessel in India and the vessel had sunk after it moved out of the territorial waters. This Court said:*

*"When the ship got clearance and moved out of the territorial waters, the export was complete..... But the expression 'taking out to a place outside India' would also mean a place in high seas. It is beyond the territorial waters of India. High seas would also mean a place outside India, if it is beyond the territorial waters of India. Therefore, the goods were taken out to the high seas outside territorial waters of India, they will come within the ambit of expression 'taking out to a place outside India'. Indubitably the goods had been taken out of India."*

5. *The emphasis in the judgment afore-mentioned is on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have taken place. In the instant case, the said cargo was destroyed when the vessel sunk within the territorial waters of India. There was, therefore, no export of the said cargo. Accordingly, no duty drawback was available in respect of the said cargo.*

6. *The civil appeal is allowed."*

The above judgement though rendered in the context of admissibility of drawback under Section 75, the ratio of the decision is squarely applicable to the present case as both rebate and drawback arise only upon export of goods.

11. Government also observes that it is an undisputed fact on record that the vessel on which the goods covered in the said rebate claims were loaded collided with another vessel immediately after leaving the port. Thus the goods in question were not actually exported. The same is further corroborated with the other discrepancies noticed in rebate claims by the original authority. This clearly shows that the goods in fact were not exported and question of any rebate of duty paid on exported goods does not arise.

12. Government also notes that Commissioner (Appeals) has rightly observed that the purpose of rebate of duty paid is to allow the goods to be available in the international market at a competitive price so that taxes are not exported along with the goods. Admissibility of rebate therefore, rest upon the goods joining the course of international trade. In this case, whatever be the reasons, the export has not taken place and therefore the grant of rebate of duty paid does not arise under the stipulation of Rule 18 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

13. Government also places reliance on the ruling of the Hon'ble Supreme Court in the case of Collector of Central Excise, Vadodara vs Dhiren Chemical Industries 2002

(143)ELT 19 (SC), Paper Products Ltd. vs Commissioner of Central Excise 1999(112)ELT 765(SC) and ITC Ltd. vs CCE 2004 (171)ELT 433 (SC) in which the Apex Court has held that strict and plain reading of the statute are to be strictly adhered to and all the authorities working under the respective Central Excise/Customs Acts are to ensure strict applicability of all the relevant Notifications/Circulars as issued for the purpose.

14. The applicant has contended that rebate is admissible as despite the accident, the ownership of the goods had got transferred to the overseas buyer as the sale was on FOB and not CIF basis. In this regard, Government notes that as per the provisions of law, transfer of ownership of goods is not one of the requirements for eligibility of rebate. The entitlement of rebate benefit will arise not from change of ownership of goods per se but only when they have been exported. In the present case, the actual export of goods has undeniably not taken place as the ship had admittedly capsized immediately upon leaving the port in India.

15. Government also does not hold as tenable the contention of the applicant that as foreign exchange has been realized, rebate cannot be denied. Rebate is allowed on the act of export of goods and if goods have not been actually exported, question of any rebate does not arise in terms of Rule 18 read with Notification 19/2004-CE(NT) dated 06.09.2004.

16. In view of the above, Government is of the considered opinion that given the circumstances of the case, the export cannot be said to have been completed and thus rebate claim has rightly been held as inadmissible on this ground alone. Government, therefore, finds no infirmity in the Order of the Commissioner (Appeals) and hence upholds the same.

17. The Revision Application is thus rejected being devoid of merits.

18. So, ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

M/s Positive Packaging Industries Ltd.,  
Village Ransai, Khopoli Pen Road,  
Taluka-Khalapur, District Raigad.

Attested.

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**ORDER NO. 53/2016-CX DATED 31.03.2016**

Copy to:-

1. The Commissioner of Central Excise , Raigad.
- 2 The Commissioner (Appeals-II), Central Excise Mumbai, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector -E, Bandra-Kurla Complex, Bandra (East), Mumbai-400051.
3. The Deputy Commissioner of Central Excise, Khopoli Division, Raigad.
4. PA to JS (RA).
5. Guard File.
6. Spare Copy.

ATTESTED



( B.P. SHARMA )  
OSD (RA)  
GOVT. OF INDIA

BHAGWAT P. SHARMA  
OSD (R.A. WING)

SC

**RECORD OF PERSONAL HEARING**

1. File No. (RA) 195/386/12-RA-Co
2. Arising Out of Order-in-Appeal No. US/27/1298/12 dt. 25-4-12
3. Date of Receipt of O/A by Applicant 03-5-12
4. Date of Receipt of RA by RA Unit 18-7-12
5. Date of Previous Hearing -
6. Date of Present Hearing 03-8-2015 at 12-30 PM
7. Applicant M/s. Positive Packaging Industries Ltd.
8. Respondent CCE Raigarh

\*\*\*\*\*

Present for the	Name	Designation	Signature
Applicant	<u>P. K. Shetty</u>	<u>Advocate</u>	<u>[Signature]</u> MS
Respondent	<u>None</u>		

The applicant reiterated the grounds of appeal. Stated that once the goods were shipped on board the ownership should transferred to the buyer particularly as the sale is on FOB basis. Moreover the payment for the goods has been received by them as is evident from the BRC. Therefore they should not be penalised for circumstances beyond their control.

[Signature]  
PK Shetty Adv

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3/8/15

F.No.195/686/12-RA -Cx  
GOVT. OF INDIA  
**MINISTRY OF FINANCE**  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

\*\*\*\*\*

Hudco Vishala Bldg., 14, B- Wing,  
6<sup>th</sup> Floor, Bhikaji Cama Place,  
New Delhi-110 066.  
Dated: 02-07-2015

To

M/s Positive Packaging Industries Ltd.,  
KM 16, Village Ransai,  
Khopoli-Pen Road,  
Khopoli-410 203

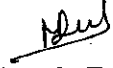
The Commissioner of Central Excise,  
Raigad Commissionerate,  
Plot N0.1, Sector-17,  
Khandeshwar, Navi Mumbai- 410 206.

Sub: Personal Hearing to be held on **03-08-2015-at 12.30 P.M.**  
Revision Application No. F. No. F. No. 195/686/12-RA-Cx in the case of  
M/s Positive Packaging Industries Ltd. - Reg...

Sir,

Please refer to the Revision Applications filed against the Order-in-Appeal No. US/271/RGD/12 dated 25-04-12 in respect of M/s Positive Packaging Industries Ltd., passed by the Commissioner of Central Excise (Appeals-II), Mumbai. Personal hearing has been fixed for **03-08-2015 at 12.30 P.M. in the office of the Joint Secretary (RA), Hudco Vishala Building, 14, B- Wing, 6<sup>th</sup> Floor, Bhikaji Cama place, New Delhi-110 066.** You are requested to cause appearance either personally or through authorized representative/counsel along with necessary documents to defend your case. Department may depute a well conversant officer not below the rank of Assistant Commissioner to defend their case or file written submissions / counter reply.

Yours faithfully,

  
(Nirmala Devi)  
Section Officer (RA)

Copy to: - Sh. P.K. Shetty, Advocate,  
F-160, 1<sup>st</sup> Floor,  
DREAMS MALL LBS Marg, Bhandup (West),  
Mumbai-400 078.

3/17

F.NO. 195/688/12-RA Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(R.A. UNIT)

Reg.,

Hudco Vishal Bldg.,  
14, B-Wing, 6<sup>th</sup> Floor,  
Bhikaji Cama Place  
New Delhi-110 066  
The dated 14-2-83

NOTICE ISSUED UNDER SECTION 35 EE OF THE CENTRAL EXCISE, ACT, 1944

Subject. Revision Application filed by *918. Positiv Packaging Industries Ltd.*  
against Order-in-Appeal No. *221/290/2872*  
dated *25-4-12* passed by the Commissioner of Central Excise,  
(Appeals), *Mumbai* -Reg.,

A Revision Application has been filed against Order-in-Appeal cited above  
(copy enclosed).

In this regard, if any Additional submissions are to be made, which are not  
elaborated in Order-in-Original and Order-in-Appeal, you may do so, within fifteen days  
from the date of receipt of this letter. If Department requires personal hearing in this case,  
it may be stated specifically.

If no reply is received within stipulated time and no request for hearing is made,  
it will be assumed that no further submissions are to be made and the matter will be  
decided based on the Order-in-Original and Order-in-Appeal, and will be communicated  
to you in due course.

Your faithfully,  
*Kiran Lakra*  
(KIRAN LAKRA) 8.5.13  
SECTION OFFICER (RA)

*Amal*

To,  
The Commissioner of Central Excise  
*Raigarh Com. Dist. Meerut*

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F.NO. 195/588/12-27  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(R.A. UNIT)

Hudco Vishala Bldg. 14-B-  
Wing, 6<sup>th</sup> Floor, Bhikaji Cama Place  
New Delh-110 066.

The dated 8/5/12

To, M/s Positive Packaging Industries Co.  
KM 16, Khopoli - Pan Road,  
Village Ranewi, Khopoli

Subject: Customs / Central Excise Revision Application against Order-in-Appeal No.  
271/RGD/2012 dated 25.4.12 passed  
by the Commissioner of Customs/Central Excise (Appeals), in the case of  
M/s./Sh. As above Reg.

Sir,

I am directed to refer to your Revision Application No. 610  
Dated 10.7.12 against the Order-in-Appeal Number cited in the above subject. Your application  
has been provisionally accepted and registered vide file reference number given on the top of this  
letter. This reference number should invariably be quoted while corresponding in future

2. The registration can be made final only on your submitting the following documents (Ticked)  
within a period of 15 days of receipt of this letter, failing which the same shall be dismissed as  
non-maintainable without any further reference:-

1. TR-6 Challan : dated
2. The Order-in-Original No. dated  
Passed by the Asst./Dy./Joint/Additional Commissioner of C. Ex./Cus
3. The Order-in-Appeal No. dated  
passed by the Commissioner (Appeals), C. Ex./Cus
4. Your Demand Draft No. dated  
for Rs. 200/1000 is returned herewith. Please furnish the fee under TR-6  
Challan (Instructions enclosed).
5. Application for condonation of delay. RA is filed after delay of .....months/days and is  
'time-barred'.
6. Evidence of receipt of Order-in-Appeal No. dated
7. Proper Vakalatnama / Authorization letter.
8. Court fee stamps of Rs. 1 each to be affixed upon O/O, O/A, RA.

Your faithfully  
Kiran Lakra  
(KIRAN LAKRA) 8.5.12  
SECTION OFFICER (RA)



Subject

Advocate/Consultants:

F.No. 195/688/12-RJ  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

Subject: Customs/Central Excise-Revision Application - Check List.

A. *M/S Positive Packaging Industries Ltd.*  
(i) Date of receipt of O/A by applicant :-  
(ii) Whether evidence for (i) furnished: - 3-5-12  
(iii) Date of receipt of R.A. by R.A. Unit :- 18-7-72  
(iv) Delay, if any, whether Application for C O D submitted? *NO*

Rs. 6,99,499/-

B.  
(i) Whether copy of O/O furnished? *Yes*  
(ii) Whether copy of O/A furnished? *Yes*  
(iii) Whether any benefit granted in O/A :- *NO*  
(v) Whether Commissioner's comments :- *Yes*  
Cross objection to be obtained?

R.F. P.P.  
R.F. P.P.  
\*\* \*\*

C.  
(i) Whether TR-6 Challan furnished? :-  
(ii) If yes, for what amount? (cars-129 DD(3), 35 EE(3)) :- 1000/-

D.  
(i) Whether FFI requested? If yes, where :- *Yes*  
(ii) Applicant(s) stationed at :-  
(iii) Advocate/Consultants stationed at :-

E.  
(i) Documents relied upon in O/O & O/A :- *Yes*  
(ii) Have these been enclosed with R.A.?

F.  
(i) Whether any other R.A. has been filed against O/A mentioned at A(I) above. :-

G.  
(i) R.A. filed by Applicant/Advocate/Consultant :-  
(ii) Whether proper Vakalatnama/ Authorization letter submitted? :-

H.  
(i) Court fee stamp affixed on :- *O/O, O/A & R/A*  
(ii) Court fee stamp not affixed on :- *O/O, O/A & R/A*

\*\* If amount is more than Rs. 1 Lakh draw line below & above it, viz. Amount & if amount is less than Rs. 5,000/-, article it viz. amount

*DA*

(KIRAN LAKRA)  
SECTION OFFICER (RA)

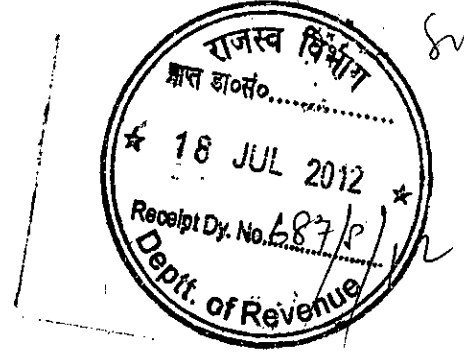
*29-May*  
*30-May*  
*18-Jul*  
*77*

197588/12-1/4

Ref: PPIL/2012

July 10, 2012

The Joint Secretary of the Government of India  
Ministry of Finance, Department Of Revenue  
CBEC & CBDT, Hudco Vishala Building  
14, B-Wing, 6<sup>th</sup> Floor, Bhikaji Cama Place,  
New Delhi - 110 066



Dear Sir,

Sub : Central Excise Revision Application against Order-in-Appeal  
No : US/271/RGD/2012 dated 25/04/2012

We enclose Revision Application in duplicate under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No : US/271/RGD/2012  
dated 25/04/2012.

We also enclose Xerox copy of acknowledgment Receipt dated 09/07/2012  
for depositing the fees of Rs. 1000/- towards captioned Revision  
Application. A copy of Board Resolution in respect of authorized signatory  
is also enclosed.

Kindly acknowledge the receipt for convenience of records.

Thanking you,

Yours Faithfully,

(D. W. DESHPANDE)  
General Manager - Indirect Taxes

Encl: Revision Application in duplicate  
Copy of Acknowledgment Receipt &  
Copy of Board Resolution


**HDFC BANK**  
**Acknowledgement Receipt**

<b>CIN:</b>	<b>BSR Code</b>	<b>Date Of Receipt</b>	<b>Challan Sr No</b>
	0510004	09072012	00069
<b>Type Of Payment:</b>	EXCISE TAX Tax		
<b>Major Head Code</b>	0038		
<b>Location Code</b>	430302		
<b>Assessee Code:</b>	AAACP2836QXM002		
<b>Name Of Assessee</b>	POSITIVE PACKAGING IND. LID. : FLEXIBLES DIVISION		
<b>Commisionerate Code</b>	43	<b>Division Code No.</b> 03	<b>Range Code</b> 02
<b>Accounting Code :</b>	00380087		
<b>Accounting Code Description</b>	OTHER RECEIPTS		
<b>Amount Per Accounting Code :</b>	1000		
<b>Total Amount In Figures :</b>	Rs. 1000		
<b>Total Amount In Words :</b>	Rs. One Thousandonly.		
<b>Date Of Realization :</b>	09/07/2012 16:26:13		

**Please Note:** : As per the CBEC's Directive, this cyber receipt in acknowledgement of your e-payment and no physical acknowledgement will be sent by post.

Close      Print  
Save  
Acknowledgement

*Tone com*  


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*Shrestha*  


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 10/7



**POSITIVE  
PACKAGING  
INDUSTRIES  
LIMITED**

98, JOLLY MAKER CHAMBERS NO. 2,  
225, NARIMAN POINT,  
MUMBAI 400 021,  
MAHARASHTRA, INDIA

24  
TEL : +91 22 2283 7206  
FAX : +91 22 2202 3774  
E-mail : positive@vsnl.com  
www.positivepackaging.com

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF THE COMPANY HELD ON 26<sup>TH</sup> APRIL 2008 AT THE REGISTERED OFFICE OF THE COMPANY**

---

**AUTHORITY TO MR. D. W. DESHPANDE**

**"RESOLVED THAT** Mr. D. W. Deshpande, General Manager - Indirect Taxes, be and is hereby authorised to sign invoices, challans, returns, Letter of Undertaking (LUT), file suits/applications/appeals, reply to notices and to take all such necessary actions as may be necessary in this regard including signing of documents, swearing of affidavits and all other documents and papers in respect of Sales Tax, Central Excise, Service Tax and Development Commissioner and to appear before the said Authorities on behalf of the Company and to do all such things and acts as may be necessary and incidental thereto in relation to all the Divisions and units of the Company.

**RESOLVED FURTHER THAT** a certified true copy of this resolution be submitted to the respective Authority for their record with a request to act thereon."

For Positive Packaging Industries Ltd.

*A. W. Deshpande*

Director / Company Secretary

Place: Mumbai

Date : 26<sup>th</sup> April 2008



FACTORY: VILLAGE RANSAI, KM. 16, KHOPOLI - PEN ROAD, KHOPOLI 410 203, MAHARASHTRA, INDIA  
TEL: +91 2192 391300 to 391309 FAX: +91 2192 391310 E-mail: factory@positivepackaging.com



original

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Before Joint Secretary, R.A Unit, Government of India, Ministry of  
Finance, New Delhi.

In the matter of

Revision Application No..... of ..... 2012

Filed by:

Positive Packaging Industries Ltd  
Mumbai.....Appellant

V/s  
Dy. Commissioner of Central Excise  
Khopoli Division.....Respondent

**INDEX.**

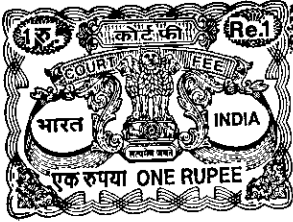
Sl. No	Exhibit	Description	Page Nos.
1	-	Form 8 duly filled in along with statement of facts and Grounds of application.	1 to 9
2	A	Copy of order-in-appeal No.US/271/RGD/2012 dated 25.4.2012	10 to 15
3	B	Copy of letter dated 25.2. 2011 confirming the total loss and no trace of containers lost in the accident.	16
4	C1 & C2	Copy of rebate claims filed by the appellants	17 to 42
5	D	Deficiency memo cum show cause notice dated 20.4.2011	43
6.	E	Written submission of appellants dated 9.5.2011.	44 to 49
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**FORM NO. E.A.-8**

[Rule 9 of the Central Excise (Appeal) Rules, 2001]

**Form of Revision Application to the Central Government under Section 35EE of the Central Excise Act 1944.**Revision Application No..... 175/688/12-RTO of ..... 2012

1	Name and address of the applicant.	:	Positive Packaging Industries Ltd, KM 16, Khopoli-Pen road, Village Ransai, Khopoli
2	Address of the Commissioner (Appeals) passing the order against which the revision application is filed.	:	Commissioner of Central Excise (A) Utpad Shulk Bhavan Sector E, Bandra Kurla Complex, Bandra (E), Mumbai-51
3	The number and date of the order.	:	O-I-A No. 271/RGD/2012 dated 25.4.2012
4	Date of communication of the order	:	3.5.2012
5	Designation and address of the adjudicating authority against which the order has been passed by the Commissioner (Appeals)	:	Deputy Commissioner of Central Excise, Khopoli Division, Trifed Towers, Sector 17, Khandeshwar, New Panvel
6	Address to which notices/communications may be sent to the applicant.	:	Positive Packaging Industries Ltd, KM 16, Khopoli-Pen road, Village Ransai, Khopoli & P.K. Shetty, Advocate F-160, 1 <sup>st</sup> Floor, Dreams Mall, L.B.S. Marg, Bhandup (West) Mumbai-400 078
7	Whether the appellant wishes to be heard in person	:	Yes
8	(i) Description of classification of goods	:	Flexible Packing Material falling under Chapter 39 of CETA 1985
	(ii) Period of dispute	:	July 2010
	(iii) Amount of duty, if any, demanded for the period mentioned in item (ii)	:	NA
	(iv) Amount of refund, if any, claimed for the period mentioned in item (ii)	:	Rs.6,99,499/- (Rs.3,63,781/- & Rs.3,35,718/-) (Rebate)
	(v) Amount of fine imposed	:	NA
	(vi) Amount of penalty imposed	:	NA
	(vii) Market value of seized goods	:	NA
9	Whether duty or penalty, if any, has been deposited (a copy/extract of the challan/account-current, as the case may be, under which the deposit is made, shall be furnished)	:	Not Applicable.  The Appeal relates to rebate of duty paid on export under Rule 18 of CER 2002
10	Relief claimed in application	:	As per grounds of Appeal



Positive Packaging Industries Ltd, KM16, Khopoli-Pen Road, Village Ransai, Khopoli (hereinafter referred to as 'Applicants') are filing this Appeal to quash & set aside the Order-in-Appeal No. 271/RGD/2012 dated 25.4.2012 upholding the Order-in-Original RGD/KPL/RC/3210/11-12 dated 31.5.2011 passed by Dy. Commissioner of Central Excise, Khopoli Division, Raigad Commissionerate, Trifed Towers, Sector 17, Khandeshwar, New Panvel-410 206 . Commissioner (Appeals) rejected the two rebate claims of Rs.363781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- on the ground that Applicants have failed to comply with the conditions of Rule 18 read with Notification No. 19/2004 CE(NT) dated 6.9.2004 in as much as the goods have not actually exported & therefore grant of rebate of duty paid does not arise. Hereto annexed & marked **Exhibit A** is the copy of the said order-in-appeal dated 25.4.12.

2. Applicants are engaged in the manufacture of flexible packaging material (Laminates) falling under Chapter sub-heading No.39 of the Schedule to CETA, 1985. The said manufactured goods are cleared for domestic market as well as export. Applicants exported their finished goods under ARE-1 No. 339 & 340 both dated 25.7.2010 to 'Premium Foods SPRL, Kinshasa, Democratic Republic of Congo, on FOB basis. Shipping bill Nos. 8693688 & 8693664 both dated 26.7.2010 were issued for the said export & the 'Let Export Order' was also passed on 27.7.2010 by the proper officer of Customs. The goods were loaded on the vessel MSC Chitra at JNPT Port on 7<sup>th</sup> August 2010 & Bill of Lading No. MTD 5000130022295 dated 7.8.2010 was issued for both the consignments by Team Global Logistics Pvt. Ltd. However it has been reported that the said Vessel, immediately after leaving the port, collided with another vessel namely Khaleeja III on 7<sup>th</sup> August 2010. It was reported by the shipping company that the said containers were lost in the accident & could not be salvaged by the shipping agency. Hereto Annexed & marked **Exhibit B** is the copy of the letter dated 25.2.2011 from the shipping agency.

3. Applicants have informed the overseas customer about the said loss of goods in-transit after handing over the goods on board. Applicants also claimed the export sale proceeds as the contract was on FOB basis and the ownership of goods was transferred to buyer in terms of INCOTERMS. The overseas customer accordingly have remitted the sale proceeds in terms of FOB contract to Applicants excluding the excise duty paid on the goods. Applicants thereafter filed two rebate claims on 9<sup>th</sup> February 2011, amounting

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Rs.3,63,781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- under ARE-1 Nos. 339 & 340 both dated 25.7.2010. In support of the claim the Applicants had submitted copies of ARE-1 duly signed by the Preventive Officers of Customs, Central Excise invoice evidencing payment of duty, Shipping Bills with order of 'Let export' permitted by Customs Officers, Custom Invoice, Bill of Lading & the Bank Realization Certificate evidencing proof of receipt of sale proceeds in convertible foreign currency covering both the containers. Hereto annexed & marked **Exhibit C1 & C2** collectively are the copy of the said two rebate claims.

4. Applicants however received the Deficiency Memo cum show-cause notice dated 20.4.2011, pointing out that:

- a) No endorsement from Customs on the reverse side of the ARE-1
- b) No endorsement from Customs on the shipping bill
- c) Copy of the mate receipt not submitted

Applicants were also directed to appear before Deputy Commissioner of Central Excise on 27.4.2011 in the matter. Hereto annexed & marked **Exhibit D** is the copy of the said Deficiency Memo Cum show-cause notice dated 20.4.2011.

5. Applicants appeared for personal hearing in the matter on 4.5.2011 wherein they have made the following submissions:

- i) the goods were loaded on vessel MSC Chitra on 17<sup>th</sup> August 2010, Team Global Logistic Pvt. Ltd. The shipping agency also issued a Bill of Lading for the said consignments. Once the vessel left the port, Applicants have no control over such accidents & in terms of FOB contracts, the ownership in goods transferred to overseas buyer & contractual obligation is complete once the goods are shipped on Board.
- ii) Applicants have collected the sale proceeds from the overseas buyer in foreign exchange for the goods exported in terms of FOB contract & the goods destroyed in transit has no relevance for the payment of rebate.
- iii) a representation has been made by the Federation of Indian Export Organisation (FIEO-Set up by the Ministry of Commerce, Govt. Of India) for waiver of duty on the goods lost in the said accident & therefore the rebate claim may be kept pending.

Hereto annexed & marked **Exhibit E** is a copy of the written submission dated 9.5.2011 filed by Applicants subsequent to the hearing.



6. Appellants, However surprised to receive order in original passed by Dy. Commissioner without going into the merits of the case rejecting the rebate claims vide OIO No. RGD/KPL/RC/3210/11-12 dated 31/05/2011 on the ground that goods are not exported. Hereto annexed & marked **exhibit F** is the copy of the said order-in-original dated 31.5.2011.

7. Aggrieved with the said order-in-original rejecting the rebate claims applicant filed appeal before the Commissioner (Appeals), Mumbai Zone II on the following grounds:

- i. The overseas buyer released the payment of goods exported in foreign currency being condition of contract as FOB.
- ii. ARE-1 is signed by the Custom Officer, LET Export order passed by the Custom Officer & Bill of Lading issued by Shipping Agency.
- iii. Representation made by Federation of Indian Exporters Organization (FIEO).
- iv. 'Non crossing of border of Indian territorial waters of the export goods' is only a procedural requirement. Main purpose of allowing the incentive in respect of export is to earn convertible Foreign exchange for the country that has been achieved by the appellant.

Hereto annexed and marked **Exhibit G** is the copy of said appeal.

8. The Commissioner (Appeals) granted personal hearing on 08/02/2012. The Applicant reiterated the submissions advanced in the appeal. Applicants, however, surprised to receive the Order-in-Appeal rejecting said rebate claims amounting to Rs. 6,99,499/- on ground that goods are not physically exported. Aggrieved with the said order Applicants are filing this appeal on the following grounds each of which are urged without prejudice to one another.

#### **GROUND OF APPEAL**

9. [ Respondent erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods & receipt of export sale proceeds in foreign exchange. Though the said certificate was enclosed to the rebate claim, Respondent merely brushed aside the said submission of the Applicants. Respondents also erred in simply stating that for payment of rebate under Rule 18, Export is a pre-condition to be fulfilled. Appellant submit that goods have been exported under FOB contract which

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stipulates that the responsibility of the exporter is to handover the goods Free On Board (FOB). Under the International Contract Terms (INCOTERMS), once the goods are handed over to the ship, the title in goods is transferred to the customer & any loss in transit is sole responsibility of the overseas buyer. In the instant case the goods were exported under FOB terms & the export proceeds are also realized in foreign exchange. This complies the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. Once the said condition is complied with, rebate on the said goods cannot be denied & therefore the order of Respondent is liable to be quashed & set aside. ]

10. [ Respondent erred in rejecting the claim only on the ground that the goods have actually not exported. Respondent failed to appreciate that the goods have actually been taken on board in the ship & the necessary Bill of Lading is issued by the shipping agency & the ship was physically moved from the port. Any accident beyond this point is not within the control of the exporter and the obligation of the exporter in terms of FOB seizes once the goods are shipped on board. There is no dispute to the fact that necessary duty has been paid on the said goods & a certificate is issued by Superintendent of Central Excise verifying the said duty payment details. As an exporter the Applicants have completely discharged their obligation on their part & therefore the burden of duty paid on the said goods exported should not fall on the exporter having completed & discharged the obligation on their part. Therefore the order of Respondent is liable to be quashed & set aside. ]

11. [ Respondent erred in travelling beyond the findings recorded by the original adjudicating authority & extended a totally new finding in his order. Adjudicating authority rejected the rebate on the ground that there is no endorsement of the customs officers on the reverse side of the ARE-1, Shipping bill & copy of Mate receipt is not submitted. This is the only finding by the adjudicating authority in rejecting the said rebate claim. However, Commissioner (Appeals) failed to extend his independent finding on this order but traversed beyond the finding of the adjudicating authority. The Commissioner (Appeals) simply rejected the appeal filed by the Appellants on the grounds that the goods have not been exported. In the present case though the goods have been lost after the vessel left the port, the Appellants have recovered the sales proceeds in the convertible foreign exchange & therefore the rebate is legally eligible to the Appellants. ] Commissioner (Appeals) failed to consider the said substantial submission of the Appellants

& therefore the order of the Commissioner (Appeals) is liable to be quashed & set aside.

13. [ Commissioner (Appeals) erred in rejecting the claims only by relying upon the word 'exported' used in the text of Rule 18, Notification No. 19/2001-CE(NT) dt 06/09/2004 & para 8.4 under Chapter 8 of the CBEC Manual. Applicant submits that the rules, notifications and manuals have been framed by keeping in mind export in the normal situation. In the instant case relates to accidental loss of export goods which requires different look at rules framed. While interpreting the literal meaning of the words used in text of the rule, notification, the intention of law needs to be considered. In the instant case it cannot be said that goods have not been exported. Physically the goods have been cleared from the factory under supervision of Central Excise Officer by following all the procedures laid down for export. The export was on FOB terms. Therefore the sale was complete and the ownership of goods was transferred to buyer once the goods were delivered on board for delivering the goods to overseas buyer } This was for this reason that after the accident, the overseas buyer could send the proceeds of export goods. Since the goods were not been found by any of the agencies appointed for that work, it can be very well said that it has crossed Indian territorial waters and therefore the export is complete. Under the circumstances whether the accident takes place within the territorial water or outside the territorial water doesn't make any difference so far as the export proceeds in convertible foreign exchange is received in India. However if the accident would have happened outside the territorial waters, the claims would have been allowed without any hesitation in spite of all other things remain same. Therefore Intention of rule, notification and supplementary instructions in the manual, as relied upon by the Commissioner (Appeals) for rejecting the claim is certainly not to deny legitimate claims. Therefore since the export proceeds have been received in convertible foreign currency, the legitimate export incentive should be allowed to the exporter. On this ground alone the impugned order is required to be quashed or set aside. X4

14. [ The Commissioner (Appeals) erred in rejecting the claim relying upon the definition of word 'export' as given under Section 2(18) of the Customs Act, 1962. The word 'export' has been defined as 'taking out of India to a place outside India'. The applicant submits that the goods were removed from the factory and loaded on the ship for taking the same to a place outside India. The definition doesn't envisage that goods must reach in the hands of overseas buyer. However because of accident, goods did not reach the destination. Despite the accident, the ownership of goods was transferred to X5

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the overseas buyer, export was complete and therefore the overseas buyer claimed the insurance and remitted the proceeds in convertible foreign currency. The inference of the definition of 'export' as drawn by the Commissioner (Appeals) is therefore wrong and is not capable of handling the situation of accident. Therefore the order of commissioner (Appeals) liable to be quashed & set aside. ]

15. [ Commissioner (Appeals) erred in rejecting the rebate claim without considering the various representation made by the Federation of Indian Export Organisation & the Chairman of CBEC to issue necessary directions & clarification so that the exporters are not put to financial loss for no mistake of theirs. Appellants have also directly written to CBEC requesting to consider their case in view of the recovery of sale proceeds in convertible foreign exchange.] Hereto annexed & marked **Exhibit H** is the copy of the letter dated 16.1.2012, addressed to CBEC from Paper Film & Foil Converter Association, Mumbai, Federation of Indian Exports Organisation, (FIEO) New Delhi letter dated 1.2.2012, Director General of Export Promotion(DGEP) New Delhi letter dated 18.1.2012, & the Appellants letter dated 10.1.2012. Commissioner (Appeals) failed to appreciate any of this representation made to the authorities & denied the request for keeping the said rebate claims in abeyance awaiting the instructions from these authorities. Therefore the order of the Commissioner (Appeals) is liable to be quashed & set aside. X6

17. Respondent erred in not considering following grounds which are specifically urged in the appeal memorandum filed by the Appellants:

a. Respondent erred in his findings that the customs officer has not signed on the ARE-1. Applicants submit that it is factually incorrect as observed from the reverse side of the ARE-1 annexed above that the Jurisdictional central excise officers have signed the ARE-1 at the time of stuffing the container at the factory & the said ARE-1 is also signed by Customs Preventive Officers at the Port of Shipment. More over the shipping bill issued for the said containers also contain the 'Let Export Order' passed by the Officers of Customs. The goods have been handed over to shipping agency namely Team Global Logistics Pvt. Ltd who have issued the Bill of Lading No. MTD:500130022295 dated 7.8.2010. Respondent simply ignored all the above documentary evidence available on records & rejected the claim only on the ground that ARE-1 not signed by the Customs. Therefore the order of Respondents is liable to be quashed & set aside & the rebate has to be paid to the Appellant.

b. Respondent erred in rejecting the rebate claim on the ground that the goods are lost within the Indian Territorial Waters and hence goods are not exported, consequently no rebate. Applicants submit that the goods have been handed over to the shipping agency on 27.7.2010 and the 'Let export orders' were also issued on 7.8.2010. Under 'FOB Contract' the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.7.2010 itself who have issued the Bill of Lading confirming goods on Board. The overseas customer, in terms of FOB contract, accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. In terms of rule 18 read with relevant notification, even if the export is made, unless the sale proceeds are realized from the overseas customer, the rebate claim is not payable and if paid already, the same is required to be refunded by the assessee. In the instant case due to collusion of ship which is beyond the control of human being, the goods have been lost in transit, on board. Simply sticking to the technical terminology i.e. 'non crossing of border of Indian territorial waters by the export goods' and ignoring realization of sale proceeds defeat the purpose of export. Main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the appellant. Since the sale proceeds were realized in view of the FOB contracts and Applicants have produced the Bank Realization Certificate (BRC) the Applicants are legally eligible for the export incentive by way of rebate. Applicants therefore submit that realization of Sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the Applicants in the present case. Therefore the Applicants are legally eligible for the rebate claim which is required to be paid immediately.

18. Applicants crave leave to add, alter and/or delete any of the submissions made herein above before or at the time of personal hearing.

19. Applicants wish to be heard in person before the appeal is finally disposed off.

**RELIEFS CLAIMED**

In view of the aforesaid grounds, Applicants pray that:

- a. the order of Respondent be quashed & set aside.
- b. It may be held that the rebate claim is eligible & order may be passed directing to settle the said claim
- c. Any other relief that may be deemed necessary & fit under the circumstances of the case be granted.

**APPLICANTS**

For Positive Packaging Industries Ltd.  
Flexibles Division



D. W. Deshpande  
General Manager, Indirect Taxes


**VERIFICATION**

I, D.W Deshpande, the authorized signatory of the Appellant, do hereby declare that what is stated above is true to the best of my information & belief.

Verified today 10<sup>th</sup> day of July 2012

**APPLICANTS**

For Positive Packaging Industries Ltd.  
Flexibles Division



D. W. Deshpande  
General Manager, Indirect Taxes

018

For Positive Packaging Industries Ltd.  
Flexibles Division

*[Handwritten signature]*

*[Handwritten text]*

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*[Faint handwritten text]*

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS-II)  
MUMBAI

3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E),  
Mumbai-400 051.

Tel.No.- 26573050 Fax.-26570525

Any person aggrieved by this Order-in-Appeal may file an appeal / application to the authority as the case may be :-

(1) (i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1, if such order relates to :-

- (a) a case of loss of goods where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final product under the provisions of this act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No.2) Act, 1998.

The appeal / application shall be made in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee as below or as prescribed by the appropriate authority :-

- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;
- (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case of which the application relates is more than one lakh rupees;

in terms of Sub-Section (3) of Section 35EE of the Central Excise Act, 1944, and should be accompanied by a copy of TR-6 Challan evidencing payment of fee as mentioned above under Major Head of Accounts.

(ii) Under section 35B of the Central Excise Act, 1944 an appeal lies to the Customs, Excise & Service Tax Appellate Tribunal, West Zone Bench, Jai Centre, 4<sup>th</sup> Floor, 34, P.D'mello Road, Poona Street, Masjid Bunder (E), Mumbai-400 009.

An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee as below or as prescribed by appropriate authority :-

- (a) where the amount of duty demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;



4-1-1939

- (b) where the amount of duty demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees;

in the form of a crossed bank draft in favour of Assistant Registrar of Customs, Excise & Service Tax Appellate Tribunal, WZB, Mumbai.

If this order covers a number of Orders-in-Original, fee of Rs.200/- or Rs. 1,000/- or as prescribed by the appropriate authority as the case may be should be paid for each such Order-in-Original in the aforesaid manner notwithstanding the fact that one appeal to the Appellate Tribunal or one application to the Central Government as the case may be is filed to avoid scriptory work.

In case of Sr. No.(i) an application to Central Government should be in duplicate and be accompanied by two copies of the Order and two copies of the Order-in-original which has given rise to the Order.

One copy of each application, the Order appealed against and the order of the adjudicating authority, shall bear an item 6 of the Court Fee Act, 1870, as amended.

In case of Sr.No.(ii) the appeal to the Appellate Tribunal should be accompanied by four copies (one copy of which at least shall be certified copy).

(2) Any person aggrieved of the Order may file an appeal in prescribed form to the authority as mentioned above within three months from the date of communication of this Order and be addressed to the authority as the case may be.

(3) Attention is also invited to Rules governing these and other related matters contained in Central Excise (Appeals) Rules, 2001 & the Customs, Excise & Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 and various other statutory provisions.

MUMBAI.

3<sup>RD</sup> FLOOR, UTPAD SHULK BHAVAN, PLOT NO.C-24, SECTOR-E, BANDRA-KURLA COMPLEX, BANDRA (EAST), MUMBAI - 400 051.

Tel No.26573050

Fax No. 2657 0525

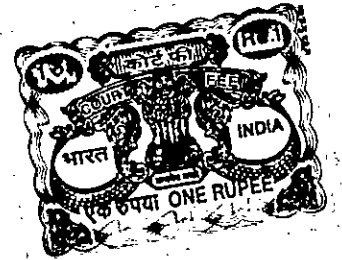
F.No. V2(A)422/RGD/2011

2572

Date: 25/04/12

Appellants : M/s Positive Packaging Industries Ltd.  
Respondent : Deputy Commissioner Central Excise, Khopoli Dn.  
Orders appealed against : Raigad/KPL/RC/3210/11-12 dated 31.05.2011  
Date of personal hearing : 08.02.2012

Order No. US/ 271 /RGD/2012



The appellants mentioned here-in-above have filed an appeal against Order-in-Original No. Raigad/KPL/RC/3210/11-12 dated 31.05.2011 passed by the Deputy Commissioner Central Excise, Khopoli Division, Raigad rejecting two rebate claim of Rs3,63,781/- and Rs. 3,35,718/- [ Total Rs. 6,99,499/-] on the ground that the goods were not exported.

It is contended in the appeal that-

1. The goods were loaded on vessel MSC Chitra on 17.08.2010 and a Bill of lading was also issued. The contract was FOB Mumbai and their obligation under the contract was complete and they also received the payment.
2. The adjudicating authority erred in holding that export was a pre-condition for grant of rebate. The ARE-1s are signed by the preventive office of Customs and the shipping bills also contain 'Let export' order.
3. The Federation of Indian Exporters Organization had represented to the CBEC for waiver of Central Excise duty on the goods lost on MSC Chitra and the appellants had requested the adjudicating authority to keep the matter pending. Some of the exporters have been granted matter of the duty and therefore, the benefit of rebate cannot be denied to the appellants.
4. The adjudicating authority wrongly held that the goods were lost in Indian territorial water and hence, not exported.

A personal hearing in the matter was held on 08.02.2012. Shri P. K. Shetty Advocate and Shri D. W. Deshpande, G. M. Indirect Taxation appeared for hearing. They reiterated the arguments advanced in the appeal.

I have gone through the case records and considered the averments made in the appeal. The short question involved in the appeal is whether the appellants were eligible for rebate under

the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (N.T) dated 06.09.2004.

Rule 18 of Central Excise Rules, 2002 states as follows.

**"RULE 18. Rebate of duty. —** *Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such 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.*

*Explanation. - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."*

*Notification No. 19/2004 C.E. (N.T) dated 06.09.2004 states as follows.*

*"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 (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar 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."*

The sanction of rebate claim under the aforesaid provisions is governed by paragraph 8.4 of CBEC Manual of Departmental instructions which states as follows.

*"8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty -paid' character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

From the above quoted section of Rule 18 and Notification No.19/2004 ibid shows that the goods have to be exported and, rebate shall be paid subject to conditions and limitations set by the Government of India and also fulfillment of prescribed procedures. The CBEC Manual of Departmental instructions Para 8.4, quoted above, further clarifies that goods have to be "actually exported". In view of these stipulations it is found that the goods although were loaded

for export but were actually not exported in view of the definition of export given under Section 2 (18) of the Customs Act, 1962. It is also important to keep in view that the rebate of duty paid is allowed, so that Indian goods are available in the international market at a competitive price and are not burdened with the duty and the Indian duties are not exported along with the goods. In this case, for whatever reasons the export has not taken place and therefore, the grant of rebate of duty paid does not arise under the stipulation of Rule 18 read with Notification No.19/2004 *ibid*.

In view of the above, the rejection of rebate claims in the instant case has to be upheld. \*\*

The alternative claim of remission of duty has no merits. There is no provision for remission of duty after the clearance of the goods on payment of duty. The law in this regard is settled. Rule 21 of Central Excise Rules 2002 which deals with remissions states as follows.

**"RULE 21. Remission of duty.** - *Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:*"

It was held by the CESTAT in Dharmapuri District Co-Op. Sugar Mills Ltd. v/s CCE 2006 (202) E.L.T. 707 (Tri. - Chennai) that-

*"5. We have given our earnest consideration to the facts of the case. Rule 49 of the erstwhile Central Excise Rules, 1944, provided for remission of duty on excisable goods which are lost or destroyed due to natural causes or unavoidable accident, or which the assessee claims to have become unfit for human consumption or marketing, before removal. The same provisions are contained in the present Rule 21 of the Central Excise Rules, 2002."*

It was held by the CESTAT in Ginni Filaments Ltd. v/s CCE -2005 (188) E.L.T. 45 (Tri. - Del.) that-

*"I find that the Commissioner has rejected the application for remission of duty on a correct ground that the remission under Rule 49 is allowable when the loss takes place within the factory. Rule 49 does not provide for remission of duty after clearance from the factory. Therefore, I do not find any merit in the appeal and the same is rejected."*

It was held by the CESTAT in Jagjit Textile Dyeing & Print v/s CCE -2007 (6) S.T.R. 400 (Tri. - Ahmd.) that-

*"7. Since the goods have already been cleared from the factory after payment of duty the question of granting remission under Rule 21 does not arise."*

No valid grounds have been adduced to interfere with the order of the Commissioner."

In view of the above, the impugned order is upheld and the appeal is rejected.



To

M/s. Positive Packaging Inds. Ltd.  
KM 16, Khopoli-Pen Road,  
Village Ransai, Khopoli

Copy to:

1. Chief Commissioner, Central Excise, Mumbai Zone-II.
2. Commissioner, Central Excise, Raigad
3. Joint/Addl. Commissioner, Central Excise, Raigad.
4. Deputy Commissioner, Khopoli Division, Raigad
5. H.F./SC/EC.

*Uma Shanker*  
(UMA SHANKER)

COMMISSIONER (APPEALS-II)  
CENTRAL EXCISE, MUMBAI

अभिमत/ATTESTED

*W. S. ...*

अभिमत (अभिमत)

Superintendent (Appeals)

केंद्रीय उत्पाद शुल्क मुंबई-II,  
Central Excise, Mumbai-II

*Attested*

*B.K.*

*08/05/12*

**B. K. BISWAS**  
SUPERINTENDENT  
CENTRAL EXCISE  
KHOPOLI, RANGE-I  
COMMNR. RAIGAD

6-22-1914

10/10/15 10/10/15 10/10/15

EXHIBIT - 'B' - 16

MSC AGENCY (INDIA) PRIVATE LIMITED

H.O. & Regd. Office : MSC House, Andheri Kurla Road, Andheri (E), Mumbai - 400 059, (INDIA)  
Tel. : +91-22-6637 8000 - Telefax : +91-22-6637 8191 - email : comm@mscindia.com, Website : www.mscindia.com

DATE-25.02.2011

EXHIBIT - 'B'

To,

TEAMGLOBAL LOGISTICS PVT. LTD.  
GR. FLOOR, CYAN BHAVAN, 8 KUMPTHA STREET,  
BALLARD ESTATE, MUMBAI - 400038  
(ON BEHALF OF POSITIVE PACKAGING INDST. LTD.)

Dear Sir

TO WHOMSOEVER IT MAY CONCERN  
(WITHOUT PREJUDICE)

' MSC CHITRA '  
Bill of lading No MSCUM2967562  
Container No. MSCU5610173, TGHU4850484

This is to certify that above mentioned cargo remains on board the casualty which has now been under water for some four months and cannot be salvaged. You should consider this consignment as being a total loss.

Yours faithfully

For MSC Agency India, Pvt. Ltd.  
As agent of Mediterranean Shipping Company S.A. Geneva

Authorised Signatory



EXHIBIT - 'C'

EXHIBIT - 'C'

**POSITIVE PACKAGING INDUSTRIES LIMITED  
FLEXIBLES DIVISION**

FACTORY: VILLAGE RANSAI, KM.16, KHOPOLI-PEN ROAD, KHOPOLI 410203, MAHARASHTRA, INDIA  
TEL: +91 - 2192 - 391300 FAX: +91 - 2192 - 391310 E-mail: factory@positivepackaging.com

उप आयुक्त, के. उ. शु. को कायदा

To the Asst./Dy. Commr., C. E.  
Date: 15/01/2011

PPIL/EXC/0760/2010-2011

The Assistant / Deputy Commissioner of Central Excise & Custom,  
Khopoli Div.: 1st Floor,  
Central Excise Building,  
Plot No. 1 Sector 17,  
New Parvel (W).

09 FEB 2011

प्रशासन अनुभाग / Admn. Section  
खोपोली मण्डल / Khopoli Dn

Sub:- Rebate of Rs. 363781/- against A.R.E. 1 No. EXP1011/000340 dtd. 25/07/2010

Dear Sir,

With reference to the above mentioned refund claim we are enclosing herewith the following documents.

1. Form 'C' in Triplicate duly filled and signed.
2. Original A.R.E.1 No. EXP1011/000340 dtd. 25/07/2010
3. Duplicate copy of A.R.E.1 No. EXP1011/000340 dtd. 25/07/2010
4. One cover containing Triplicate copy of A.R.E.1 No. EXP1011/000340 dtd. 25/07/2010
5. Duplicate copy of Excise Invoice No. 00340 dtd. 25/07/2010
6. Self Attested Copy of Shipping Bill No. 8693664 dtd. 26/07/2010.
7. Self Attested Copy of Air Way Bill No. 500130022295 dtd. 07/08/2010.
8. Self Attested Copy of Customs Invoice No. EXP1011/15321 dtd. 25/07/2010
9. Declaration
10. Certificate regarding payment of excise duty duly attested by the Superintendent of Central Excise, Range: Khopoli-II.
11. Self Attested copy of Bank Realisation Certificate.

We request you to kindly process said rebate claim and arrange to release your Cheque at the earliest and oblige.

Thanking you.

Yours faithfully,

**AUTHORISED SIGNATORY**

Encl. As above.

Shipping Bills  
to be Replaced

**FORM - C****APPLICATION FOR REBATE OF DUTY ON EXCISABLE GOODS OTHER THAN  
(VEGETABLE NON ESSENTIAL OILS AND TEA) BY SEA/AIR**

The Assistant / Deputy Commissioner of Central Excise,  
Khopoli Division, Raigad Commissionrate,  
1st Floor, Central Excise Building, Sector - 17,  
Khandeshwar, New Panvel

We have exported the under mentioned quantity of Printed Flexible Laminated material and produced below mentioned as evidence on payment of excise duty thereon, the attached ARE.1 No. **EXP1011/000340** dated **25/07/2010**. A copy of relevant Bill of Lading is also attached. We therefore request your goodself to sanction the admissible rebate at the earliest.

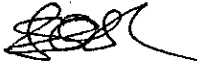
## Particulars of documents attached

01	ARE.1 No. and Date	EXP1011/000340 dated 25/07/2010
02	Name of Commissionerate from which the manufactured Goods removed after payment of Excise Duty	Raigad
03	Name and Address of Manufacturer and Exporter	Positive Packaging Industries Limited Flexibles Division, Survey No.51 to 53, KM.16, Khopoli-Pen Road, Khopoli.
04	Factory Central Excise Registration No.	AAACP2836QXM002
05	Name of Person or Firm who cleared the goods on payment of duty	<b>Positive Packaging Industries Limited Flexibles Division.</b>
06	Quantity of Goods	Net. Wt. 13782.33 Kgs.
07	Invoice No. and Date	00340 Dated 25/07/2010
08	Tariff Classification No.	3921 90 96
09	Rate of Duty	Excise Duty 8% + Ed. Cess 2% + SHE Cess 1%
10	Value of Goods	Rs. 3,531,846.00
11	Amount of Excise Duty Paid	Rs. 363,781.00
12	Sr.No.of E.No.& Dt. under which duty was debited	3008/30.07.10
13	No. and Date of Bill of Lading	500130022295 / 07/08/2010
14	No. and Date of Shipping Bill	8693664 Dated 26/07/2010
15	Weight of quantity exported	Net. Wt. 13782.33 Kgs.
16	Name of Vessel on which goods shipped	MSC CHITRA
17	Date of Shipment	15/01/2011

We certify that the aforesaid particulars are correct and we are the rightful claimant of rebate of duty of Rs. 363,781 (Rupees Three Lac Sixty Three Thousand Seven Hundred Eighty One Only)

Dated : 15/01/2011

Signature and Full Address of the Claimant  
Positive Packaging Industries Limited Flexibles Division,  
Survey.No.51 to 53, KM.16, Khopoli-Pen Road, Khopoli.

  
Authorised Signatory

**II**

Refund Order No. \_\_\_\_\_ Date \_\_\_\_\_

The Claim of M/s. Positive Packaging Industries Limited Flexibles Division, Village Ransai, Survey No.51 to 53, KM.16, Khopoli-Pen Road, Khopoli, Maharashtra has been scrutinized with ARE.1 No. EXP1011/000340 dated 25/07/2010 and the relevant Bill of Lading and rebate of Rs.363,781 (Rupees Three Lac Sixty Three Thousand Seven Hundred Eighty One Only) sanctioned. A suitable remark has been endorsed on the copy of ARE.1 produced by the claimant as well as other copies.

Date \_\_\_\_\_ Assistant / Deputy Commissioner of Central Excise

**III**

Office of the Central Excise Khopoli Division \_\_\_\_\_ forwarded to \_\_\_\_\_

- 1. The Chief Accounts Officer, Central Excise, Central Excise \_\_\_\_\_ for information and necessary action. The Triplicate copy of the form ARE.1 is attached.
- 2. M/s.

Date \_\_\_\_\_ Assistant / Deputy Commissioner of Central Excise

**IV**

- 3. Passed for payment of Rs. 363,781 (Rupees Three Lac Sixty Three Thousand Seven Hundred Eighty One Only) The amount is adjustable under Head "0038 - Union Excise Duties - Deduct Refunds"

Date \_\_\_\_\_ Chief Account Officer

**V**

Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ issued in favour of M/s. Positive Packaging Industries Limited Flexibles Division. of Rs.363,781 (Rupees Three Lac Sixty Three Thousand Seven Hundred Eighty One Only)

Date \_\_\_\_\_ Chief Account Officer

**VI**

Received Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only)

Revenue Stamp



Signature of the claimant

**VII**

Verified that the refund has been noted against the ARE.1 No. \_\_\_\_\_ dated \_\_\_\_\_

Date \_\_\_\_\_ Chief Account Officer

Range II  
 Division Khopoli Address 4th Floor, Trifed Tower  
 Plot No.3, Sector 17, Khandeshwar  
 New Panvel 410206  
 Commissionerate Raigad

FORM A/R. E. 1

A. R. E. 1 No. : 0340 Dtd. : 25/07/2010

Application for Removal of excisable goods  
 for export by road/ sea  
 [Rule 18 of the C.Ex. (No.2) Rules 2001]

CUSTOM. INV. No. : 15321  
 DATE : 25/07/2010  
 CONTAINER No. : MSCU-561017(3)  
 BOTTLE SEAL No. : D57747

- Superintendent of Central Excise - Range : II, "Ayesha Complex"; 1st Floor, Mumbai Pune Highway, Shilphata, Khopoli, Tal. : Khalapur, Dist. : Raigad. 410203
- Particulars of Assistant Commissioner of Central Excise from whom rebate shall be claimed and his complete postal address : The Assistant Commissioner of Central Excise & Customs  
 Khopoli Division: 1st Floor, Central Excise Building, Plot No. 1 Sector 17, New Panvel (W).
  - I/We M/s. Positive Packaging Industries Limited Flexibles Division of Vill. Ransai, Pen-Khopoli Road, Tal. : Khalapur, Dist. : Raigad propose to export the under mentioned consignment to : DAR ES SALAAM / CONGO (Country of destination) BY ROAD/ SEA under claim for rebate.

Original White  
 Duplicate Buff  
 Triplicate Pink  
 Quadruplicate Green

Particulars of Manufacturers of goods and his Central Excise Registration No.	No. and Description of Packages		Gross Weight Net Weight KGS.		Marks and Nos. on packages Sr. No. :	Quantity of Goods NT. WT. KGS.	Description of Goods CH. HEADING : 3921 90 96	Value Rs.		Duty		No. and date of Invoice under which duty was paid	Amount of Rebate Claimed Rs.
	1	2	3	4	5	6		7	8	9	10		
Positive Packaging Industries Limited Flexibles Division, Vill. Ransai, Pen-Khopoli Rd., Tal. : Khalapur, Dist. : Raigad, Registration No. AAA CP 2836 QXM 002	PALLET	REEL	GR. WT.	NT. WT.	PPIL MUMBAI,INDIA GR. WT. KGS. NT. WT. KGS.	13782.33	PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VIT ARICHE 814 X 120 (5 TRACK)	Rate Per 1000 PIECE	Amount Rs.	Rs.	Exp. Inv. No. EXP1011/009340 DT. 25/07/2010 Amount of Duty Payable in RG.23A PT II		
						10,904,790.00		327.9800	3576553				
					COWBELL 814 X 120 POS/FPI-235 DAR ES SALAAM		10 Absorbant bags are used inside Shipping Container to control moisture, in order to avoid damage to product in transit & these absorbant bags are bought out from open market & no cenvat credit has being taken on these items.	Discount :	44707				
TOTAL :	28		14851.97	13782.33		10,904,790				10% 353185 2% 7064 1% 3532			353185 7064 3532
													363781

SHIPMENT UNDER EPCG LICENCE NO. : 0330023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10  
 SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.130B RATE 8% ON FOB - VALUE CAP'RS.150/- P. KGS.

POSITIVE PACKAGING INDUSTRIES LIMITED  
 FLEXIBLES DIVISION

- We hereby certify that the above mentioned goods have been manufactured.  
 (a) availing facility without availing facility \*of CENVAT credit under CENVAT Credit Rules, 2004.  
 (b) availing facility without availing facility under Notification 21/2004-Central Excise (N.T.) dated 6th Sept., 2004 issued under rule 18 of Central Excise (No.2) Rules, 2001.  
 (c) availing facility without availing facility under Notification 43/2001-Central Excise (N.T.) dated 26th June, 2001 issued under rule 19 of Central Excise(No.2) Rules, 2001.
- We hereby declare that the export is in discharge of the export obligation under DEPB Scheme / Under claim of Duty Drawback under Customs & Central Excise Duty Drawback Rules, 1995.
- We hereby declare that the above particulars are true & correctly stated.  
 \* Strike out whichever is not applicable.

SUNIL MOPE  
 OFFICER EXCISE  
 AUTHORISED SIGNATORY  
 Signature of owner or his  
 Authorised agent with date  
 Name in Block Letters and  
 Designation

Date : 26/07/2010  
 Time of Removal 21:40

PART A  
CERTIFICATION BY CENTRAL EXCISE OFFICER

✓ Certified that duty has been paid by debit entry in the Personal Ledger Account No. \_\_\_\_\_ and /or CENV, Account Entry Amount of duty payable or recorded as payable in Daily Stock Account, on the goods described overleaf.

OR

Certified that the owner has entered into Bond No./Undertaking No. \_\_\_\_\_, duly accepted by the As Commissioner/Deputy Commissioner of Central Excise on \_\_\_\_\_, Rule 19 of Central Excise, (No.2) Rules, 2002 with the [F.No. \_\_\_\_\_]

2 Certified that I have opened and examined the packages PALLET NO: 3, 16 & 23 and found that the particulars stated an description of goods given overleaf and packing list (if any) are correct and that all the packages have been stuffed in the CONTAINER No. MSCU-561017(3) Marks D57747 \* and the same has been sealed with Central Excise Seal/One Time Sea (OTS) No.216310]

3 I have verified with the records, the exporter is only availing the export incentives, as specified in box No.6 and four be correct.

4 Certified that I have drawn three representative samples from the consignment (Wherever necessary) and have hande two sets thereof duly sealed to the exporter / his authorized representative.

Place: Khopoli  
Date: 26/07/10

S. M. BAGAL  
SUPERINTENDENT,  
CENTRAL EXCISE  
Superintendent of Range-I  
KHOPOLI RANGE-I

J. S. BHARTI  
INSPECTOR,  
CENTRAL EXCISE  
Inspector of Range-II  
KHOPOLI RANGE-II

PART B  
CERTIFICATION BY THE CUSTOMS OFFICER

certified that the consignment was shipped under my supervision under Shipping Bill No. \_\_\_\_\_ dated \_\_\_\_\_ by S.S. / Flight No. \_\_\_\_\_ Which left on \_\_\_\_\_ that day of \_\_\_\_\_ (Month)

OR  
Certified that the above mentioned consignment was stuffed in Container No. \_\_\_\_\_ belonging to Shipping Line. \_\_\_\_\_ based on the "Let Export Order" given on \_\_\_\_\_ day of \_\_\_\_\_ (Month) (Year) on the Shipping Bill No. \_\_\_\_\_ dated \_\_\_\_\_ and sealed by seal / one time lock No. \_\_\_\_\_ in my supervision and the container was handed over to t \_\_\_\_\_ Custodian M/s. \_\_\_\_\_ for being shipped via \_\_\_\_\_ (Name of the Port).

OR  
Certified that the above mentioned consignment has been duly identified and has passed the land frontier at \_\_\_\_\_ in its original condition under Bill of Exports No. \_\_\_\_\_ Place \_\_\_\_\_ Date \_\_\_\_\_

Place  
Date

Signature  
(Name and designation of the Customs officer in Block Letters (Seal).

SAVITRI H. MANIYAR  
INSPECTOR  
CUSTOMS

PART C  
EXPORT BY POST

certified that the consignment described overleaf has been despatched by foreign post to \_\_\_\_\_ day of \_\_\_\_\_ 200.

Place  
Date

Signature of Post Master,  
(Seal)

PART D  
REBATE SANCTION ORDER

(On Original, Duplicate and Triplicate)  
Refund Order No. \_\_\_\_\_ Dated \_\_\_\_\_ Rebate of Rs. \_\_\_\_\_ (Rupees)  
) sanctioned vide cheque No. \_\_\_\_\_ Dated \_\_\_\_\_

Place  
Date

Assistant/Deputy Commissioner/Mari  
Commissioner of Central Excise

\*Strike out inapplicable portion

DRAFT - NOT TO BE USED FOR EXPORT CREDIT

**INVOICE CUM CHALLAN (EXPORT)**  
Invoice for removal of Excisable goods from factory or warehouse on payment of duty (Rule- 11)

**POSITIVE PACKAGING INDUSTRIES LIMITED**  
**FLEXIBLES DIVISION**

FACTORY : VILLAGE RANSAI, SURVEY NO.51, 52, 53, KM.16, KHOPOLI-PEN ROAD, KHOPOLI 410203, MAHARASHTRA, INDIA  
TEL : +91-2192-391300 FAX : +91-2192-391310 E-mail : factory@positivepackaging.com

RANGE : "Ayesha Complex", 1st Floor, Mumbai-Pune Highway, Shilphata, Khopoli, DIVISION : 1st Floor, Central Exdse Bldg., Plot No. 1, Sector 17, New Panvel (W) Commissionerate : RAIGAD E.C.C. No. : AAACP 2836 QXM 002 P.L.A. No. : CON (39, 48 & 76) 65 / 96 / B - 11 C. Ex. Regn. No. : AAACP 2836 QXM 002 B.S.T. No. : 410206 - S - 900 Dt. 01-04-96. C.S.T. No. : 400021 - C - 2115 Dt. 01-04-96. P.A.N. No. : AAACP2836Q IEC No. : 039500 Mode of Transport : BY ROAD/ SEA Transporter's Name: L. R. No.	Exp. Invoice No.: <b>00340</b> Date : 25/07/2010 Name of Excisable Goods FILM, OF PLASTICS, OTHER, FLEXIBLE, LAMINATED Chapter No./Tariff Sub-Heading No. : 3921 90 96 Rate of duty : 10.00 % P.O. No. : PO NO. : POS/FPI-235 Date & Time of preparation of Invoice : 25/07/2010 15:14 Date & Time of removal of goods : 26/07/2010 21:40 Vehicle No. : MH-04-BU-419
--	---

Name & Address of Consignee PREMIUM FOODS SPRL AVENUE BOBOZO NO. 19284/4B QUARTIER MBAMU, LIMETE, KINSHASA DEMOCRATIC REPUBLIC OF CONGO	Billing Address FPI LOGISTICS C/O DIARMUD MARRON PO BOX 9970 DUBLIN 15 IRELAND
--	---

PACKING			DESCRIPTION OF GOODS	QUANTITY			RATE	AMOUNT
PALLET	REEL			GROSS WT.	NET WT.	PIECES	@ Rs.	Rs.
28			PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VITARICHE 814 X 120 (5 TRACK)  10 Absorbant bags are used inside Shipping Container to control moisture in order to avoid damage to product in transit & these absorbant bags are bought out from open market & no cenvat credit has being taken on these items.	14851.97	13782.33	10904790	Per 1000 PIECE 327.9800	3576552
			TOTAL	14851.97	13782.33	10904790	Less Discount :	4470.
28								3531841

EXCISE DUTY PAYABLE : [ UNDER RG.23A PT II ] Three Lac Fifty Three Thousand One Hundred Eighty Five Only Education CESS : Seven Thousand Sixty Four Only S.H.E. CESS : Three Thousand Five Hundred Thirty Two Only TOTAL VALUE : Thirty Eight Lac Ninety Five Thousand Six Hundred Twenty Seven Only	Excise Duty 10% Education Cess 2% S. H. E. Cess 1% <b>Grand Total</b>	35318 706 353 <b>389562</b>
--	--	--------------------------------------

EXPORT UNDER CLAIM OF REBATE.  
 CUSTOM INV. No. : 15321 Date 25/07/2010  
 A. R. E 1 No. : EXP1011/000340 Date 25/07/2010  
 CONTAINER NO MSCU -561017(3) BOTTLE SEAL NO D57747  
 SHIPMENT UNDER EPCG LICENCE NO.: 0330023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10  
 SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.130B RATE 8% ON FOB - VALUE CAP RS.150/- P. KGS.

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directly or indirectly from the buyer. Subject to terms & conditions printed overleaf.

E. &amp; O. E.

*J. K. BHARTIYA*  
**J. K. BHARTIYA**

INSPECTOR  
 CENTRAL EXCISE,  
 KHOPOLI RANGE-II

For POSITIVE PACKAGING INDUSTRIES LIMITED  
 FLEXIBLES DIVISION

**SUNIL MORE**  
 OFFICER EXCISE

Authorised Signatory  
 Signature of owner or his  
 Authorised agent with date  
 Name in Block Letters and  
 Designation

Head Office: 98, Jolly Maker Chambers No.2, 225, Nandgaon, Mumbai - 400 021. Tel:(022) 2837206(5 Lines), Fax:(022)22023774. email: positive@vsnl.

JAWAHAR CUSTOMS CONCOR-DI  
E. D. I. Service Centre, JNPT

EXCHANGE CONTROL ( )  
LED No : 14/266

LED Date: 27/07/2010  
Indian Customs EDI System / Export (ICES/E)

JNPT , Nhava Sheva  
Shipping Bill for Export

1058

SB No : 8693664 / 26/07/2010 BRC Realisation Date : 31/07/2011  
CHA : AAEFJ8308ACH001 JAI INTERNATIONAL  
Print Date : 27/07/2010 16:26  
This consignment was not opened for physical examination by Customs  
Port of Ldg-Code : INNSAI State of Origin : MAHARASHTRA

<b>EXPORTER DETAILS</b>	<b>CONSIGNEE</b>
0392001455( )	PAN No. : AAACP280360FT001
POSITIVE PACKAGING INDUSTRIES LIMITED	PREMIUM FOOD SPRL
Branch # 0 98, JOLLY MAKER CHAMBERS NO.2,	AVENUE BOBOZO NO.19284/4B
225, NARINAN POINT,	QUARTIER MBAMU, LIMETE, KINSHASA
MUMBAI, MAHARASHTRA.	DEMOCRATIC REPUBLIC OF CONGO
	CONGO

Factory Sealed Address Details

IEC :X	Name :X	Total Pkgs. : 28
Port of Loading : JNPT , Nhava Sheva		Loose pkts : 0
Port of Discharge: DAR ES SALAAM		Net Wt(KGS) : 13782.330
Gross Wt(KGS) : 14851.970		No. of Ctrs. : 1
Country of Best : CONGO	Rotation Date : 09/07/2010	
Rotation No. : 27178		
Nature of Cargo : C		
Marks and Nos. : 5		

FOREX BANK ACC:222-0-528796-3  
RBI Waiver No/Date:  
FOB VALUE (INR) : 3531845.96 DEB (INR) : 0.00  
AD. Code : 6470013 Bank a/c No : 100030022643772  
I.F.S. Code : SBIN0007491

**INVOICE DETAILS** Invoice 1/1  
Inv.val : 3531845.96 INR 76779.26 USD  
FOB Val : 3531845.96 INR  
Inv.no. : 15321  
Mat. of con : FOB  
Exchange rate : 1.00 (USD) = 46.000 (INR)  
Inv Dt : 25/07/2010  
Curr (inv): USD

	Rate	Currency	Amount
Insurance	0.00		0.00
Freight			0.00
Discount	0.00	USD	971.89
Commission	0.00	USD	0.00
Other Deductions	0.00	USD	0.00
Packing Charges		USD	0.00

Mature of payment: DP  
Buyer Name & Address  
FPI LOGISTICS  
C/O DIARMUD NARRON  
P.O.BOX 9970, DUBLIN 15  
IRELAND

Period of Payment:  
Quota Certificates

1047623

1007544

2047624

JAWAHAR CUSTOMS CONCOR-DR  
E. D. I. Service Centre, JNPT

Indian Customs EDI System / Export (ICES/E)

JNPT , Nhava Sheva  
Shipping Bill for Export

SB No : 8693664 / 26/07/2010 BRC Realization Date : 31/07/2011  
CHA : AAEFJB308ACH001 JAI INTERNATIONAL  
Print Date : 27/07/2010 16:26  
This consignment was not opened for physical examination by Customs  
Port Of Ldg-Code : INNSA1 State of Origin : MAHARASHTRA

Exporter 0395001453( ) Consignee  
POSITIVE PACKAGING INDUSTRIES LIMITED PREMIUM FOOD SPRL

Invoice No & Date 15321 25/07/2010 Exch. Rate 1.00 USD = 46.000 INR

ITEM DETAILS

No.	RITC CD	Description	Quantity	Units	Item Rate	per	Units	Total Val(FOB)	FOB(INR)	Scheme
		Scheme Description			Declared	PMV(INR)	Accepted	PMV(INR)		
1	39219096	H-404 PRIM.ADV.LAN.FLENTPKS.NTRL.OF MUL TI LAY.IN THE FORM OF ROLLS USE FOR PKG.THE FOLLOWING PRODUCT CORBELL VITARICHE 10904790.000PCS 7.130000000000 POS 19751.15000 3531845.96 55 EPCS AND DEPB(POST EXPORTS) 161.00 361.00								
Add Freight							( )			0.00
Add Insurance							( )			0.00



2047620

JAWAHAR CUSTOMS CONCOR-DF  
E. D. I. Service Centre, JNPT

Indian Customs EDI System / Export (ICES/E)

JNPT, Nhava Sheva  
Shipping Bill for Export

SB No : 8693664 / 26/07/2010 BRC Realisation Date : 31/07/2011  
CHA : AAEFJ8308ACH001 JAI INTERNATIONAL  
Print Date : 27/07/2010 16:26  
This consignment was not opened for physical examination by Customs  
Port Of Ldg-Code : INNSA1 State of Origin (MAHARASHTRA)

DEPB DETAILS								
Inv It	DGFT	PN No.	Grp	It.Cd	Rate	DEPB Qty	Value cap	DEPB Amt(INR)
1	1	102/2008	63	13088.000	13782.330	Rs150,000 per1KGS	165387.95	
(For credit purpose, Customs approved value is 7.13000								USD per 1000 KGS)
TOTAL DEPB (INR)							1	165387.95

LICENSE DETAILS				
License/File No.	Adv. Lic. No./Recpt. No.	IEC	EXIM	
Inv Item	SLNO(E) Exp.Qty	Unit	FOB	
+Description	SLNO(C) Imp.Qty	Unit	Ind-imp	
0330023935		0375001455	11	
1		10904790.000	3531845.96	
+CFM COMPACT L TYPE 15K3.21.000/MACHINE	1	0.000	SET Imp	

Vessel Name: N.V. MSC CHITRA Voyage No.: 12R  
 Container Details: Con Det: CTR No. size Seal No. / Date  
 MSCU5610173 40 216310 726-JUL-10

Sealed by Authorised Agency			
AR# DETAILS	AR# No.	AR# Date	Division
Inv Item	0340	25/07/2010	KHOPOLI
			Commissionerate: RAIGAD

Total FOB Value declared by Exporter for DEPB ITEMS : 76779.2600 USD  
 Total FOB Value declared by Exporter for NON-DEPB ITEMS : 0.0000 USD  
 Customs accepted Total FOB value for DEPB ITEMS : 76779.2600 USD

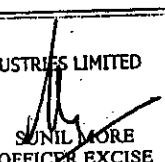
I/We declare that the particulars given herein are true and correct  
 Following is the list of Documents attached :

Inv Item	Agency Name	Document Name
-	-	INVOICES
-	-	Packing List
-	-	SDF Declaration
-	-	Appendix II with ZA declaration
1	1	EPCG Licence

Signature of Exporter/CHA with Date

Let Export : S W MORE Dated : 27/07/2010 Allowed for Shipment

## CUSTOMS INVOICE

Exporter : <b>POSITIVE PACKAGING INDUSTRIES LIMITED</b> <b>FLEXIBLES DIVISION</b> 98, JOLLY MAKER CHAMBERS No. 2, 225, NARIMAN POINT, MUMBAI - 400 021. INDIA Tel.: 91-22-22837206 Fax : 22023774 IEC No. : 039500		Invoice No. & Date <b>15321</b> Dt: 25/07/2010	Exporter's Ref. :INT 10110090		
Consignee <b>PREMIUM FOODS SPRL</b> AVENUE BOBOZO NO. 19284/4B QUARTIER MBAMU, LIMETE, KINSHASA DEMOCRATIC REPUBLIC OF CONGO		Buyer's (if other than consignee) <b>FPI LOGISTICS</b> C/O DIARMUD MARRON PO BOX 9970 DUBLIN 15 IRELAND			
Pre-Carriage by BY ROAD/BY SEA	Place of Receipt by Pre-carrier KHOPOLI	Country of Origin of Goods INDIA	Country of Final Destination CONGO		
Vessel / Flight No. DAR ES SALAAM	Port of Loading J.N.P.T.	TERMS & CONDITIONS : FOB			
Port of Discharge DAR ES SALAAM	Final Destination LUBUMBASHI	D/P SIGHT			
MARKS & Nos. / Nos. & KIND OF PACKING CONTAINER No.	DESCRIPTION OF GOODS CHAPTER SUB-HEADING NO : 3921 90 96		Quantity PIECES	Rate USD/ 1000	Amount USD
PHIL MUMBAI, INDIA GR. WT. KGS NT. WT. KGS SR. NO. 1 to 28.  COWBELL 814 X 120 POS/FPI-235 DAR ES SALAAM	PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VITARICHE 814 X 120 (5 TRACK)  10 Absorbant bags are used inside Shipping Container to control moisture in order to avoid damage to product in transit & these absorbent bags are bought out from open market & no cenvat credit has being taken on these items.		10,904,790	7.130000	77,751.15
		TOTAL GROSS WT. : 14,851.97 KGS TOTAL NET WT. : 13,782.33 KGS TOTAL NO OF PALLETS : 28			
			LESS DISCOUNT 1.25%		971.8
			Total FOB USD		76,779.2
Amount Chargeable : TOTAL FOB USD : SEVENTY SIX THOUSAND SEVEN HUNDRED SEVENTY NINE AND CENTS TWENTY SIX ONLY					
SHIPMENT UNDER EPCG LICENCE NO.: 0330023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10					
SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.130B RATE 8% ON FOB - VALUE CAP RS.150/- P. KGS.					
Excise Inv No : EXP1011/000340 Dt. 25/07/2010 A.R.E. 1 No : EXP1011/000340 Dt. 25/07/2010			Container No : MSCU -561017(3) Bottle Seal No : D57747		40 FEET
Declaration : We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.			Signature & Date <b>POSITIVE PACKAGING INDUSTRIES LIMITED</b> <b>FLEXIBLES DIVISION</b>   <b>SUNIL MORE</b> OFFICER EXCISE AUTHORISED SIGNATORY Signature of owner or his Authorised agent with date Name in Block Letters and Designation		25/07/2010

**CERTIFICATE**

CHECKED EMPTY CONTAINER No. MSCU -561017(3) BEFORE STUFFING  
VERIFIED THE DESCRIPTION. MARKS & NUMBER, WEIGHT AND VALUE OF THE  
GOODS COVERED BY THE INVOICE OVERLEAF AND AS SHOWN IN THE  
PACKING LIST No. 15321 DATED 25/07/2010 EXAMINED PALLET NO: 3, 16 & 23  
AFTER SELECTION.

DRAWN THREE REPRESENTATIVE SAMPLES AND FORWARDED DULY SEALED.

THE CONTAINER NO. : MSCU -561017(3) IS SEALED WITH CENTRAL EXCISE  
BOTTLE SEAL NO. : 216310, A.R.E. 1 NO. EXP1011/000340 DATED 25/07/2010  
AGENT BOTTLE SEAL NO. : D57747.

FACTORY STUFFING PERMISSION NO.896/2009-10 ISSUED UNDER  
F.NO.S/6-Gen-874/09-10 Exp FSP Dt.13.11.09 by JOINT COMMISSIONER OF  
CUSTOMS,FSP CELL,JNCH, NHAVA SHEVA.

A.R.E. 1 No. & DATE	CENTRAL EXCISE BOTTLE SEAL NUMBER	AGENTS SEAL NUMBER
EXP1011/000340	216310	D57747
DATED : 25/07/2010		

PLACE : KHOPOLI

DATE : 26/07/2010

*J. K. Bhartiya*  
**J. K. BHARTIYA**  
 INSPECTOR,  
 CENTRAL EXCISE,  
 KHOPOLI RANGE-II



*S. M. Bagal*  
**S. M. BAGAL**  
 SUPERINTENDENT,  
 CENTRAL EXCISE,  
 KHOPOLI RANGE-II





# TEAMGLOBAL

Taking business places

Teamglobal Logistics Pvt Ltd.  
 Gyan Bhavan, Ground Floor, 8, Kumpilha Street,  
 Ballard Estate, Mumbai-400 038, INDIA  
 Tel: +91 22 6764 9800 • Fax: +91 22 6764 9899  
 Email: info@teamglobal.in  
 Website: www.teamglobal.in  
 Reg. No. MTO/DGS/197/2066  
 FMC Registration No. 020250

**MTD Bill of Lading, NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER.**  
**Consignor / Shipper**  
 POSITIVE PACKAGING INDUSTRIES LIMITED  
 ON BEHALF OF RICHMOND FOODS LTD  
 PO BOX 384, 6 HILGROVE STREET, ST HELIER JE4 9ZH JERSEY  
 CHANNEL ISLANDS, UK

**Consignee (If 'To Order' as Indicate)**  
 PREMIUM FOODS SPRL  
 AVENUE BOBOZO NO 19284/4B  
 QUARTIER MBAMU, LIMETE, KINSHASA  
 DEMOCRATIC REPUBLIC OF CONGO  
 TEL: 243 81 99 15051.

**Notify Address** (ONE CLASH SHALL ATTACH FOR FAILURE TO NOTIFY)  
 PREMIUM FOODS SPRL  
 AVENUE BOBOZO NO 19284/4B  
 QUARTIER MBAMU, LIMETE, KINSHASA  
 DEMOCRATIC REPUBLIC OF CONGO  
 TEL: 243 81 99 15051.

<b>Place of acceptance</b> NHAVA SHEVA	<b>Port of loading</b> NHAVA SHEVA
<b>Port of discharge</b> DAR ES SALAAM	<b>Place of delivery</b> LUBUMBASHI-D.R.CONGO

**Vessel & Voyage No.**  
 MSC CHITRA 12

Container No.(s)	Mark and No.(s)	Number and kind of packages/description of goods	Gross weight(kg)	Volume(cbm)
TGHU4850484 40' CONTAINER A/Seal No: D57757 C/Seal No: 216309 MSCU5610173 40' CONTAINER A/Seal No: D57747 C/Seal No: 216310	PPIL MUMBAI, INDIA GR. WT. KGS NT. WT. KGS SR. NO. 1 TO 55 COWBELL 014 X 120 POS/FP1/235 DAR ES SALAAM	55 PALLET(S)  (FIFTY FIVE PALLETS ONLY) 26,612.52 KG DE SACHETS EN ALUMINIUM EN ROULEAUX POUR LA FABRICATION DES EMBALLAGES (2,09,68,390 SACHET DE 20 GR) AS PER PROFORMA INVOICE NO: POS/FP1/235 IMPORT LICENCE NO : 1201503357 B.V. REF NO.: PRI 2010 006810/0001 TOTAL GR. WT. : 28,746.58 KGS TOTAL NT. WT. : 26,612.52 KGS TOTAL NO. OF PALLET : 55 TOTAL NO. OF REELS : 217 TOTAL NO. OF PCS : 2,09,68,390 REF NO.: CON4783	28746.580	2X40' FCL

ALL LOCAL CHARGES LIKE FCL SERVICE CHARGES QUAY DUES, PIER DUES, CONGESTION SURCHARGE, THC DELIVERY ORDER FEE AND IISF, ISPS GSC CHARGES ARE FOR ACCOUNT OF CONSIGNEE



SHIPPER'S LOAD STOW, WEIGHT AND COUNT, CONTAINER(S) SEALED BY SHIPPERS, CARRIER NOT RESPONSIBLE FOR PACKAGING OF CARGO AND ITS STOWAGE INSIDE THE CONTAINERS.

FREIGHT PAYABLE AT DESTINATION SHIP AND OR CARGO LOST OR NOT LOST.

SHIPPED ON BOARD 07-AUG-10  
 Particulars above furnished by consignee/consignee

<b>DELIVERY AGENT:</b> FREIGHT AFRICA NV, ANTWERP OEYVAERSBOSCH 10/4, 2630 AARTSELAAR, BELGIUM Ph:32 3 877 39 34 Fax:32 3 877 39 22	<b>Freight Amount</b> [REDACTED]	<b>No of original</b> 3	<b>Place and date of issue</b> MUMBAI 07-AUG-10
--	-------------------------------------	----------------------------	--

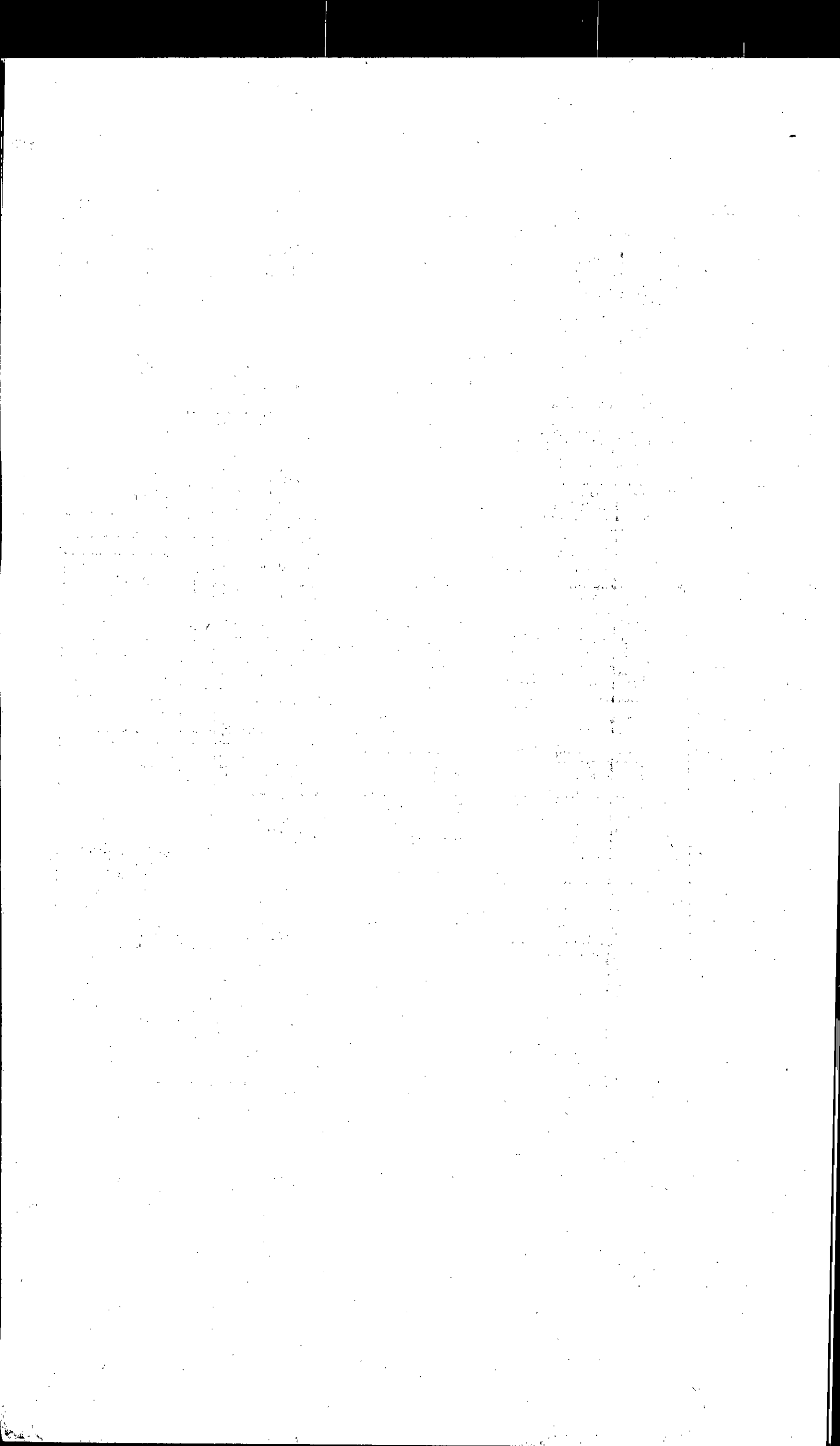
Taken in charge in apparently good condition herein at the place of receipt or transport and delivery as mentioned above, unless otherwise stated. The MTD in accordance with provisions contained in the MTD undertakes to perform or to procure the performance of the multimodal transport from the place at which the goods are taken in charge, to the place designated for delivery and assumes responsibility for such transport.  
 One of the MTD(s) must be surrendered, duly endorsed in exchange for the goods. In witness where of the original MTD all of this tenor and date have been signed in the number indicated below one of which being accomplished the other(s) to be void.

**CERTIFIED TRUE COPY**  
 POSITIVE PACKAGING INDUSTRIES LTD.  
 Mumbai Division

Weight and measurement of container not to be included (TERMS CONTAINED ON REVERSE)

36489

**AUTHENTICATORY**



ORIGINAL

BANK CERTIFICATE OF EXPORT AND REALISATION						FORM NO.1	APPENDIX - 22A
NOTE: Please See Chapter 4 and 5 of the Policy and Chapter 4 and 5 To THE JY. DIRECTOR GENERAL OF FOREIGN TRADE BOMBAY-400 020.						Period 1-09-2004 to 31-3-2009	
We, POSITIVE PACKAGING INDUSTRIES LTD, 95 JOLLY MAKER CHAMBERS NO.2, 225 NARIMAN POINT, MUMBAI 400 021.						IN Code: 0395001455	
hereby declare that we have forwarded a documentary export bill to STANDARD CHARTERED BANK, 90 M.G. ROAD FORT, MUMBAI-400 001.							
for collection/negotiation/purchase as per particulars given hereunder:							
1. Invoice No.15371						DATE: 07.08.2010	
3. Export Promotion copy of S/ Bill duly authenticated by custom no. 8693664						4. Date: 26.07.2010	
5. Description of Goods as given in the Customs undivided Shipping Bills: PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL							
6. Bill of Lading/ Post Parcel Receipt/ Airways Bill No: 500130022295						DATE: 07.08.2010	
9. Destination of goods: Country Name: D.R.CONGO							
9	10	11	12	13	14		
Bill Amount (i.f.c. & l.s.o.b. (in foreign exchange)	Freight amount as per bill of Lading Freight memo (IS)	Insurance Amount as per Insurance Company's Bill/ Receipt	Commission Discount paid payable	Whether the export is in freely convertible currency of in Indian Rupees	E.O.B. Value/F.O.B Value actually realised in free foreign Exchange / Rupees		
FOB. USE: \$6,779.26 1. US\$ - RS 44.66 RS. 3,428,961.75	RS. 0.00	RS. 0.00	RS. 0.00	FCC	\$76,779.26 INR 3,428,962.00		
15. Date of realisation of export proceeds: 20.11.2010						16. SDF Form No: 8693664 DT. 26.07.2010	
17. No. Date & Category of application License: DEPB LICENSE						FOR POSITIVE PACKAGING INDUSTRIES LTD (SIGNATURE OF THE EXPORTER)	
We further declare that (i) the aforesaid particulars are correct (copies of invoices relevant to these exports and Custom attested E.P. Copy of relevant Shipping Bill is attached for verification by the bank).						N.Y. Bhalekar Authorized Signatory	
Place: MUMBAI Date: 06.12.2010		Official Seal Stamp		Name in Block Letters Designation Full Official Address Full Residential Address:		N.Y. Bhalekar Sr. Officer, Impex 95, JOLLY MAKER CHAMBERS NO.2 225, NARIMAN POINT, MUMBAI-400 021 14A, MUKTI DHAM CHS, SHREE HAGARTHANERW	
Authorized Foreign Exchange Dealer Code No. BANK'S CERTIFICATE allotted to the bank by						Ex. Control CODE No. 6470013-8000009	
1. This is to certify that we have verified the relevant export invoices, Custom attested E.P. Copies of the Shipping Bill and other relevant documents of M/s. POSITIVE PACKAGING INDS. LTD. MUMBAI. We further certify that the Particulars given in Col. 1 to 17 have been verified and found to be correct. We have verified the E.O.B. value mentioned in Col.14 above with reference to following documents (i) Bill of Lading/PP Receipt/Airways Bill (ii) Insurance Policy/Cover/Insurance receipt						RBI NO. : 0001593-6000009 RFP NO. : 529132901796-II DATE : 06.12.2010 PLACE : MUMBAI	
2. We have also verified that the date of the connected Mate Receipts as indicated in the relevant Shipping bills is (date to be given)						For STANDARD CHARTERED BANK	
3. We have also verified that the export is (Applicable only in respect of exports by air)						MANAGER-TRADE	
4. This is to certify that we have certified the amount of the Commission paid/payable, as declared above, by the exporter i.e. Rs. with G.R. Form and found to be correct.						364, D. N. Road, Mumbai-400 001	
NOTE: 1. Bank can issue a consolidate certificate (consignment-wise) for more than one consignment.						Nadeem Patel E-Code 1243002	
2. F.O.B. actually realised and date of realisation of export proceeds are to be given in all case except where consignment has been sent against confirmed irrevocable letter of credit.						(Signature of the Bankers) Full address of the Bankers (Branch & City) Official Stamp	
3. This shall be required wherever specifically prescribed in the policy/procedure.							

CERTIFIED TRUE COPY  
POSITIVE PACKAGING INDUSTRIES LTD.  
Flexibles Division

AUTHORISED SIGNATORY

EXHIBIT - C 2 30

EXHIBIT - C 2

**POSITIVE PACKAGING INDUSTRIES LIMITED  
FLEXIBLES DIVISION**

FACTORY: VILLAGE RANSAL, KM. 16, KHOPOLI - PEN ROAD, KHOPOLI - 410223, MAHARASHTRA, INDIA  
TEL: +91 - 2192 - 391800 FAX: +91 - 2192 - 391310 E-mail: [info@positivepackaging.com](mailto:info@positivepackaging.com)

PPIL/EXC/0761/2010-2011

The Assistant / Deputy Commissioner of Central Excise & Custom,  
Khopoli Div.: 1st Floor,  
Central Excise Building,  
Plot No. 1 Sector 17,  
New Panvel (W).

Office of the Asst./Dy. Commr., C

Date: 15/01/2011

10 FEB 2011

प्रशासन अनुमान / Admn.  
खोपोली मण्डल / Khopoli

**Sub:- Rebate of Rs. 335718/- against A.R.E. 1 No. EXP1011/000339 dtd. 25/07/2010**

Dear Sir,


With reference to the above mentioned refund claim we are enclosing herewith the following documents.

1. Form 'C' in Triplicate duly filled and signed.
2. Original A.R.E.1 No. EXP1011/000339 dtd. 25/07/2010
3. Duplicate copy of A.R.E.1 No. EXP1011/000339 dtd. 25/07/2010
4. One cover containing Triplicate copy of A.R.E.1 No. EXP1011/000339 dtd. 25/07/2010
5. Duplicate copy of Excise Invoice No. 00339 dtd. 25/07/2010
6. Self Attested Copy of Shipping Bill No. 8693668 dtd. 26/07/2010.
7. Self Attested Copy of Air Way Bill No. 500130022295 dtd. 07/08/2010.
8. Self Attested Copy of Customs Invoice No. EXP1011/15322 dtd. 25/07/2010
9. Declaration
10. Certificate regarding payment of excise duty duly attested by the Superintendent of Central Excise, Range: Khopoli-II.
11. Attached self attested Bank Realisation Certificate

We request you to kindly process said rebate claim and arrange to release your Cheque at the earliest and oblige.

Thanking you.

Yours faithfully,



**AUTHORISED SIGNATORY**

Encl. As above.



**FORM - C****APPLICATION FOR REBATE OF DUTY ON EXCISABLE GOODS OTHER THAN  
(VEGETABLE NON ESSENTIAL OILS AND TEA) BY SEA/AIR**

The Assistant / Deputy Commissioner of Central Excise,  
Khopoli Division, Raigad Commissionerate,  
1st Floor, Central Excise Building, Sector - 17,  
Khandeshwar, New Panvel

We have exported the under mentioned quantity of Printed Flexible Laminated material and produced below mentioned as evidence on payment of excise duty thereon, the attached ARE.1 No. **EXP1011/000339** dated **25/07/2010**. A copy of relevant Bill of Lading is also attached. We therefore request your goodself to sanction the admissible rebate at the earliest.

Particulars of documents attached

01	ARE.1 No. and Date	EXP1011/000339 dated 25/07/2010
02	Name of Commissionerate from which the manufactured Goods removed after payment of Excise Duty	Raigad
03	Name and Address of Manufacturer and Exporter	Positive Packaging Industries Limited Flexibles Division, Survey No.51 to 53, KM,16, Khopoli-Pen Road, Khopoli.
04	Factory Central Excise Registration No.	AAACP2836QXM002
05	Name of Person or Firm who cleared the goods on payment of duty	<b>Positive Packaging Industries Limited Flexibles Division.</b>
06	Quantity of Goods	Net. Wt. 12830.19 Kgs.
07	Invoice No. and Date	00339 Dated 25/07/2010
08	Tariff Classification No.	3921 90 '96
09	Rate of Duty	Excise Duty 8% + Ed. Cess 2% + SHE Cess 1%
10	Value of Goods	Rs. 3,259,402.00
11	Amount of Excise Duty Paid	Rs. 335,718.00
12	Sr.No.of E.No.& Dt. under which duty was debited	3008/31.07.2010
13	No. and Date of Bill of Lading	500130022295 / 07/08/2010
14	No. and Date of Shipping Bill	8693668 Dated 26/07/2010
15	Weight of quantity exported	Net. Wt. 12830.19 Kgs.
16	Name of Vessel on which goods shipped	MSC CHITRA
17	Date of Shipment	15/01/2011

We certify that the aforesaid particulars are correct and we are the rightful claimant of rebate of duty of Rs. 335,718 (Rupees Three Lac Thirty Five Thousand Seven Hundred Eighteen Only)

Dated : 15/01/2011

Signature and Full Address of the Claimant  
Positive Packaging Industries Limited Flexibles Division,  
Survey No.51 to 53, KM.16, Khopoli-Pen Road, Khopoli.

Authorised Signatory

**II**

Refund Order No. \_\_\_\_\_ Date \_\_\_\_\_

The Claim of M/s. Positive Packaging Industries Limited Flexibles Division, Village Ransai, Survey No.51 to 53, KM.16, Khopoli-Pen Road, Khopoli, Maharashtra has been scrutinized with ARE.1 No. EXP1011/000339 dated 25/07/2010 and the relevant Bill of Lading and rebate of Rs.335,718 (Rupees Three Lac Thirty Five Thousand Seven Hundred Eighteen Only) sanctioned. A suitable remark has been endorsed on the copy of ARE.1 produced by the claimant as well as other copies.

Date \_\_\_\_\_

Assistant / Deputy Commissioner of Central Excise

**III**

Office of the Central Excise Khopoli Division \_\_\_\_\_ forwarded to \_\_\_\_\_

1. The Chief Accounts Officer, Central Excise, Central Excise \_\_\_\_\_ for information and necessary action. The Triplicate copy of the form ARE.1 is attached.
2. M/s. \_\_\_\_\_

Date \_\_\_\_\_

Assistant / Deputy Commissioner of Central Excise

**IV**

3. Passed for payment of Rs. 335,718 (Rupees Three Lac Thirty Five Thousand Seven Hundred Eighteen Only) The amount is adjustable under Head "0038 - Union Excise Duties - Deduct Refunds"

Date \_\_\_\_\_

Chief Account Officer

**V**

Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ Issued in favour of M/s. Positive Packaging Industries Limited Flexibles Division. of Rs.335,718 (Rupees Three Lac Thirty Five Thousand Seven Hundred Eighteen Only)

Date \_\_\_\_\_

Chief Account Officer

**VI**

Received Cheque No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ only)

Revenue Stamp

Signature of the claimant

**VII**

Verified that the refund has been noted against the ARE.1 No. \_\_\_\_\_ dated \_\_\_\_\_

Date \_\_\_\_\_

Chief Account Officer

FORM A. R. E. 1

A. R. E. I No. : 0339

Dtd. : 25/07/2010

Range II  
Division Khopoli Address 4th Floor, Trifed Tower  
Plot No.3, Sector 17, Khandeshwar  
New Panvel 410206

Application for Removal of excisable goods  
for export by road/ sea  
[Rule 18 of the C.Ex. (No.2) Rules 2001]

CUSTOM INV.No. : 15322  
DATE : 25/07/2010  
CONTAINER No. : TGHU -485048(4)  
BOTTLE SEAL No. : D57757

Commissionerate Raigad

Original White  
Duplicate Buff  
Triplicate Pink  
Quadruplicate Green

Superintendent of Central Excise - Range : II, "Ayesha Complex", 1st Floor, Mumbai Pune Highway, Shilphata, Khopoli, Tal. : Khalapur, Dist. : Raigad. 410203  
1. Particulars of Assistant Commissioner of Central Excise from whom rebate shall be claimed and his complete postal address : The Assistant Commissioner of Central Excise & Customs  
Khopoli Division: 1st Floor, Central Excise Building, Plot No. 1 Sector 17, New Panvel (W).

2. I/We M/s. Positive Packaging Industries Limited Flexibles Division of Vill. Ransai, Pen-Khopoli Road. Tal. : Khalapur, Dist. : Raigad propose to export the under mentioned  
consignment to : DAR ES SALAAM / CONGO (Country of destination) BY ROAD/ SEA under claim for rebate.

Particulars of Manufacturers of goods and his Central Excise Registration No.	No. and Description of Packages		Gross Weight		Marks and Nos. on packages Sr. No. :	Quantity of Goods NT. WT. KGS.	Description of Goods CH. HEADING : 3921 90.90	Value Rs.		Duty		No. and date of Invoice under which duty was paid	Amount of Rebate Claimed Rs.
	1	2	3	4				5	6	7	8		
Positive Packaging Industries Limited Flexibles Division, Vill. Ransai, Pen-Khopoli Rd., Tal. : Khalapur, Dist. : Raigad, Registration No. AAA CP 2836 QXM 002	PALLET	REEL	GR. WT.	NT. WT.	PPIL MUMBAI,INDIA GR. WT. KGS. NT. WT. KGS.  COWBELL 814 X 120 POS/FP-215 DAR ES SALAAM	12830.19	PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VITARICHE 814 X 120 (5 TRACK)	Rate Per 1000 PIECE	Amount Rs.	Rs.		Exp. Inv. No. EXP1011/000339 DT. 25/07/2010 Amount of Duty Payable in RG,23A PT. II	
	27	0	13894.61	12830.19		10,053,600.00		327.9800	3300660				
TOTAL		27		13894.61	12830.19	10,053,600		Discount:	41258				
								Education Cess	10%	325940			325940
								S. H. E. Cess	2%	6519			6519
								S. H. E. Cess	1%	3259			3259
										3259402			
											335718		335718

SHIPMENT UNDER EPCG LICENCE NO.: 0330023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10  
SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.130B RATE 8% ON FOB - VALUE CAP RS.150/- P. KGS.

3. I/We hereby certify that the above mentioned goods have been manufactured.  
(a) availing facility/without availing facility of CENVAT credit under CENVAT Credit Rules, 2004.  
(b) availing facility/without availing facility under Notification 21/2004-Central Excise (N.T.) dated 6th Sept., 2004 issued under rule 18 of Central Excise (No.2) Rules, 2001.  
(c) availing facility/without availing facility under Notification 43/2001-Central Excise (N.T.) dated 26th June, 2001 issued under rule 19 of Central Excise (No.2) Rules, 2001.  
4. I/We hereby declare that the export is in discharge of the export obligation under DEPB Scheme Under claim of Duty Drawback under Central Excise Rules, 2001.  
5. I/We hereby declare that the above particulars are true & correctly stated.

POSITIVE PACKAGING INDUSTRIES LIMITED  
FLEXIBLES DIVISION

SUNIL MOKE  
OFFICER EXCISE  
AUTHORISED SIGNATORY  
Signature of owner or his  
Authorised agent with date  
Name in Block Letters and  
Designation

Date : 26/07/2010  
Time of Removal : 21:30

PART A  
CERTIFICATION BY CENTRAL EXCISE OFFICER

I Certified that duty has been paid by debit entry in the Personal Ledger Account No. \_\_\_\_\_ and /or CENVAT  
Account Entry Amount of duty payable or recorded as payable in Daily Stock Account, on the goods described overleaf.

OR

Certified that the owner has entered into Bond No./Undertaking No. \_\_\_\_\_ under  
Rule 19 of Central Excise, (No.2) Rules, 2002 with the [F.No. \_\_\_\_\_], duly accepted by the Assistant  
Commissioner/Deputy Commissioner of Central Excise on \_\_\_\_\_

2 Certified that I have opened and examined the packages PALLET NO: 33, 37 & 48 and found that the particulars stated and  
description of goods given overleaf and packing list (if any) are correct and that all the packages have been stuffed in the  
CONTAINER No. TGHU -485048(s) Marks D57757 \* and the same has been sealed with Central Excise Seal/One Time Seal  
(OTS) No.216309]

3 I have verified with the records, the exporter is only availing the export incentives, as specified in box No.6 and found it to  
be correct.

4 Certified that I have drawn three representative samples from the consignment (Wherever necessary) and have handed over,  
two sets thereof duly sealed to the exporter / his authorised representative.

Place : Khopoli  
Date : 26/07/10

S. M. BAGAL  
SUPERINTENDENT,  
(CENTRAL EXCISE)  
Supervisor, Range-II  
Khopoli

J. K. BHARTIYA  
INSPECTOR  
(Name and designation of  
Inspector, Central Excise)  
Khopoli Range-II

PART B  
CERTIFICATION BY THE CUSTOMS OFFICER

certified that the consignment was shipped under my supervision under Shipping Bill No. \_\_\_\_\_  
dated \_\_\_\_\_ by S.S. / Flight.No. \_\_\_\_\_ Which left on \_\_\_\_\_ that day of \_\_\_\_\_ (Month)

OR  
Certified that the above mentioned consignment was stuffed in Container No. \_\_\_\_\_ belonging  
to Shipping Line \_\_\_\_\_ based on the "Let Export Order" given on \_\_\_\_\_ day of \_\_\_\_\_  
(Month) (Year) on the Shipping Bill No. \_\_\_\_\_ dated \_\_\_\_\_ and sealed by  
seal / one time lock No. \_\_\_\_\_ in my supervision and the container was handed over to the \_\_\_\_\_  
Custodian M/s. \_\_\_\_\_ for being shipped via \_\_\_\_\_ (Name of the Port).

OR  
Certified that the above mentioned consignment has been duly identified and has passed the land frontier today  
at \_\_\_\_\_ in its original condition under Bill of Exports No. \_\_\_\_\_ Place \_\_\_\_\_ Date \_\_\_\_\_

Place  
Date

[Signature and Stamp]

Signature  
(Name and designation of the  
Customs officer in Block Letters  
(Seal)

PART C  
EXPORT BY POST

certified that the consignment described overleaf has been despatched by foreign post to  
day of \_\_\_\_\_ 200.

Place  
Date

Signature of Post Master,  
(Seal)

PART D  
REBATE SANCTION ORDER

(On Original, Duplicate and Triplicate)  
Refund Order No. \_\_\_\_\_ Dated \_\_\_\_\_ Rebate of Rs. \_\_\_\_\_ (Rupees  
) sanctioned vide cheque No. \_\_\_\_\_ Dated \_\_\_\_\_

Place  
Date

Assistant/Deputy Commissioner/Maritime  
Commissioner of Central Excise

\*Strike out inapplicable portion

DUPLICATE FOR TRANSPORTER (Not for Credit)

**INVOICE CUM CHALLAN (EXPORT)**  
Invoice for removal of Excisable goods from factory or warehouse on payment of duty (Rule- 11)

**POSITIVE PACKAGING INDUSTRIES LIMITED**  
**FLEXIBLES DIVISION**

FACTORY : VILLAGE RANSAL, SURVEY NO.51, 52, 53, KM.16, KHOPOLI-PEN ROAD, KHOPOLI 410203, MAHARASHTRA, INDIA  
TEL : +91-2192-391300 FAX : +91-2192-391310 E-mail : factory@positivepackaging.com

RANGE : "Ayesha Complex", 1st Floor, Mumbal-Pune Highway, Shilphata, Khopoli.  
DIVISION : 1st Floor, Central Excise Bldg., Plot No. 1, Sector 17, New Banvel (W),  
Commissionerate : RAIGAD  
E.C.C. No. : AAACP 2836 QXM 002  
P.L.A. No. : CON (39, 48 & 76) 65 / 96 / B - 11  
C. Ex. Regn. No. : AAACP 2836 QXM 002  
B.S.T. No. : 410206 - S - 900 Dt. 01-04-96.  
C.S.T. No. : 400021 - C - 2115 Dt. 01-04-96.  
P.A.N. No. : AAACP2836Q  
IEC No. : 039500  
Mode of Transport : BY ROAD/ SEA  
Transporter's Name :  
L. R. No. :

Exp. Invoice No. : **00339**

Date : 25/07/2010

Name of Excisable Goods  
FILM, OF PLASTICS, OTHER, FLEXIBLE, LAMINATED

Chapter No./Tariff Sub-Heading No. : 3921 90 96

Rate of duty : 10.00 %

P.O. No. : PO NO. : POS/FPI-235

Date & Time of preparation of Invoice : 25/07/2010 11:30

Date & Time of removal of goods : 26/07/2010 21:30

Vehicle No. : MH-04-BU-418

Name & Address of Consignee  
PREMIUM FOODS SPRL  
AVENUE BOBOZO NO. 19284/4B  
QUARTIER MBAMU, LIMETE,  
KINSHASA  
DEMOCRATIC REPUBLIC OF CONGO

Billing Address  
FPI LOGISTICS  
C/O DIARMUD MARRON  
PO BOX 9970  
DUBLIN 15  
IRELAND

PACKING		DESCRIPTION OF GOODS	QUANTITY			RATE	AMOUNT
PALLET	REEL		GROSS WT.	NET WT.	PIECES	@ Rs.	Rs.
27		PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS. USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VITARICHE 814 X 120 (5 TRACK)  10 Absorbant bags are used inside Shipping Container to control moisture in order to avoid damage to product in transit & these absorbent bags are bought out from open market & no cenvat credit has being taken on these items.	13894.61	12830.19	10063600	327.9800	3300560.00
						Less Discount :	41258.00
27		<b>TOTAL</b>	13894.61	12830.19	10063600		3259402.00

EXCISE DUTY PAYABLE : [ UNDER RG.23A PT II ]  
Three Lac Twenty Five Thousand Nine Hundred Forty Only  
Education CESS : Six Thousand Five Hundred Nineteen Only  
S.H.E. CESS : Three Thousand Two Hundred Fifty Nine Only  
TOTAL VALUE : Thirty Five Lac Ninety Five Thousand One Hundred Twenty Only

*J. R. BHARTWA*  
INSPECTOR,  
CENTRAL EXCISE,  
KHOPOLI RANGE-II

Excise Duty	10%	325940.00
Education Cess	2%	6519.00
S. H. E. Cess	1%	3259.00
<b>Grand Total</b>		<b>3595120.00</b>

EXPORT UNDER CLAIM OF REBATE.

CUSTOM INV. No. : 15322 Date : 25/07/2010  
A. R. E I No. : EXP1011/000339 Date : 25/07/2010  
CONTAINER NO : TGHU-485048(4) BOTTLE SEAL NO : D57757

SHIPMENT UNDER EPCG LICENCE NO. : 0310023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10  
SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.130B RATE 8% ON FOB - VALUE CAP RS.150/- P. KGS.

Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration directly or indirectly from the buyer. Subject to terms & conditions printed overleaf.

E. & O. E.

For POSITIVE PACKAGING INDUSTRIES LIMITED  
FLEXIBLES DIVISION

*SUNIL MOKE*  
OFFICER EXCISE  
Authorised Signatory  
Signature of owner or his  
Authorised agent with date  
Name in Block Letters and  
Designation

Head Office: 98, Jolly Maker Chambers No.2, 225, Nariman Point, Mumbai 400 021. Tel.(022) 2837206(5 Lines), Fax:(022)22023774. email: positive@vsnl.com

**CUSTOMS INVOICE**

<b>Exporter :</b> POSITIVE PACKAGING INDUSTRIES LIMITED FLEXIBLES DIVISION 98, JOLLY MAKER CHAMBERS No. 2, 225, NARIMAN POINT, MUMBAI - 400 021. INDIA Tel.: 91-22-22837206 Fax : 22023774 IEC No. : 039500		Invoice No. & Date <b>15322</b> Dt : 25/07/2010	Exporter's Ref. : INT 10110090
<b>Consignee</b> PREMIUM FOODS SPRL AVENUE BOBOZO NO. 19284/4B QUARTIER MBAMU, LIMETE, KINSHASA DEMOCRATIC REPUBLIC OF CONGO		Buyer's (if other than consignee) FPI LOGISTICS C/O DIARMUD MARRON PO BOX 9970 DUBLIN 15 IRELAND	
Pre-Carriage by BY ROAD/BY SEA	Place of Receipt by Pre-carrier KHOPOLI	Country of Origin of Goods INDIA	Country of Final Destination CONGO
Vessel / Flight No.	Port of Loading I.N.P.T.	TERMS & CONDITIONS : <b>FOB</b>	
Port of Discharge DAR ES SALAAM	Final Destination LUMBASHI	O/P SIGHT	
MARKS & Nos. / Nos. & KIND OF PACKING CONTAINER No.	DESCRIPTION OF GOODS CHAPTER SUB-HEADING NO : 3921 90 96		Quantity PIECES
PPIL MUMBAI, INDIA GR. WT. KGS NT. WT KGS SR. NO. 29 TO 55.  COWBELL 814 X 120 POS/FPI-235 DAR ES SALAAM	PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL OF MULTI LAYERS IN THE FORM OF ROLLS USE FOR PACKING THE FOLLOWING PRODUCT COWBELL VITARICHE 814 X 120 (5 TRACK)  10 Absorbant bags are used inside Shipping Container to control moisture in order to avoid damage to product in transit & these absorbent bags are bought out from open market & no cenvat credit has being taken on these items.		Rate USD/ 1000 PIECE FOB
			Amount USD
	TOTAL GROSS WT. : 13,894.61 KGS TOTAL NET WT. : 12,830.19 KGS TOTAL NO OF PALLETS : 27		
		LESS DISCOUNT 1.25%	896.92
		Total FOB USD	70,856.55
Amount Chargeable : TOTAL FOB USD : SEVENTY THOUSAND EIGHT HUNDRED FIFTY SIX AND CENTS FIFTY FIVE ONLY			
SHIPMENT UNDER EPCG LICENCE NO.: 0330023935 DT. 01/10/2009 AND FILE NO. 03/97/021/00471/AM10			
SHIPMENT UNDER DEPB SCHEME PRODUCT GROUP PLASTIC - SR. NO.1308 RATE 8% ON FOB - VALUE CAP RS.150/- P. KGS.			
Excise Inv No : EXP1011/000339 Dt. 25/07/2010		Container No : TGHU -485048(4) 40 FEET	
A.R.E. 1 No : EXP1011/000339 Dt. 25/07/2010		Bottle Seal No : D57757	
Declaration : We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.		Signature & Date POSITIVE PACKAGING INDUSTRIES LIMITED FLEXIBLES DIVISION  SUNIL MORE OFFICER EXCISE AUTHORISED SIGNATORY Signature of owner or his Authorised agent with date Name in Block Letters and Designation  25/07/2010	

### CERTIFICATE

CHECKED EMPTY CONTAINER No. TGHU -485048(4) BEFORE STUFFING VERIFIED THE DESCRIPTION, MARKS & NUMBER, WEIGHT AND VALUE OF THE GOODS COVERED BY THE INVOICE OVERLEAF AND AS SHOWN IN THE PACKING LIST No. 15322 DATED 25/07/2010 EXAMINED PALLET NO. 33, 37 & 48 AFTER SELECTION.

DRAWN THREE REPRESENTATIVE SAMPLES AND FORWARDED DULY SEALED.

THE CONTAINER NO. : TGHU -485048(4) IS SEALED WITH CENTRAL EXCISE BOTTLE SEAL NO. : 216309, A.R.E. 1 NO. EXP1011/000339 DATED 25/07/2010 AGENT BOTTLE SEAL NO. : D57757.

FACTORY STUFFING PERMISSION NO.896/2009-10 ISSUED UNDER F.NO.S/6-Gen-874/09-10 Exp FSP Dt.13.11.09 by JOINT COMMISSIONER OF CUSTOMS, FSP CELL, JNCH, NHAVA SHEVA.

A.R.E. 1 No. & DATE	CENTRAL EXCISE BOTTLE SEAL NUMBER	AGENTS SEAL NUMBER
EXP1011/000339	216309	D57757
DATED : 25/07/2010		

PLACE : KHOPOLI

DATE : 26/07/2010

*J. K. Bhartiya*  
26/07/10  
J. K. BHARTIYA  
INSPECTOR,  
CENTRAL EXCISE,  
KHOPOLI RANGE-II



*S. M. Bagal*  
26/07/10  
S. M. BAGAL  
SUPERINTENDENT,  
CENTRAL EXCISE,  
KHOPOLI RANGE-II

JAWAHAR CUSTOMS CONCOR-DH  
E. D. I. Service Centre, JNPT

1007545

LED Date: 27/07/2010  
Indian Customs EDI System / Export (ICES/E)

EXCHANGE CONTROL C  
LED No : 14/265

JNPT , Nhava Sheva  
Shipping Bill for Export

1059

SB No : 8692668 / 26/07/2010      SRC Realisation Date : 31/07/2011  
CHA : AAUFJ8308ACH001 JAI INTERNATIONAL  
Print Date : 27/07/2010 16:26  
This consignment was not opened for physical examination by Customs  
Port Of Ldg-Code : INNSA1      State of Origin : MAHARASHTRA

EXPORTER DETAILS

0393001453( )      PAN No. : AAACP28360FT001  
POSITIVE PACKAGING INDUSTRIES LIMITED  
Branch # 0      98, JOLLY MAKER CHAMBERS NO.2,  
225, NARINAN POINT,  
MUMBAI, MAHARASHTRA.

CONSIGNEE

PREMIUM FOOD SPRL  
AVENUE BOBOZO NO.19284/4B  
QUARTIER MBAMU, LIMETE, KINSHASA  
DEMOCRATIC REPUBLIC OF CONGO  
CONGO

Factory Sealed Address Details

IEC No.      Name  
Port of Loading : JNPT , Nhava Sheva      Total Pkgs. : 27  
Port of Discharge : DAR ES SALAAM      Loose Pkgs : 0  
Gross Wt(KGS) : 13894.610      Net Wt(KGS) : 112830.190  
Country of Dest : CONGO      No. of Ctrs. : 1  
Rotation No. : 27178      Rotation Date : 09/07/2010  
Nature of Cargo : C  
Marks and Nos. :

FOREX BANK ACC: 222-0-528996-3  
RBI Waiver No/Date:  
FOB VALUE (INR) : 3259401.30      DBK (INR) : 0.00  
AD. Code : 6470013      Bank a/c No : 00030022643772  
I.F.S. Code : SBIN0007491

INVOICE DETAILS

Invoice 1/1  
Inv. val      13259401.30      INR      70856.55      USD  
FOB Val      13259401.30      INR  
Inv. no.      15322      Inv Dt      25/07/2010  
Nat. of con      FOB      Curr (Inv) : USD  
Exchange rate      1:1.00      (USD) = 46.000 (INR)

	Rate	Currency	Amount
Insurance	0.00		0.00
Freight:			0.00
Discount:	0.00	USD	898.92
Commission:	0.00	USD	0.00
Other Deductions:	0.00	USD	0.00
Packing Charges:		USD	0.00

Nature of payment: DP      Period of Payment:  
Buyer Name & Address      Quota Certificates  
FPI LOGISTICS  
C/O DIARMUD NARRON  
P.O. BOX 9970, DUBLIN 15  
IRELAND



J47637

JAWAHAR CUSTOMS CONCOR-DI  
E. D. I. Service Centre, JNPT

Indian Customs EDI System / Export (ICES/E)

JNPT - Nhava Sheva  
Shipping Bill for Export

SB No : 8693668 / 26/07/2010 BRC Realization Date : 31/07/2011

CHA : AAEFJ8308ACH001 JAI INTERNATIONAL

Print Date : 27/07/2010 16:26

This consignment was not opened for physical examination by Customs

Port Of Ldg-Code : INNSA1 State of Origin : MAHARASHTRA

Exporter 03950014551  
POSITIVE PACKAGING INDUSTRIES LIMITED

Consignee  
PREMIUM FOOD SPRL

Invoice No & Date 15322 25/07/2010

Exch. Rate 1.00 USD = 46.000 INR

ITEM DETAILS

No.	RITC CD	Description	Quantity	Units	Item Rate	per	Units Declared	Total Val(FC)	FOB(INR)	Scheme
		Scheme Description					PMV(INR)	Accepted PMV(INR)		
1	39219096	H-504 PRIN-ADV.LAM.FLEM.PKG.MTRL.OF MUL TI LAY.IN THE FORM OF ROLLS USE FOR PKG.THE FOLLOWING PRODUCT CONBELL VITARICHE EPCG AND DEPR(POST EXPORTS)	10063600.000	Pcs	3.13000	per 1000	Pcs 3173.47000	3259401.30	361.00	55
							361.00			
							Add Freight	( )		0.00
							Add Insurance	( )		0.00

347600

JAWAHAR CUSTOMS CONCERN-DH  
E. D. I. Service Centre, JNPT

Indian Customs EDI System / Export (ICES/E)

JNPT, Nhava Sheva  
Shipping Bill for Export

SB No : 8673668 / 26/07/2010 BRC Realization Date : 31/07/2011  
CHA : AAEFJ8308ACH001 JAI INTERNATIONAL  
Print Date : 27/07/2010 16:26  
This consignment was not opened for physical examination by Customs  
Port Of Ldg-Code : INNSAI State of Origin (MAHARASHTRA)

DEPB DETAILS	Inv It	DEFT	PN No.	Grp	It.Cd	Rate	DEPB Qty	Value cap	DEPB Amt(INR)
	1	1	102/2008		63	13088.000	12830.190	Rs150.000 per1KGS	153962.28
(For credit purpose, Customs approved value is 7.13000									USD per 1000 KGS)
TOTAL DEPB (INR)									153962.28

LICENSE DETAILS	Inv Item	Description	Adv. Lic. No./Recpt. No.	SLMD(E) Exp.Qty	SLMD(C) Imp.Qty	IEC Unit	EXIM Unit	FOB Ind-Imp
	0330023935			10063600.000	0.000	0395001455	11	3259401.30
	1	CFN COMPACT L TYPE 15K3.21.000/MACHINE		1				SET Imp

Vessel Name: M.V. MSC CHITRA  
 Container Details: Don Det: CTR No. size Seal No. / Date  
 TGHU4850484 40 216309 726-JUL-10  
 Sealed by Authorised Agency

AR4 DETAILS	Inv Item AR4 No.	AR4 Date	Division	Commissionerate
	1 0009	26/07/2010	KNDPDLI	RAIGAD

Total FOB Value declared by Exporter for DEPB ITEMS : 70856.5500 USD  
 Total FOB Value declared by Exporter for NON-DEPB ITEMS : 0.0000 USD  
 Customs accepted Total FOB value for DEPB ITEMS : 70856.5500 USD

I/We declare that the particulars given herein are true and correct

Following is the list of Documents attached :

Inv Item Agency Name	Document Name
-	INVOICES
-	Packing List
-	SDF Declaration
-	Appendix II with ZA declaration
1	EPCG Licence

Signature of Exporter/CHA with Date

Let Export : S M MORE Dated : 27/07/2010 Allowed for Shipment

Signature of Customs

Signature of Officer of Customs



# TEAMGLOBAL

Taking business places

**Teamglobal Logistics Pvt Ltd.**  
 Gyan Bhavan, Ground Floor, 8, Kumptha Street,  
 Ballard Estate, Mumbai-400 038, INDIA  
 Tel: +91 22 6754 9800 • Fax: +91 22 6754 9899  
 Email: info@teamglobal.in  
 Website: www.teamglobal.in  
 Reg. No. MTO/DGS/507/2006  
 FMC Registration No. 020250

**MTD Bill of Lading** NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER  
**Consignor / Shipper:**  
 POSITIVE PACKAGING INDUSTRIES LIMITED  
 ON BEHALF OF RICHMOND FOODS LTD  
 PO BOX 384,6 HILGROVE STREET,ST HELIER JE4 9ZH JERSEY  
 CHANNEL ISLANDS,UK

**Consignee (If 'To Order' as Indicate):**  
 PREMIUM FOODS SPRL  
 AVENUE BOBOZO NO 19284/4B  
 QUARTIER MBAMU,LIMETE , KINSHASA  
 DEMOCRATIC REPUBLIC OF CONGO  
 TEL: 243 81 99 15051.

**Notify Address** (ONE CLAIM SMALL ATTACH FOR PARTIAL TO NOTIFY)  
 PREMIUM FOODS SPRL  
 AVENUE BOBOZO NO 19284/4B  
 QUARTIER MBAMU,LIMETE , KINSHASA  
 DEMOCRATIC REPUBLIC OF CONGO  
 TEL: 243 81 99 15051.

<b>Place of acceptance</b> NHAVA SHEVA	<b>Port of loading</b> NHAVA SHEVA
<b>Port of discharge</b> DAR ES SALAAM	<b>Place of delivery</b> LUBUMBASHI-D.R.CONGO

**Vessel & Voyage No.**  
 MSC CHITRA 12

By accepting this Bill of Lading shipper accepts an abide by all terms, conditions clauses printed and stamped on the face or reverse side of this Bill of Lading.  
 For freight prepaid Bill of Lading, delivery of Cargo is subject to collection of freight cheque. Demurrage/ Detention charges at Port if destination Payable by consignee at per lines tariff.  
 By accepting this Bill of Lading, the shipper accepts his responsibility towards the carrier for payment of freight (in case of freight collect shipments), Access Government, registration or disposal cost (as the case may be) if the consignee fails to take delivery to cargo with 90 days from the date the cargo reached destination.  
 For shipments where inland trucking involved it is mandatory on consignee to custom clear the shipment at port of discharge.  
 The carrier reserves the right to repack the goods if the same are not in seaworthy packing. The packing condition will be certified by the local bonded warehouse or competent survey or, and accepts the liability towards the cost for the same.  
 In case of any discrepancy found in declared weight & volume the carrier reserve the right to hold the shipment & recover all charges as per the revised weight & volume whichever is high from shipper or consignee

**ORIGINAL**

Container No.(s)	Mark and No.(s)	Number and kind of packages;description of goods	Gross weight(kg)	Volume(cbm)
TGHU4850484 40' CONTAINER A/Seal No: 057757 C/Seal No: 216309 MSCU5610173 40' CONTAINER A/Seal No: 057747 C/Seal No: 216310	PPIL MUMBAI, INDIA GR.WT. KGS NT. WT. KGS SR.NO. 1 TO 55 COWBELL. 814 X 120 POS/FPI/235 DAR ES SALAAM	55 PALLET(S)  (FIFTY FIVE PALLETS ONLY) 26,612.52 KG DE SACHETS EN ALUMINIUM EN ROULEAUX POUR LA FABRICATION DES EMBALLAGES (2,09,68,390 SACHET DE 20 GR) AS PER PROFORMA INVOICE NO: POS/FPI/235 IMPORT LICENCE NO : 1201503357 B.V. REF NO.: PRI 2010 006810/0001 TOTAL GR.WT.: 26,746.58 KGS TOTAL NT. WT. : 26,612.52 KGS TOTAL NO. OF PALLET : 55 TOTAL NO. OF REELS : 217 TOTAL NO. OF PCS : 2,09,68,390 REF NO.: CON4783	28746.580	2X40' FCL

ALL LOCAL CHARGES LIKE FCL SERVICE CHARGES QUAY DUES, PIER DUES, CONGESTION SURCHARGE, THC DELIVERY ORDER FEE AND IISF, ISPS CSC CHARGES ARE FOR ACCOUNT OF CONSIGNEE



SHIPPER'S LOAD STOW, WEIGHT AND COUNT, CONTAINER(S) SEALED BY SHIPPERS, CARRIER NOT RESPONSIBLE FOR PACKAGING OF CARGO AND ITS STOWAGE INSIDE THE CONTAINERS.

FREIGHT PAYABLE AT DESTINATION SHIP AND OR CARGO LOST OR NOT LOST

SHIPPED ON BOARD 07-AUG-10  
 Particulars above furnished by consignee/consignor

**DELIVERY AGENT:**  
 FREIGHT AFRICA NV, ANTWERP  
 OEYVAERSBOSCH 10/4, 2630 AARTSELAAR, BELGIUM Ph:32  
 3 877 39 34 Fax:32 3 877 39 22

Freight Amount	No of original 3	Place and date of issue MUMBAI 07-AUG-10
Freight Payable At DESTINATION	FOR TEAMGLOBAL LOGISTICS	

Taken in charge in apparently good condition herein at the place of receipt or transport and delivery as mentioned above, unless otherwise stated. The MTD in accordance with provisions contained in the MTD undertakes to perform of to procure the performance of the multimodal transport from the place at which the goods are taken in charge, to the place designated for delivery and assumes responsibility for such transport.  
 One of the MTD(s) must be surrendered, duly endorsed in exchange for the goods. In witness where of the original MTD all of this honor and date have been signed in the number indicated below one of which being accomplished the other(s) to be void.

Weight and measurement of container not to be included (TERMS CONTAINED ON BACK)  
**CERTIFIED TRUE COPY**  
 POSITIVE PACKAGING INDUSTRIES LTD.  
 Mumbai Division

36489

ORIGINAL

**BANK CERTIFICATE OF EXPORT AND REALISATION FORM NO. 1** APPENDIX - 22A  
 Period 1-09-2004 to 31-3-2009 IE Code: 0395001459

NOTE: Please See Chapter 4 and 5 of the Policy and Chapter 4 and 5 of THE JT. DIRECTOR GENERAL OF FOREIGN TRADE BOMBAY-400 020.  
 We, **POSITIVE PACKAGING INDUSTRIES LTD, 98 JOLLY MAKER CHAMBERS NO.2, 225 NARIMAN POINT, MUMBAI 400 021.** (Name & Address of the Exporters)  
 hereby declare that we have forwarded a documentary export bill to **STANDARD CHARTERED BANK, 90 M.G. ROAD FORT, MUMBAI-400 001.** (Name & Address of the Bank i.e. Branch and City)  
 for collection/negotiation/purchase as per particulars given hereunder: DATE: 07.08.2010

1. Invoice No. 4322 4. Date: 26.07.2010  
 3. Export Promotion copy of S/Bill duly authenticated by custom no. 8693668  
 5. Description of Goods as given in the Customs authenticated Shipping Bills: **PRINTED ADHESIVE LAMINATED FLEXIBLE PACKAGING MATERIAL.**

6. Bill of Lading/Post Parcel Receipt/Airways Bill No: 500130022295 DATE: 07.08.2010  
 8. Destination of goods : Country Name: D.R.CONGO

9 Bill Amount c.i.f.c.& f.o.b. (in foreign exchange)	10 Freight amount as per Bill of Lading Freight income (Rs.)	11 Insurance Amount as per Insurance Company's Bill / Receipt	12 Commission Discount paid payable	13 Whether the export is in freely convertible currency of in Indian Rupees	14 F.O.B. Value/F.O.B Value actually realised in free foreign Exchange / Rupees Rs.
FOB. USS. 70,856.55 1 USS = RS.44.66 RS. 3,164,453.52	RS. 0.00	RS. 0.00	RS. 0.00	FCC	570,856.55 (NR 3,164,454.00)

15. Date of realisation of export proceeds: 20.11.2010 16. SDF Form No: 8693668 DT. 26.07.2010  
 17. No. \_\_\_\_\_ Date \_\_\_\_\_ Licence: DEPB LICBNSR

We further declare that (i) the aforesaid particulars are correct (copies of invoices relevant to these exports and Custom attested E.P. Copy of the Shipping Bill is attached for verification by the bank).

Place: MUMBAI Name in Block Letters : N.Y. Dhalekar  
 Date: 06.12.2010 Designation : Sr. Officer, Impex  
Full Official Address : 98, JOLLY MAKER CHAMBERS NO.2  
Full Residential Address : 225, NARIMAN POINT, MUMBAI-400 021.  
14A, MUKTI DHAM CHS, SHREE NAGAR THANE(W)

Authorized Foreign Exchange Dealer Code No. **6479013-6000009** Ex. Control CODE No. 6479013-6000009  
 allowed to the bank by **POSITIVE PACKAGING INDUSTRIES LTD** (SIGNATURE OF THE EXPORTER)  
RBIND. : 0601593-6000009  
RFRAND. : 529132504796-II  
DATE : 06.12.2010  
PLACE : MUMBAI

1. This is to certify that we have verified the relevant export invoices, Custom attested E.P. Copies of the Shipping Bill and other relevant documents of M/s. POSITIVE PACKAGING INDS. LTD, MUMBAI. We further certify that the Particulars given in Col. 1 to 17 have been verified and found to be correct. We have also verified the f.o.b. values mentioned in Col.14 above with reference to following documents  
 (i) Bill of Lading/PP Receipt/Airways Bill (ii) Insurance Policy/Cover/Insurance receipt  
 2. We have also verified that the date of the consigned Mate Receipts as indicated in the relevant Shipping bills is (date to be given)  
 3. We have also verified that the export is  
 \*Applicable only in respect of exports by air.  
 4. This is to certify that we have certified the amount of the Commission paid/payable, as declared above; by the exporter i.e. Rs. \_\_\_\_\_ with G.R. Form and found to be correct.

NOTE : 1. Bank can issue a consolidate certificate (consignment-wise) for more than one consignment.  
 2. F.O.B. actually realised and date of realisation of export proceeds are to be given in all case except where consignment has been sent against confirmed irrevocable letter of credit.  
 3. This shall be required wherever specifically prescribed in the policy/procedure.

For STANDARD CHARTERED BANK  
 (Signature of the Bankers)  
**MANAGER-TRADE**  
 364, D. N. Road, Mumbai-400 001  
 Nadeem Patel  
 E-Code 1243002  
 Full address of the Bankers (Branch & City)  
 Official Stamp

CERTIFIED TRUE COPY  
 POSITIVE PACKAGING INDUSTRIES LTD.  
 Flexibles Division

AUTHORISED SIGNATORY

EXHIBIT-D 43

EXHIBIT-D

OFFICE OF THE DEPUTY COMMISSIONER: CENTRAL EXCISE: KHOPOLI DIVISION. 4<sup>TH</sup>  
FLOOR, TRIFED TOWER, PLOT NO.3, SECTOR-17, KHANDESHWAR NEW PANVEL- 410 206

F.No.V-18(DN-KPL)/RB/4499-4500/10-11/743  
New Panvel, 20 April, 2010

To  
M/s Positive Packaging Industries Ltd.,  
Village Ransai, LM-16, Khopoli Pen Road,  
Khopoli 410203.

Gentlemen,

DEFECIENCY MEMO CUM SHOW CAUSE NOTICE

Sub: Discrepancies noticed in the rebate claims submitted reg.

Please refer to rebate claims No. V-18(DN-KPL)RB/4499/10 and V-18(DN-KPL)RB/4500/10 filed for the export effected under ARE-1 No. 340 dtd.25.07.2010 and ARE-1 No. 339 dtd.25.07.2010.

On scrutiny of the subject claim it is noticed that:

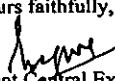
- (i) There is no endorsement from Customs on the reverse side of ARE-1s.
- (ii) There is no endorsement on Shipping bill from Customs.
- (iii) Copy of Mate receipt not submitted.

In this connection, I have been directed to inform you that the Deputy Commissioner, Central Excise, Khopoli Division, Raigad Commissionerate, is pleased to grant you opportunity for personal hearing on 27.04.11 at 11:30 Hrs. Or at

You are, therefore, requested to remain present at the time and address given above and bring with you all the relevant documents which you intend to rely upon in support of your defence.

Please note that, if you fail to appear for the personal hearing, the case will be decided on the basis of evidences available on record.

Yours faithfully,

  
Superintendent Central Excise (Tech-I)  
Central Excise, Khopoli Division.

Copy to: Range Superintendent, Range II Khopoli division he should handover the copy to the assessee and forward dated acknowledgement to this office.

*M. J. 22/4/11*



VILLAGE RANSAI,  
KM. 16, KHOPOLI - PEN ROAD,  
KHOPOLI 410 203,  
MAHARASHTRA, INDIA.

TEL : + 91 2192 391300  
FAX : + 91 2192 391310  
E-mail : factory@positivepackaging.com  
WEB : www.positivepackaging.com

Ref:PPIL/EXE-012/2011-12

May 06, 2011

Dy Commissioner of Central Excise  
Division Khopoli  
4<sup>th</sup> Floor, Trifed Tower  
Khnadeshwar,  
New Panvel

Dear Sir,

Sub: **Rebate Claim - ARE-1 No EXP1011/339 and 340  
dated 25/07/2010 for Rs. 335718/- & Rs. 363781/-**

This has with reference to your Deficiency Memo F. NO. V-18(DN)-KPL/RB/4499-4500/10-11 dated 20<sup>th</sup> April, 2010 wherein it was informed to us that the claims are having the following discrepancies:

- i. There is no endorsement from customs on reverse side of ARE-1
- ii. There is no endorsement on shipping bill from customs.
- iii. Copy of Mate receipt not submitted.

Vide the said deficiency memo we have been directed to appear for personal hearing on 27/04/2011 at 11.30 hrs which was adjourned to 04/05/2011. Accordingly we have appeared before your Honors on 04/05/2011 and made the following submissions:

**Brief Facts**

2. We had exported the finished goods under ARE-1 No EXP1011/339 and ARE-1 No EXP1011/340 both dated 25/07/2011 to Premium Foods SPRL, Kinshasa, Democratic Republic of Congo
3. The said goods were exported vide shipping bill nos 8693668 dated 26/07/2010 and 8693664 dated 26/07/2010. Nature of consignment as mentioned on the said shipping bills was 'FOB'
4. Goods were loaded on vessel namely MSC Chitra at JNPT on 7<sup>th</sup> August, 2010. Team Global Logistics Pvt Ltd issued Bill of Lading No. MTD NO:500130022295 dated 07/08/2010 for both the consignments. It is evident from the Bill of Lading that freight was payable at Destination by the overseas customer.

to the Asstt./Dy.

09 MAY 2011



REGD. OFFICE : 98, JOLLY MAHER CHANDRIBER, NO. 225, NARIMAN POINT,  
MUMBAI 400 021, MAHARASHTRA, INDIA.  
TEL : + 91 22 3001 1700 / 91 22 2202 3774  
E-mail : positive@positivepackaging.com



EXHIBIT - 'E'

प्रशासन अनुभाग, के. ज. सु. वन कार्यालय  
to the Asstt./Dy. Commr.

09 MAY 2011

प्रशासन अनुभाग / Admn. Section  
खोपोली कार्यालय / Khopoli Dn

5. The Vessel left the port on 7<sup>th</sup> August, 2010. It has been reported that immediately after leaving the port the vessel colluded with another vessel namely Khaleeja III on 7<sup>th</sup> August, 2010. The vessel in fact left the port for reaching to the destination. Thereafter exporters have no control over such accidents which is beyond anybody's control. Therefore such events whether within the territorial water or outside shall not affect the interests of the exporters.

6. In terms of INCOTERMS, the title of the export goods is passed on to the customer once the goods are handed over to the vessel at the port of loading. Accordingly the overseas customer has remitted the port proceeds of USD 70856.55 & 76779.26 being the total invoice value of export goods. The Standard Chartered Bank has also issued the Bank Realization Certificate (BRC) having realized the said amount.

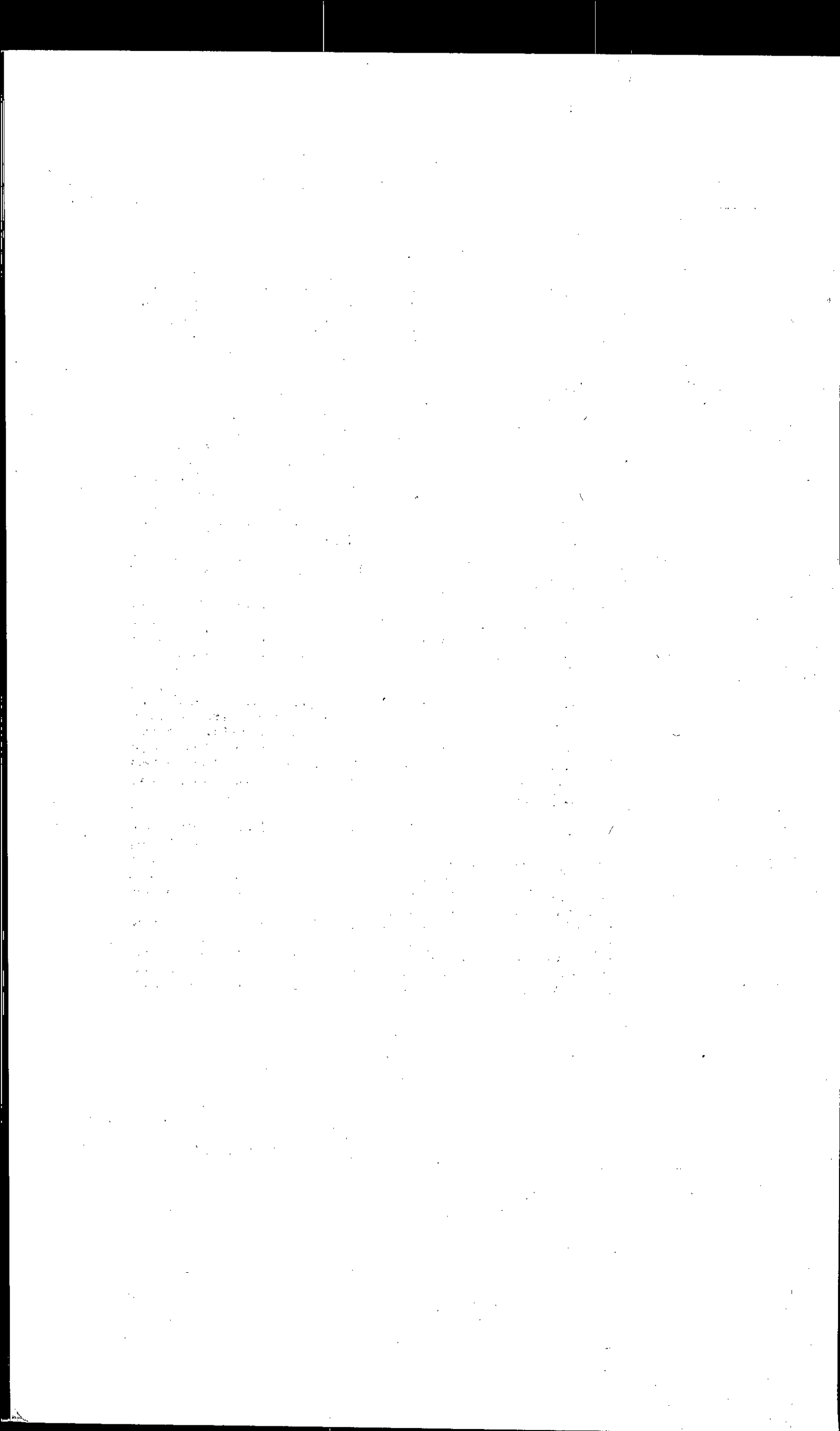
7. All the above documents have been submitted along with the rebate claim.

**Submissions:**

8. We submitted that the contract for export of goods was on FOB basis i.e. Free On Board. Accordingly once the goods are handed over to the Vessel the sale is complete and the ownership / title in the goods is passed on to the customer. This is also in line with International Contract Terms (INCOTERMS). Accordingly the customer has paid for the goods in foreign currency though the goods have been destroyed in the transit. We submit that we have performed the contractual obligation in this contract and accordingly we are eligible for rebate having earned the foreign exchange for the goods exported which is the basic purpose of export.

9. We submitted that we are the members of Federation of Indian Export Organization (Set up by Ministry of Commerce, Government of India). Since many exporters have lost their goods in the captioned collusion, they have made representation to the FIEO to take up the matter to the Ministry of Finance to provide the necessary relief. Accordingly the Federation vide their letter NO. FIEO/EP.3(6)/20011 dated 15/04/2011 made representation to CBEC, Ministry of Finance, New Delhi. Annexed hereto as **Exhibit A** is a copy of the said letter. We being the Two Star Export House also in the process of making a separate representation to the CBEC in the matter.

10. We alternatively submitted that if it is considered that goods have not been exported and the same is destroyed before export, the goods are eligible for remission of duty which are meant for export as held in the case of Kuntal Granites Ltd V CCE - 2007 (215) ELT 515 - (Tri Bang).





Annexed hereto as **Exhibit B** is a copy of the said judgment. In the instant case since the goods have been cleared on payment of duty and the same may be refunded after granting remission of duty for the goods destroyed in transit in terms of the said settled law by the Tribunal.

11. We further relied upon the Apex Court judgment in the case of *CC v Sun Industries - 1988 (35) ELT 241 (SC)*. The facts of the case were:

2. On 7th June, 1980 the respondent *M/s. Sun Industries of Calcutta* had shipped 6000 bundles containing 100000 sets of plywood panels for tea chests on the *M.V. Mohur Gang*. The shipment of the said goods was intended for delivery at Colombo under claim for drawback on the said goods under Section 75 of the Act against shipping bill. On 20th June, 1980 on proceeding to the voyage after shipment of the goods, the ship developed engine trouble on the way and returned back and ran aground in Indian territorial waters at the port of Paradeep. The fitting stores and cargo vessel had been salvaged into India under the supervision of Port Trust Paradeep. The respondent thereafter applied for drawback under Section 75 of the Act. By an order dated 25th October, 1986, the Assistant Collector of Customs rejected the claim for drawback on the said goods under Section 75 of the Act read with Section 2(18) and Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 1971. Being dissatisfied the respondent appealed to the Appellate Collector of Customs, Calcutta. By the order dated 12th February, 1981 the Appellate Collector rejected the appeal holding that the ship ran aground in territorial waters of India, therefore, the said goods could not be deemed to have been exported. Dissatisfied with the said order the respondent preferred a revision under Section 131 of the Act. The revision petition was thereafter transferred to the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi.

The Tribunal held that once the goods are handed over to the vessel, title of the goods passed on to the purchaser, the export having been completed, they are eligible for duty drawback. In the instant case also the goods have been destroyed within the territorial waters of India as happened in the case of *Sun Industries*. Facts in both the cases are similar i.e. destroying the goods in territorial water of India. The Apex Court in the said case held that subsequently the ship decided to sail in to territorial waters of India is of no affect. Therefore in the instant case neither the goods have been salvaged nor the same is re-landed in India, the export proceeds have been realized in foreign currency having the title of goods passed on to the purchaser. Therefore even though the

goods have not passed the territorial waters of India, the rebate is eligible having complied with the other conditions of rebate.

12. We would like to draw your kind attention to the provisions of Section 41 & 42 of The Customs Act, 1962. The text of the said section is given below:

*SECTION 41. - Delivery of export manifest or export report. - (1) The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form :*

*] \* \* \* \* \**

*The person delivering the export manifest or export (2) report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.*

*If the proper officer is satisfied that the export (3) manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.*

*SECTION 42. - No conveyance to leave without written order. - (1) The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.*

*No such order shall be given until - (2)*

*the (a) person-in-charge of the conveyance has answered the questions put to him under section 38;*

*the provisions of (b) section 41 have been complied with;*

*the shipping (c) bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;*

*all duties (d) leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;*

the (e) person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

in (f) any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, -

such goods have been unloaded, or (i)

where the [Assistant Commissioner of Customs or Deputy (ii) Commissioner of Customs] is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.


It is evident from the above provisions that Export Manifest was handed over to the proper officer before vessel leaving the custom station. On the basis of such manifest it is mandatory on the part of all subsequent officers to issue the proper documents required for claiming the export incentives. We therefore submitted that kindly allow us to take back the documents to custom authorities for getting the endorsements as pointed out in the deficiency memo.

13. Alternatively we submitted that the refund may be granted by way of credit to cenvat account instead of refund in cash.

14. Alternatively in view of the FIEO representation to CBEC which is pending for clarification, we requested your goodself to keep the matter in abeyance till the said clarification is issued by the CBEC.

Thanking you

Yours faithfully,  
For Positive Packaging Industries Ltd

  
(D. W. DESHPANDE)  
General Manager - Indirect Taxes

Encl: as above.



फेडरेशन ऑफ इंडियन एक्सपोर्ट ऑर्गनाइजेशन  
(वाणिज्य मंत्रालय, भारत सरकार द्वारा स्थापित)



FEDERATION OF INDIAN EXPORT ORGANISATIONS  
(SET UP BY MINISTRY OF COMMERCE, GOVERNMENT OF INDIA)

AJAY SAHAI NIRYAT BHAWAN, OPP. ARMY HOSPITAL, RESEARCH & REFERRAL  
RAO TULKA RAM MARG, NEW DELHI - 110 057 (INDIA)  
Indian Trade Service Director General's Office  
TEL: (91) 11 22150111, 46042111, (DIR): 26150101-04/46042222  
FAX: (91) 11 22150177 (DIR): 26148194 E-mail: ajoy@ndiaies.org / nobby@ndiaies.org  
fiec@ndiaies.net.in Website: http://www.fieo.org

NO: FIEO/EP-3(6)/2011

15 April 2011

Dear Shri Thakur,

At times, export shipments, unfortunately, are lost / destroyed in transit causing huge losses to the exporters. Examples of such incidences in recent past are:

- i. Fire in Export Warehouse, ICD, NKB, New Delhi held on 10 April 2010.
- ii. Accident of vessel MSC Chitra in Indian Shore in August, 2010.

In both the above cases, the export goods were Customs cleared and exporters had no control on the same. The loss suffered by the exporters was not only goods loss but business loss, goodwill loss and above all, clients loss, without any fault of their end. Though Rule 21 of Central Excise Rules, 2002 provides remission of duty in such cases, but any time before removal, Agra result, exporters are required to pay Excise Duty with interest for the lost/destroyed goods which were cleared under Bond/C.T.L. for the reason that the goods have not left Indian shore and in the absence of EP Copy or Shipping Bill, can not be considered as export. Thus, exporters have to suffer additional loss.

In order to provide relief to the affected exporters, it is suggested that excise duty rebate may be provided to the exporters in such cases. Suitable instructions/circular may be issued in this regard in the interest of exports.

It would be very much appreciated, if the above suggestion is considered sympathetically.

With regards,

Yours sincerely,  
(Sd/-)  
(Ajay Sahai)

Shri M.C. Thakur  
Member (Central Excise)  
Central Board of Excise & Customs  
Ministry of Finance  
New Delhi - 110 001

Copy to: Shri A.R. Modi, Pump Air Corporation, Mumbai - with reference to your  
Email dated 13/4/2011

Director General & CEO

सहायक आयुक्त का कार्यालय, मंडल-  
केन्द्रीय उत्पाद तथा, सीमा शुल्क, आयुक्तालय-

आदेश सं.: RGD/KPL/RC/3210/11-12

आदेश की तारीख: 31/5/2011

फा. सं. V 18 (DN-KPL) RB/4499/10

द्वारा पारित :- श्री अमर कुमार  
उप आयुक्त,  
केन्द्रीय उत्पाद शुल्क, मंडल-  
आयुक्तालय-

4703  
11-07-2011

627  
12-7-2011

मूल आदेश

- 1) यह प्रति उस व्यक्ति के निजी उपयोग के लिये निःशुल्क प्रदान की गई है जिसके लिये यह आदेश जारी किया गया है।
- 2) कोई भी व्यक्ति जो अपने आपको इस आदेश से दुखी समझता है वह आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील), मुंबई क्षेत्र -II, 3 रा माला, उत्पाद शुल्क भवन, बान्द्रा- कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400051 के पास फार्म ई. ए.-1 में अपील कर सकता है। इस आदेश के प्राप्त होने की तारीख से 60 दिनों के अन्दर आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क के पास अपील दायर किया जाना चाहिए। अपील के ऊपर 1.00 रु. कोर्ट फीस स्टॅम्प लगा होना चाहिए तथा उसके साथ निम्नानुसार संलग्न हो :-

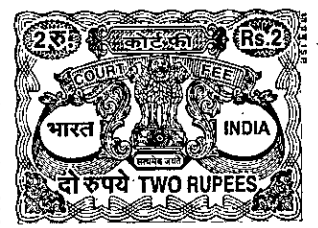
क) केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2002 के नियम 3 के प्रावधानों के अनुसार अपील के आधार तथा अपीलकर्ता (आवेदक) द्वारा विधिवत हस्ताक्षरित सत्यापन फार्म तथा

ख) अपील फार्म संख्या ई. ए. 1 में हो जिसके साथ तथ्यों का विवरण व अपील के आधार दो प्रतियों में दायर करते हुये इस आदेश की प्रति भी संलग्न की जाये।

- 3) इस आदेश के विरुद्ध अपील के इच्छुक कोई भी व्यक्ति इस आदेश के अनुसार जिसके विरुद्ध अपील करना हो वांछित शुल्क अथवा दण्ड की राशि जमा करे और अपील के साथ ऐसे भुगतानों का सबूत पेश करे।
- 4) ऐसा न करने से केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 (एफ) के प्रावधानों के तहत जरूरी अनुपालन न करने के कारण अपील खारिज किया जा सकता है।

निर्धारिती का नाम : M/s Positive Packaging Industries Ltd.  
Village - Ransai, Khopoli Pen Road.  
Taluka - Khalapur, Dist. Raigad.

D.M. cum Secy No. V. 18 (DN-KPL) RB/4499-4500/10-11/7B  
dt. 20/4/2011



**BRIEF FACTS OF THE CASE**

[ M/s. Positive Packaging Industries Ltd., Village. Ransai, Khopoli Pen Road, Taluka- Khalapur, District Raigad (hereinafter referred to as "the assessee") registered with Central Excise Department as manufacturer filed below mentioned the Rebate Claims in Central Excise, Khopoli Division, Raigad Commissionerate on 09.02.2011. ]

S. No.	ARE-1 No	Date	Goods Exported	Value (Rs)	Rebate claim (Rs)
1	0340	25.07.10	Printed Adhesive Laminated Flexible Packaging Material for Multi layers in form of Rolls	3531846	363781
2	0339	25.07.10	Printed Adhesive Laminated Flexible Packaging Material for Multi layers in form of Rolls	3259402	335718
			TOTAL		699499

2. [ During scrutiny of aforesaid claims it was noticed that:-

- (i) There was no endorsement from Customs on the reverse side of ARE-1s.
- (ii) There was no endorsement on Shipping Bill from Customs
- (iii) Copy of Mate Receipt not submitted. ]

3. [ Accordingly above discrepancies were conveyed to the assessee vide Deficiency Memo Cum Show Cause Notice (DM) vide F. No. V-18(Dn. KPL) RB/4499-4500/10-11 dtd. 20.04.2011. ] Also the assessee was granted personal hearing (PH) on 27.04.2011.

**DEFENCE**

4. The assessee vide their letter dtd. 27.04.2011 sought postponement of Personal Hearing on 04.05.2011, on the ground that they were trying to organize some more document in support of their claim.

5. Accordingly, Shri. D. W. Deshpande, General Manager, Indirect

Taxes appeared for Personal Hearing (PH), on behalf of the assessee, on 04.05.2011. He pleaded that in the instant case the vessel "MSC Chitra" which was carrying the impugned goods met with an accident in the port area outside JNPT with MV Khalaja. The ownership of goods, was transferred to consignee the moment goods were loaded on the vessel. The assessee has received remittance and buyer has got insurance claim. Further, he contended that they are going to submit written reply shortly. He requested for favourable order.

6. Subsequently, Shri. D. W. Deshpande, filed written reply vide their letter Ref. no. PPIL/EXE-012/2011-12 dtd. 06.05.2011 received in this office on 09.05.2011, wherein it is stated that :-

"(i) Goods were loaded on vessel namely MSC Chitra at JNPT on 7<sup>th</sup> August,2010. Team Global Logistics Pvt. Ltd. issued Bill of Lading No. MTD No. 500130022295 dated 07.08.2010 for both the consignments. It is evident from the Bill of Lading that freight was payable at Destination by the overseas customer.

(ii) The Vessel left the port on 7<sup>th</sup> August,2010. It has been reported that immediately after leaving the port the vessel colluded with another vessel namely Khaleeja III on 7<sup>th</sup> August,2010. The vessel in fact left the port for reaching to the destination. Thereafter exporters have no control over such accidents which is beyond anybody's control. Therefore such events whether within the territorial water or outside shall not affect the interest of the exporters.

(iii) In terms of INCOTERMS, the title of the export goods is passed on to the customer once the goods are handed over to the vessel at the port of loading. Accordingly, the overseas customer has remitted the export proceeds of USD 70856.55 & 76779.26 being the total invoice value of export goods. The Standard Chartered Bank has also issued the Bank Realisation Certificate (BRC) having realized the said amount.

(iv) We submitted that the contract for export of goods was on FOB basis i.e. Free on Board. Accordingly, once the goods are handed over to the Vessel the sale is complete and the ownership/title in the goods is passed on to the customer. This is also in line with International Contract Terms (INCOTERMS). Accordingly, the customer has paid for the goods in foreign currency though the goods have been destroyed in the transit. We submit that we have performed the contractual obligation in this contract and accordingly we are

eligible for rebate having earned the foreign exchange for the goods exported which is the basic purpose of export.

(v) We submitted that we are the members of Federation of Indian Export Organisation (Set up by Ministry of Commerce, Government of India). Since many exporters have lost their goods in the captioned collusion, they have made representation to the FIEO to take up the matter to the Ministry of Finance to provide the necessary relief. Accordingly, the Federation vide their letter No. FIEO/EP.3(6)/20011 dated 15.04.2011 made representation to CBEC, Ministry of Finance, New Delhi. Annexed hereto as Exhibit A is a copy of the said letter. We being the Two Star Export House also in the process of making a separate representation to the CBEC in the matter.

(vi) We alternatively submitted that if it is considered that goods have not been exported and the same is destroyed before export, the goods are eligible for remission of duty which are meant for export as held in the case of Kuntal Granites Ltd. V/s. CCE- 2007 (215) ELT 515 - Tri Bang). Annexed hereto as Exhibit B is a copy of the said judgment. In the instant case since the goods have been cleared on payment of duty and the same may be refunded after granting remission of duty for the goods destroyed in transit in terms of the said settled law by the Tribunal.

(vii) We further relied upon the Apex Court judgment in the case of CC V Sun Industries- 1988 (35) ELT 241 (SC)

(viii) It is evident from the provisions of Section 41 & 42 of the Customs Act, 1962 that Export Manifest was handed over to the proper officer before vessel leaving the custom station. On the basis of such manifest it is mandatory on the part of all subsequent officers to issue the proper documents required for claiming the export incentives. We therefore submitted that kindly allow us to take back the documents to custom authorities for getting the endorsements as pointed out in the deficiency memo.

(ix) Alternatively we submitted that refund may be granted by way of credit to Cenvat account instead of refund in cash."

#### **DISCUSSION AND FINDINGS**

7. I have carefully gone through both the rebate claims, its supporting documents, reply filed by the assessee to the Deficiency Memo



referred above and oral submissions made during Personal Hearing by the representative of the assessee.

8. The representative of the assessee has requested to keep the matter in abeyance in view of representation dtd. 15.04.2011 of Federation of India Export Organisation, New Delhi to the Board (CBEC). However, the case is already heard and the same can not be kept pending adjudication unless it fits into the guidelines in this regard. The said guidelines do not cover the said situation brought forward by the representative of the assessee. Hence, I proceed to decide this case based on evidence available on records.

9. The issue to be decided is that whether assessee is entitled for Rebate in terms of Rule 18 of Central Excise Rules, 2002 in the situation when the goods are not 'exported'.

10. The situation of non-exporting of goods in question has been clarified by the representative of the assessee during Personal Hearing and in written submission dtd. 06.05.2011, is that the vessel on which the goods covered in both the said Rebate Claims were loaded colluded with another vessel immediately after leaving the port. Thus the goods in question were not "exported". This fact is further corroborated with the following discrepancies noticed in both the rebate claims which were communicated to the assessee on 20.04.2011.

- (a) There is no endorsement from Customs on the reverse side of ARE-1s.
- (b) There is no endorsement on Shipping Bill from Customs
- (c) Copy of Mate Receipt not submitted.

11. However, the assessee failed to comply with aforesaid discrepancies, which conclusively prove that the goods in fact were not exported.

12. The relevant provisions of statute for grant of rebate are contained in Rule 18 of Central Excise Rules, 2002(CER). The relevant portion of said Rule 18 is reproduced below:-

*" where any goods are **exported** the Central govt. may by Notification :- grant rebate of duty paid on such excisable goods ....."*

13. From above, it is clear that in terms of Rule 18 CER, the rebate is admissible provided the goods are "exported" and not otherwise. As elaborated

earlier, in the instant case the goods were not "exported". Moreover, the assessee has failed to produce proof for such export as much as they could not produce - (a) Mate Receipt, (b) Endorsement of Custom on reverse side of ARE-1s, (c) Endorsement on Shipping Bill from Customs.

14. As the goods in question are not "exported", the rebate thereof is not admissible to the assessee.

15. In view of the above, I pass the following order:

**ORDER**

I reject both the Rebate Claims for Rs. 3,63,781/- and Rs. 3,35,718/- totally amounting to Rs. 6,99,499/- (Rupees Six Lakhs Ninety Nine Thousand Four Hundred Ninety Nine Only) filed by M/s. Positive Packaging Industries Ltd. against ARE-1 Nos. 0340 & 0339 both dtd. 25.07.2010, respectively, due to non fulfillment of conditions of Rule 18 of Central Excise Rules, 2002.

*ABHAY KUMAR*  
(ABHAY KUMAR) 31-05-11  
DEPUTY COMMISSIONER,  
CENTRAL EXCISE: KHOPOLI DVN.

F. No. V.18 (Dn.KPL)RB/4499/10

New Panvel, the May'2011

To,

M/s. Positive Packaging Industries Ltd.,

Village. Ransai,

Khopoli Pen Road,

Taluka- Khalapur, District Raigad

Attested,

*S. M. BAGAL*  
S. M. BAGAL  
SUPERINTENDENT  
CENTRAL EXCISE,  
KHOPOLI RANGE-II

- Copy to:-
- (i) Deputy Commr. (Review), C. Ex., Raigad.
  - (ii) Deputy Commr. (Audit), C. Ex., Raigad.
  - (iii) Supdt., C. Ex., Range Khopoli-II, Khopoli Dvn. He should hand over copy of this order to the assessee and forward dated acknowledgement thereof to this office
  - (iv) Master file
  - (v) Spare.

**FORM EA-1**

(See Rule 3 of the Central Excise Appeal Rules 2001)  
**FORM OF APPEAL TO THE COMMISSIONER (APPEALS)**  
**UNDER SECTION 35 OF THE CENTRAL EXCISE ACT, 1944**

(1) Appeal No.....of..... 2011

(against order-in-original No. RGD/KPL/RC/3210/11-12  
dated 31.5.2011 passed by Dy. Commissioner of Central Excise,  
Khopoli Division, Raigad Commissionerate, New Panvel-410 206)

- (2) Name and address of the Appellant : Positive Packaging Industries Ltd  
KM16, Khopoli-Pen road,  
Village Ransai,  
Khopoli.
- (3) The Designation and address of the authority passing the decision or order appealed against : Dy. Commissioner -  
Central Excise  
Khopoli Division  
4<sup>th</sup> Floor, Trifed Tower,  
Sector 17, Khandeshwar,  
Navi Mumbai- 401 206
- (4) Date of communication of a copy of the order appealed against : 12/07/2011
- (5) Address to which the notices may be sent to the appellant : i) Same as Sr. No.2 above  
and  
ii) P.K.Shetty, Advocate  
C-604, Lakeflorencia CHS  
Near Gopalsharma School  
Powai, Mumbai-400 076.
- (6) i) Description and classification of Goods : Flexible packaging material falling under Chapter No. 39
- ii) Period of dispute : July 2010
- iii) Amount of duty, if any mentioned in item (ii) : N.A
- iv) Amount of rebate, if any, claimed for the period mentioned in item (ii). : Rs.6,99,499/-  
(Rs.363781/- & Rs.3,35,718/-)
- v) Amount of fine imposed : NA
- vi) Amount of penalty imposed : NA
- vii) Market value of seized goods : NA
- (7) Whether duty or penalty or both is deposited; if not, whether any application : Not Applicable.  
The Appeal relates to rebate of duty paid for export under Rule

for dispensing with such deposit has been made. (A copy of the Challan under which the deposit is made shall be furnished).

18 of CER 2002

- (8) Whether the appellant wishes to be heard in person : Yes
- (9) Reliefs claimed in appeal : As claimed in the Memorandum of Appeal.

#### STATEMENT OF FACTS

Positive Packaging Industries Ltd, 16<sup>th</sup> KM, Khopoli-Pen road, Village Ransai, Khopoli (herein after referred to as Appellants) are filing this appeal to quash & set aside the order-in-original No. RGD/KPL/RC/3210/11-12 dated 31.5.2011 (issued on 11.7.2011) passed by Dy. Commissioner of Central Excise, Khopoli Division, Raigad Commissionerate, Trifed Towers, Sector 17, Khandeshwar, New Panvel-410 206 (hereinafter referred to as Respondents). Respondents rejected the two rebate claims of Rs.363781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- on the ground that Appellants have failed to submit the proof of export in as much as they could not produce mate receipt, ARE-1 & shipping bills endorsed by Customs. Hereto annexed & marked **Exhibit A** is the copy of the said order dated 31.5.2011(issued on 11.7.2011).

2. Appellants are engaged in the manufacture of flexible packaging material (laminates) falling under Chapter sub-heading No.39 of the Schedule to CETA, 1985. The said manufactured goods are cleared for domestic market as well as export. Appellants exported finished goods under ARE-1 No. 339 & 340 both dated 25.7.2010 to 'Premium Foods SPRL, Kinshasa, Democratic Republic of Congo, on FOB basis. Shipping bill Nos. 8693688 & 8693664 both dated 26.7.2010 were issued for the said export & the 'Let Export Order' was also passed on 27.7.2010 by the proper officer of Customs. The goods were loaded on the vessel MSC Chitra at JNPT Port on 7<sup>th</sup> August 2010 & Bill of Lading No. MTD

5000130022295 dated 7.8.2010 was issued for both the consignments by Team Global Logistics Pvt. Ltd. However it has been reported that the said Vessel, immediately after leaving the port, collided with another vessel namely Khaleeja III on 7<sup>th</sup> August 2010. It was reported the said containers were lost in the accident & the goods could not be salvaged by the shipping agency. Hereto Annexed & marked **Exhibit B** is the copy of the letter dated 25.2.2011 from the MSC Agency (I) Pvt Ltd.

3. Appellants have informed the overseas customer about the said loss of goods in-transit after handing over the goods on board. Appellants also claimed the export sale proceeds as the contract was on FOB basis and the ownership of goods was transferred to buyer in terms of INCOTERMS. The overseas customer accordingly have reimbursed the sale proceeds in terms of FOB contract to appellants excluding the excise duty paid on the goods. Appellants thereafter filed two rebate claims on 9<sup>th</sup> February 2011, amounting Rs.3,63,781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- under ARE-1 Nos. 339 & 340 both dated 25.7.2010. In support of the claim the Appellants had submitted copies of ARE-1 duly signed by the Preventive Officers of Customs, Central excise invoice evidencing payment of duty, Shipping Bills with order of 'Let export' permitted by Customs Officers, Custom Invoice, Bill of Lading & the Bank Realization Certificate evidencing proof of receipt of sale proceeds in convertible foreign currency covering both the containers. Hereto annexed & marked **Exhibit C** collectively are the copy of the said two rebate claims.

4. Appellants however received the Deficiency Memo cum show-cause notice dated 20.4.2011, pointing out that:

- a) No endorsement from Customs on the reverse side of the ARE-1.
- b) No endorsement from Customs on the shipping bill.
- c) Copy of the mate receipt not submitted.

Appellants were also directed to appear before Deputy Commissioner of Central Excise on 27.4.2011 in the matter. Hereto annexed & marked **Exhibit D** is the copy of the said Deficiency Memo Cum show-cause notice dated 20.4.2011.

5. Appellants appeared for personal hearing in the matter on 4.5.2011 wherein they have made the following submissions:

- i) the goods were loaded on vessel MSC Chitra on 17<sup>th</sup> August 2010. Team Global Logistic Pvt. Ltd. The shipping agency also issued a Bill of Lading for the said consignments. Once the vessel left the port, Appellants have no control over such accidents & in terms of FOB contracts, the ownership in goods transferred to overseas buyer & contractual obligation is complete once the goods are shipped on Board.
- ii) Appellants have collected the sale proceeds from the overseas buyer in foreign exchange for the goods exported in terms of FOB contract & the goods destroyed in transit has no relevance for the payment of rebate.
- iii) a representation has been made by the Federation of Indian Export Organisation (FIEO- Set up by the Ministry of Commerce, Govt. Of India) for waiver of duty on the goods lost in the said accident & therefore the rebate claim may be kept pending.

Hereto annexed & marked **Exhibit E** is a copy of the written submission dated 9.5.2011 and FIEO representation made to CBEC for waiver of duty on the goods lost in the said containers, filed by appellants subsequent to the hearing.

6. Appellants, however, surprised to receive the order-in-original rejecting both the rebate claims amounting to Rs. 6,99,499/- on ground that goods are not exported. Aggrieved with the said order Appellants are

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filing this appeal on the following grounds each of which are urged without prejudice to one another.

#### GROUNDS OF APPEAL

7. Respondent erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods & receipt of export sale proceeds in foreign exchange. Though the said certificate was enclosed to the rebate claim, Respondent merely brushed aside the said submission of the Appellants. Respondents also erred in simply stating that for payment of rebate under Rule 18, Export is a pre-condition to be fulfilled. Appellant submit that goods have been exported under FOB contract which stipulates that the responsibility of the exporter is to handover the goods on board the vessel. Under the International Contract Terms (INCOTERMS), once the goods are handed over to the ship, the title in goods is transferred to the customer & any loss in transit is sole responsibility of the overseas buyer. In the instant case the goods were exported under FOB terms & the export proceeds are also realized in foreign exchange. These complies the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. Once the said condition is complied with, rebate on the said goods cannot be denied & therefore the order of Respondent is liable to be quashed & set aside.

8. Respondent erred in his findings that the customs officer has not signed on the ARE-1. Appellants submit that it is factually incorrect as observed from the reverse side of the ARE-1 annexed above that the Jurisdictional central excise officers have signed the ARE-1 at the time of stuffing the container at the factory & the said ARE-1 is also signed by Customs Preventive Officers at the Port of Shipment. More over the shipping bill issued for the said containers also contain the 'Let Export Order' passed by the Officers of Customs. The goods have been handed



over to shipping agency namely Team Global Logistics Pvt. Ltd who have issued the Bill of Lading No. MTD: 500130022295 dated 7.8.2010. Respondent simply ignored all the above documentary evidence available on records & rejected the claim only on the ground that ARE-1 not signed by the Customs. Therefore the order of Respondents is liable to be quashed & set aside & the rebate has to be paid to the Appellant.

9. Respondent ignored the fact that the issue relates to the export of goods which have been shipped in the said ill-fated vessel i.e. MSC Chitra which met with an accident. The members of Federation of Indian Export Organization (FIEO- Set up by the Ministry of Commerce, Govt. of India) have made the representation to the CBEC, Member, Central Excise for waiving the Central Excise duty on the goods exported through the said vessel which have been lost. It was informed that there were more than 100 exporters and some of the exporters have been granted remission of duty on the goods lost in the said Vessel i.e. MSC Chitra. This amounts to granting of duty waiver on the goods lost in the said container in which case, the Appellants will automatically become eligible for rebate of the duty paid on the said export goods. Appellants cannot be singled out by rejecting the refund claim while other exporters have been extended the benefit of duty remission on the goods lost.

10. Appellants submit that in view of the representation made to CBEC for waiver of duty on the goods lost in the said containers, Appellants requested the adjudication authority to keep the claims under hold till the clarification by CBEC, New Delhi. However this request of appellant was not considered by the adjudicating authority. Instead rejected the claim merely on the ground that the goods are lost within Indian territorial waters and hence there is no export. Therefore the order of Respondents is liable to be quashed & set aside & the rebate claim is required to be settled without any delay.

11. Respondent erred in rejecting the rebate claim on the ground that the goods are lost within the Indian Territorial Waters and hence goods are not exported, consequently no rebate. Appellants submit that the goods have been handed over to the shipping agency on 27.7.2010 and the 'Let export orders' were also issued on 7.8. 2010. Under 'FOB Contract' the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.7.2010 itself who have issued the Bill of Lading confirming goods on Board. The overseas customer, in terms of FOB contract, accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. In terms of rule 18 read with relevant notification, even if the export is made, unless the sale proceeds are realized from the overseas customer, the rebate claim is not payable and if paid already, the same is required to be refunded by the assessee. In the instant case due to collusion of ship which is beyond the control of human being, the goods have been lost in transit, on board. Simply sticking to the technical terminology i.e. 'non-crossing of border of Indian territorial waters by the export goods' and ignoring realization of sale proceeds defeat the purpose of export. Main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the appellant. Since the sale proceeds were realized in view of the FOB contracts and appellants have produced the Bank Realization Certificate (BRC) the appellants are legally eligible for the export incentive by way of rebate. Appellants therefore submit that realization of Sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the Appellants in the present case. Therefore the Appellants are legally eligible for the rebate claim which is required to be paid immediately.

12. Appellants crave leave to add, alter and/or delete any of the submissions made herein above before or at the time of personal hearing.

13. Appellants wish to be heard in person before the appeal is finally disposed off.

### RELIEFS CLAIMED

In view of the aforesaid grounds, Appellants pray that:

- a. the order of Respondent be quashed & set aside.
- b. Respondent be directed to settle the rebate claim with interest at the prescribed rate till the same is settled.
- c. Any other relief that may be deemed necessary & fit under the circumstances of the case be granted.

### APPELLANTS

Positive Packaging Industries Ltd.  
Flexibles Division  
*Anurag Joshi*  
Anurag Joshi  
General Manager (Accounts & Excise)

### VERIFICATION

I, Anurag Joshi, the authorized signatory of the appellant, do hereby declare that what is stated above is true to the best of my information & belief.

Verified today 5<sup>th</sup> day of September 2011.

### APPELLANTS

Positive Packaging Industries Ltd.  
Flexibles Division  
*Anurag Joshi*  
Anurag Joshi  
General Manager (Accounts & Excise)



फेडरेशन ऑफ इंडियन एक्सपोर्ट आर्गनाइजेशन्स  
(वाणिज्य मंत्रालय, भारत सरकार द्वारा स्थापित)  
**FEDERATION OF INDIAN EXPORT ORGANISATIONS**  
(SET UP BY MINISTRY OF COMMERCE, GOVERNMENT OF INDIA)



NIRYAT BHAWAN, RAO TULA RAM MARG, OPP. ARMY HOSPITAL RESEARCH & REFERRAL  
NEW DELHI - 110057 (INDIA) ♦ TEL: +91-11-46042222, 26150101- 04 ♦ FAX:+91-11-26148194  
E-mail : fieo@airtelmail.in / fieo@nda.vsnl.net.in ♦ Website: <http://www.fieo.org>

No. FIEO/EP.1(1)/2011

February 1, 2012

**The Director (Customs)**  
Central Board of Excise & Customs  
Ministry of Finance  
North Block  
New Delhi – 110 001

Dear Sir,

We invite your kind attention to a representation dated 10<sup>th</sup> January, 2012 from M/s. Positive Packaging Industries Limited, Mumbai addressed to the Chairman, CBEC, wherein a request is made for sanction of rebate and other export benefits on the destroyed goods shipped per vessel MSC Chitra sunk in Bombay Coast. A copy of the letter is enclosed for your ready reference.

As per the details/documents submitted with the representation and in view of the fact that full export proceeds have been realized against the destroyed goods, as stated therein, the request of the exporter appears to be reasonable and merit consideration.

We shall be grateful for an early decision in the matter.

Thanking you,

Yours faithfully,  
Sd/-  
( H C Pant )  
Joint Director

Encl. As above

✓c.c. M/s. Positive Packaging Industries Limited, 202, Great Eastern Summit, A-Wing, Plot No. 565, Sector 15, CBD Belapur (E), Navi Mumbai -- 400 614

Joint Director

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DGE/EOU/Misc/01/2012/106  
**DIRECTORATE GENERAL OF EXPORT PROMOTION**  
Deptt. of Revenue, Ministry of Finance, Govt. of India  
HOTEL JANPATH, NEW DELHI -110 001  
EPABX No.:23344616, 23344622, Fax No:-23344614/ 560.

18/Jan./2012

**OFFICE MEMORANDUM**

**Sub: Rebate on goods exported per Vessel MSC Chitra in August 7, 2010 in Mumbai coast- clarification reg.**

I have been directed to enclose letter dated 10.01.2012, from the General Manager of M/s Positive Packaging Industries Ltd., Navi Mumbai, in original, addressed to the Chairman, CBEC regarding the above subject.

2. Subject matter of the letter pertains to the Customs Section of CBEC. Hence, the same is forwarded for necessary action.

Encls: As above (25 pages)

4 — 18.1.12  
(M K Arora)  
Addl. Director

Shri Sandeep M Bhatnagar  
Joint Secretary (Customs),  
CBEC, North Block,  
New Delhi.

✓ Copy for information to:

Shri W D Deshpande,  
General Manager,  
M/s Positive Packaging Industries Ltd.,  
202, Great Eastern Summit, A-wing,  
Plot No.56, Sector 15, CBD Belapur (E),  
Navi Mumbai-400 614.



**POSITIVE  
PACKAGING  
INDUSTRIES  
LIMITED**

202 GREAT EASTERN SUMMIT, A-WING,  
PLOT NO. 56, SECTOR 15, CBD BELAPUR (E),  
NAVI MUMBAI - 400 614,  
MAHARASHTRA, INDIA.

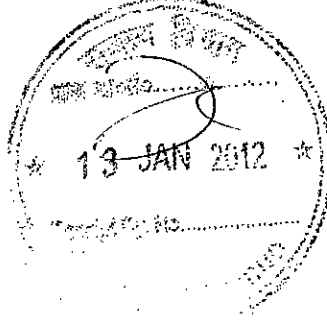
TEL : + 91 22 3921 1400  
FAX : + 91 22 3921 1430  
E-mail : positive@positivepackaging.com  
WEB : www.positivepackaging.com

o/c

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January 10, 2012.

To  
Chairman  
Central Board of Excise & Customs  
Ministry of Finance, Dept of Revenue  
North Block, New Delhi 110 001



Dear Sir,

**Sub: Rebate on goods exported per Vessel MSC Chitra in  
August 7, 2010 in Mumbai coast-Clarification reg.**

Your goodself may be aware that a cargo vessel MSC Chitra met with an accident immediately after leaving the Mumbai Coast on 7<sup>th</sup> August 2010. It has been reported that immediately after leaving the port the vessel colluded with another vessel namely Khaleeja III on 7<sup>th</sup> August, 2010 and sunk. The salvage operations were undertaken for several days, however only partial quantity of goods could be salvaged. The shipping companies/steamer agents declared thereafter that the balance goods as lost. Hereto annexed & marked **Exhibit A** is the copy of the Standing Order No. 43/2010 dated 13/08/2010 issued by the Commissioner of Customs (Export), JNCH, Nhava Sheva, Navi Mumbai.

2. We are the manufacturers of flexible packaging material falling under chapter 39 of CETA 1985 and exporting substantial part of our production. We had exported the finished goods under ARE-1 No 339 (Custom Invoice No. 15322) and ARE-1 No 340 (Custom Invoice No. 15321) both dated 25/07/2011 under claim of rebate to Premium Foods SPRL, Kinshasa, Democratic Republic of Congo. The Range Superintendent supervised the container stuffing, verified the documents, allowed the export and post export issued Duty Paying Certificate for excise duty paid on said export consignments. The said goods were exported vide Shipping Bill numbers 8693688 and 8693664 both dated 26/07/2010. Nature of consignment as mentioned on the said shipping bills was 'FOB'. Hereto annexed and marked **Exhibit B** is collectively copies of ARE1, customs invoice, shipping bills etc.



REGD. OFFICE : 98, JOLLY MAKER CHAMBERS NO 2, 225, NARIMAN POINT,  
MUMBAI 400 021, MAHARASHTRA, INDIA.  
TEL : + 91 22 3001 1700 FAX : + 91 22 2202 3774  
E-mail : positive@positivepackaging.com





**POSITIVE  
PACKAGING  
INDUSTRIES  
LIMITED**

202 GREAT EASTERN SUMMIT, A-WING,  
PLOT NO. 56, SECTOR 15, CBD BELAPUR (E),  
NAVI MUMBAI - 400 614,  
MAHARASHTRA, INDIA.

TEL : + 91 22 3921 1400  
FAX : + 91 22 3921 1430  
E-mail : positive@positivepackaging.com  
WEB : www.positivepackaging.com

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3. In terms of INCOTERMS, the title of the export goods is passed on to the customer once the goods are handed over to the vessel at the port of loading. Accordingly our overseas customer has remitted the export proceeds of USD 70856.55 against Custom Invoice No. 15322 & USD 76779.26 against Custom Invoice No. 15321 being the total invoice value of export goods. The Standard Chartered Bank has also issued the Bank Realization Certificate (BRC) having realized the said amount. Hereto annexed and marked **Exhibit C** is copy of said BRC.

4. It has always been the Governments policy to promote export of the goods and services to earn foreign exchange for the country. In the instant case we have since earned the foreign exchange for the country, the legitimate rebate, DEPB and FMS benefit should have been granted. When the objectives of exports are already met, legitimate benefits due to the exporter shall be granted. We are put to great loss if our rebate, DEPB & FMS claims on the export of said goods are rejected.

5. In view of the aforesaid reasons, we request the Hon'ble Board of Central Excise & Customs that a clarification may be issued for sanction of rebate of duty, DEPB & FMS benefit on the goods lost in accident of cargo vessel MSC chitra considering the facts that the exporters do not have any control on such event. We, therefore, request your good selves to look into the matter and shall be thankful if you issue necessary instructions so that the same is implemented uniformly for all the exporters affected by the said fatal accident.

Thanking You

For Positive Packaging inds ltd

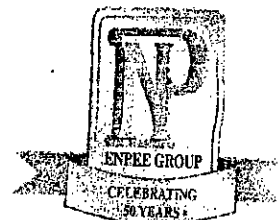
  
(D. W. DESHPANDE)

General Manager - Indirect Taxes

Encl: Copies of above referred documents



REGD. OFFICE : 98, JOLLY MAKER CHAMBERS NO 2, 225, NARIMAN POINT,  
MUMBAI 400 021, MAHARASHTRA, INDIA.  
TEL : + 91 22 3001 1700 FAX : + 91 22 2202 3774  
E-mail : positive@positivepackaging.com





**POSITIVE  
PACKAGING  
INDUSTRIES  
LIMITED**

202 GREAT EASTERN SUMMIT, A-WING,  
PLOT NO. 56, SECTOR 15, CBD BELAPUR (E),  
NAVI MUMBAI - 400 614,  
MAHARASHTRA, INDIA.

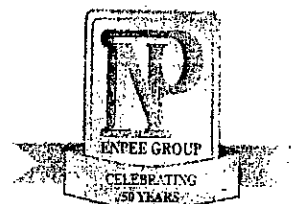
TEL : + 91 22 3921 1400  
FAX : + 91 22 3921 1430  
E-mail : positive@positivepackaging.com  
WEB : www.positivepackaging.com

1. Name of the unit : Positive Packaging Industries Ltd
2. Address : 3rd Floor, Great Eastern Summit,  
A Wing, Plot No. 56, Sector 15,  
CBD Belapur East,  
Navi Mumbai 400614.  
Maharashtra.  
Phone: +91 22 3921 1436,  
Mobile: +91 99167771601
3. Manufacturing activities : Flexible Packaging Material
4. Factory Address : Village Ransai, KM 16,  
Khopoli - Pen Road  
Khopoli. Taluka Khalapur  
District Raigad  
Maharashtra
5. Commissionerate : Raigad, Maharashtra.
6. Division : Khopoli
7. Registration No. : AAACP2836QXM002

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REGD. OFFICE : 98, JOLLY MAKER CHAMBERS NO 2, 225, NARIMAN POINT,  
MUMBAI 400 021, MAHARASHTRA, INDIA.  
TEL : + 91 22 3001 1700 FAX : + 91 22 2202 3774  
E-mail : positive@positivepackaging.com





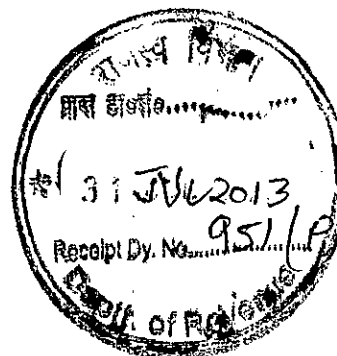
195/686/12

PPIL/CBD/2013/PG/250713

25th July 2013

To

The Section officer (RA)  
Govt of India (Ministry of Finance)  
Department of Revenue  
Hudco Vishala Building  
14 B- wing, 6<sup>th</sup> Floor,  
Bhikaji Cama Place  
New Delhi 110 066



ku  
31.7.13  
S. M. J.

Dear Sir,

**Subject : Revision Application against OIA no US/271/RGD/2012 dated 25.04.2012 ( F No : 195/686/12-RA)**  
**Ref : Your letter dated 08.05.2013**

This is with reference to your above letter intimating us to submit the Order in Original & Order in Appeal after affixing the court fees stamp on O/O, O/A, RA.

We are enclosing the following OIO, OIA & RA after affixing the court fee stamps.

1. OIO no : RGD/KPL/RC/3210/11-12 dated 31.05.2011
2. OIA No : 271/RGD/2012 dated 25.04.2012
3. RA application dated 10<sup>th</sup> July 2012

We request you to kindly acknowledge the receipt of the same and allow for an early hearing in this matter.

Thanking you,

Yours Sincerely

For Positive Packaging Industries Ltd

P Gopalan

General Manager – Indirect Taxation

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F.NO. 175/528/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(R.A. UNIT)

Hudco Vishala Bldg. 14-B-  
Wing, 6<sup>th</sup> Floor, Bhikaji Cama Place  
New Delh-110 066.

To, M/s Positive Packaging Industries Co.  
KM 16, Khopoli - Pan Road,  
Village Ranai, Khopoli

The dated 8/9/13

Subject: Customs / Central Excise Revision Application against Order-in-Appeal No.

JA1/RGD/2672 dated 25.4.12 passed  
by the Commissioner of Customs/Central Excise (Appeals), in the case of  
M/s/Stk. As above Reg.

Sir,

I am directed to refer to your Revision Application No. 417  
Dated 10.7.12 against the Order-in-Appeal Number cited in the above subject. Your application  
has been provisionally accepted and registered vide file reference number given on the top of this  
letter. This reference number should invariably be quoted while corresponding in future

2. The registration can be made final only on your submitting the following documents (Ticked)  
within a period of 15 days of receipt of this letter, failing which the same shall be dismissed as  
non-maintainable without any further reference:-

1. TR-6 Challan :
2. The Order-in-Original No. dated
3. Passed by the Asst./Dy./Joint/Additional Commissioner of C Ex./Cus dated
4. The Order-in-Appeal No. dated
5. passed by the Commissioner (Appeals), C. Ex./Cus dated
6. Your Demand Draft No. dated
7. for Rs. 200/1000 is returned herewith. Please furnish the fee under TR-6  
Challan (Instructions enclosed).
8. Application for condonation of delay. RA is filed after delay of .....months/days and is  
'time-barred'.
9. Evidence of receipt of Order-in-Appeal No. dated
10. Proper Vakalatnama / Authorization letter.
11. Court fee stamps of Rs. 1 each to be affixed upon O/O, O/A, RA.

Your faithfully,  
Kiran Lakra  
(KIRAN LAKRA) 8.5.13  
SECTION OFFICER (RA)

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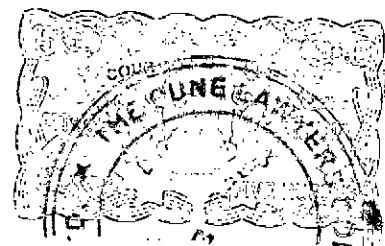
Before Joint Secretary, R.A Unit, Government of India, Ministry of  
Finance, New Delhi.

In the matter of

Revision Application No..... of ..... 2012

Filed by:

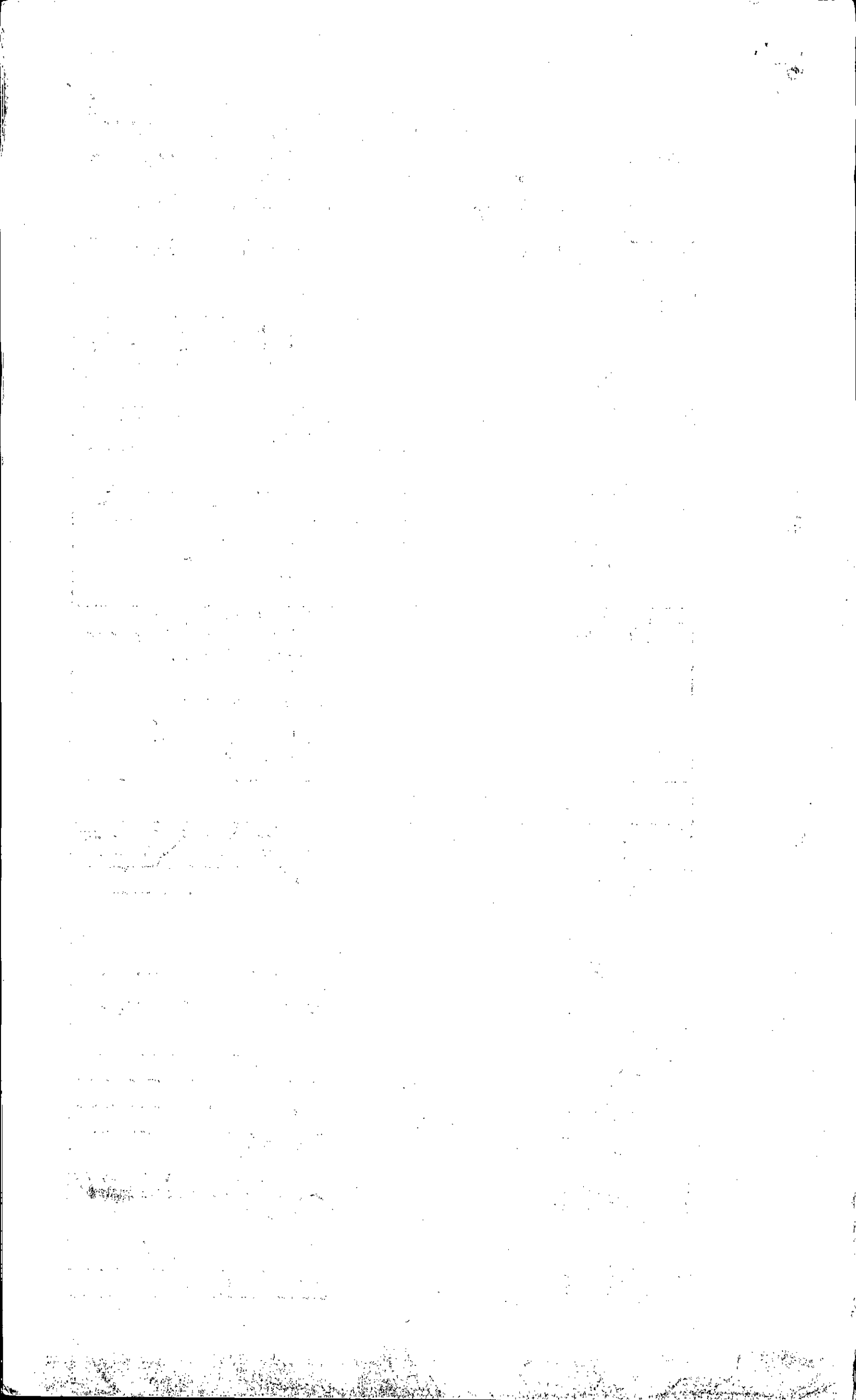
Positive Packaging Industries Ltd  
Mumbai.....Appellant



V/s  
Dy. Commissioner of Central Excise  
Khopoli Division.....Respondent

**INDEX.**

Sl. No	Exhibit	Description	Page Nos.
1	-	Form 8 duly filled in along with statement of facts and Grounds of application.	1 to 9
2	A	Copy of order-in-appeal No.US/271/RGD/2012 dated 25.4.2012	10 to 15
3	B	Copy of letter dated 25.2. 2011 confirming the total loss and no trace of containers lost in the accident.	16
4	C1 & C2	Copy of rebate claims filed by the appellants	17 to 42
5	D	Deficiency memo cum show cause notice dated 20.4.2011	43
6.	E	Written submission of appellants dated 9.5.2011.	44 to 49
7	F	Copy of order-in-original dated 31.5.2011 passed by Dy. Commissioner of Central Excise Khopoli Division.	50 to 55
8	G	Copy of appeal filed before Commissioner (Appeals)	56 to 63
9	H	Copy of representation sent to CBEC by appellants and the various Trade Associations.	64 to 68



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**FORM NO. E.A.-8**

[Rule 9 of the Central Excise (Appeal) Rules, 2001]

**Form of Revision Application to the Central Government under Section 35EE of the Central Excise Act 1944.**

Revision Application No..... of ..... 2012

1	Name and address of the applicant.	:	Positive Packaging Industries Ltd, KM 16, Khopoli-Pen road, Village Ransai, Khopoli
2	Address of the Commissioner (Appeals) passing the order against which the revision application is filed.	:	Commissioner of Central Excise (A) Utpad Shulk Bhavan Sector E, Bandra Kurla Complex, Bandra (E), Mumbai-51
3	The number and date of the order.	:	O-I-A No. 271/RGD/2012 dated 25.4.2012
4	Date of communication of the order	:	3.5.2012
5	Designation and address of the adjudicating authority against which the order has been passed by the Commissioner (Appeals)	:	Deputy Commissioner of Central Excise, Khopoli Division, Trifed Towers, Sector 17, Khandeshwar, New Panvel
6	Address to which notices/communications may be sent to the applicant.	:	Positive Packaging Industries Ltd, KM 16, Khopoli-Pen road, Village Ransai, Khopoli & P.K. Shetty, Advocate F-160, 1 <sup>st</sup> Floor, Dreams Mall, L.B.S. Marg, Bhandup (West) Mumbai-400 078
7	Whether the appellant wishes to be heard in person	:	Yes
8	(i) Description of classification of goods	:	Flexible Packing Material falling under Chapter 39 of CETA 1985
	(ii) Period of dispute	:	July 2010
	(iii) Amount of duty, if any, demanded for the period mentioned in item (ii)	:	NA
	(iv) Amount of refund, if any, claimed for the period mentioned in item (ii)	:	Rs.6,99,499/- (Rs.3,63,781/-& Rs.3,35,718/-) (Rebate)
	(v) Amount of fine imposed	:	NA
	(vi) Amount of penalty imposed	:	NA
	(vii) Market value of seized goods	:	NA
9	Whether duty or penalty, if any, has been deposited (a copy/extract of the challan/account-current, as the case may be, under which the deposit is made, shall be furnished)	:	Not Applicable.  The Appeal relates to rebate of duty paid on export under Rule 18 of CER 2002
10	Relief claimed in application	:	As per grounds of Appeal

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## Statement of facts

Positive Packaging Industries Ltd, KM16, Khopoli-Pen Road, Village Ransai, Khopoli (hereinafter referred to as 'Applicants') are filing this Appeal to quash & set aside the Order-in-Appeal No. 271/RGD/2012 dated 25.4.2012 upholding the Order-in-Original RGD/KPL/RC/3210/11-12 dated 31.5.2011 passed by Dy. Commissioner of Central Excise, Khopoli Division, Raigad Commissionerate, Trifed Towers, Sector 17, Khandeshwar, New Panvel-410 206 . Commissioner (Appeals) rejected the two rebate claims of Rs.363781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- on the ground that Applicants have failed to comply with the conditions of Rule 18 read with Notification No. 19/2004 CE(NT) dated 6.9.2004 in as much as the goods have not actually exported & therefore grant of rebate of duty paid does not arise. Hereto annexed & marked **Exhibit A** is the copy of the said order-in-appeal dated 25.4.12.

2. Applicants are engaged in the manufacture of flexible packaging material (Laminates) falling under Chapter sub-heading No.39 of the Schedule to CETA, 1985. The said manufactured goods are cleared for domestic market as well as export. Applicants exported their finished goods under ARE-1 No. 339 & 340 both dated 25.7.2010 to 'Premium Foods SPRL, Kinshasa, Democratic Republic of Congo, on FOB basis. Shipping bill Nos. 8693688 & 8693664 both dated 26.7.2010 were issued for the said export & the 'Let Export Order' was also passed on 27.7.2010 by the proper officer of Customs. The goods were loaded on the vessel MSC Chitra at JNPT Port on 7<sup>th</sup> August 2010 & Bill of Lading No. MTD 5000130022295 dated 7.8.2010 was issued for both the consignments by Team Global Logistics Pvt. Ltd. However it has been reported that the said Vessel, immediately after leaving the port, collided with another vessel namely Khaleeja III on 7<sup>th</sup> August 2010. It was reported by the shipping company that the said containers were lost in the accident & could not be salvaged by the shipping agency. Hereto Annexed & marked **Exhibit B** is the copy of the letter dated 25.2.2011 from the shipping agency.

3. Applicants have informed the overseas customer about the said loss of goods in-transit after handing over the goods on board. Applicants also claimed the export sale proceeds as the contract was on FOB basis and the ownership of goods was transferred to buyer in terms of INCOTERMS. The overseas customer accordingly have remitted the sale proceeds in terms of FOB contract to Applicants excluding the excise duty paid on the goods. Applicants thereafter filed two rebate claims on 9<sup>th</sup> February 2011, amounting

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Rs.3,63,781/- & Rs.3,35,718/- totaling to Rs.6,99,499/- under ARE-1-Nos. 339 & 340 both dated 25.7.2010. In support of the claim the Applicants had submitted copies of ARE-1 duly signed by the Preventive Officers of Customs, Central Excise invoice evidencing payment of duty, Shipping Bills with order of 'Let export' permitted by Customs Officers, Custom Invoice, Bill of Lading & the Bank Realization Certificate evidencing proof of receipt of sale proceeds in convertible foreign currency covering both the containers. Hereto annexed & marked **Exhibit C1 & C2** collectively are the copy of the said two rebate claims.

4. Applicants however received the Deficiency Memo cum show-cause notice dated 20.4.2011, pointing out that:

- a) No endorsement from Customs on the reverse side of the ARE-1
- b) No endorsement from Customs on the shipping bill
- c) Copy of the mate receipt not submitted

Applicants were also directed to appear before Deputy Commissioner of Central Excise on 27.4.2011 in the matter. Hereto annexed & marked **Exhibit D** is the copy of the said Deficiency Memo Cum show-cause notice dated 20.4.2011.

5. Applicants appeared for personal hearing in the matter on 4.5.2011 wherein they have made the following submissions:

- i) the goods were loaded on vessel MSC Chitra on 17<sup>th</sup> August 2010, Team Global Logistic Pvt. Ltd. The shipping agency also issued a Bill of Lading for the said consignments. Once the vessel left the port, Applicants have no control over such accidents & in terms of FOB contracts, the ownership in goods transferred to overseas buyer & contractual obligation is complete once the goods are shipped on Board.
- ii) Applicants have collected the sale proceeds from the overseas buyer in foreign exchange for the goods exported in terms of FOB contract & the goods destroyed in transit has no relevance for the payment of rebate.
- iii) a representation has been made by the Federation of Indian Export Organisation (FIEO-Set up by the Ministry of Commerce, Govt. Of India) for waiver of duty on the goods lost in the said accident & therefore the rebate claim may be kept pending.

Hereto annexed & marked **Exhibit E** is a copy of the written submission dated 9.5.2011 filed by Applicants subsequent to the hearing.



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6. Appellants, However surprised to receive order in original passed by Dy. Commissioner without going into the merits of the case rejecting the rebate claims vide OIO No. RGD/KPL/RC/3210/11-12 dated 31/05/2011 on the ground that goods are not exported. Hereto annexed & marked **exhibit F** is the copy of the said order-in-original dated 31.5.2011.

7. Aggrieved with the said order-in-original rejecting the rebate claims applicant filed appeal before the Commissioner (Appeals), Mumbai Zone II on the following grounds:

- i. The overseas buyer released the payment of goods exported in foreign currency being condition of contract as FOB.
- ii. ARE-1 is signed by the Custom Officer, LET Export order passed by the Custom Officer & Bill of Lading issued by Shipping Agency.
- iii. Representation made by Federation of Indian Exporters Organization (FIEO).
- iv. 'Non crossing of border of Indian territorial waters of the export goods' is only a procedural requirement. Main purpose of allowing the incentive in respect of export is to earn convertible Foreign exchange for the country that has been achieved by the appellant.

Hereto annexed and marked **Exhibit G** is the copy of said appeal.

8. The Commissioner (Appeals) granted personal hearing on 08/02/2012. The Applicant reiterated the submissions advanced in the appeal. Applicants, however, surprised to receive the Order-in-Appeal rejecting said rebate claims amounting to Rs. 6,99,499/- on ground that goods are not physically exported. Aggrieved with the said order Applicants are filing this appeal on the following grounds each of which are urged without prejudice to one another.

**GROUNDS OF APPEAL**

9. Respondent erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods & receipt of export sale proceeds in foreign exchange. Though the said certificate was enclosed to the rebate claim, Respondent merely brushed aside the said submission of the Applicants. Respondents also erred in simply stating that for payment of rebate under Rule 18, Export is a pre-condition to be fulfilled. Appellant submit that goods have been exported under FOB contract which

stipulates that the responsibility of the exporter is to handover the goods Free On Board (FOB). Under the International Contract Terms (INCOTERMS), once the goods are handed over to the ship, the title in goods is transferred to the customer & any loss in transit is sole responsibility of the overseas buyer. In the instant case the goods were exported under FOB terms & the export proceeds are also realized in foreign exchange. This complies the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. Once the said condition is complied with, rebate on the said goods cannot be denied & therefore the order of Respondent is liable to be quashed & set aside.

10. Respondent erred in rejecting the claim only on the ground that the goods have actually not exported. Respondent failed to appreciate that the goods have actually been taken on board in the ship & the necessary Bill of Lading is issued by the shipping agency & the ship was physically moved from the port. Any accident beyond this point is not within the control of the exporter and the obligation of the exporter in terms of FOB ceases once the goods are shipped on board. There is no dispute to the fact that necessary duty has been paid on the said goods & a certificate is issued by Superintendent of Central Excise verifying the said duty payment details. As an exporter the Applicants have completely discharged their obligation on their part & therefore the burden of duty paid on the said goods exported should not fall on the exporter having completed & discharged the obligation on their part. Therefore the order of Respondent is liable to be quashed & set aside.

11. Respondent erred in travelling beyond the findings recorded by the original adjudicating authority & extended a totally new finding in his order. Adjudicating authority rejected the rebate on the ground that there is no endorsement of the customs officers on the reverse side of the ARE-1, Shipping bill & copy of Mate receipt is not submitted. This is the only finding by the adjudicating authority in rejecting the said rebate claim. However, Commissioner (Appeals) failed to extend his independent finding on this order but traversed beyond the finding of the adjudicating authority. The Commissioner (Appeals) simply rejected the appeal filed by the Appellants on the grounds that the goods have not been exported. In the present case though the goods have been lost after the vessel left the port, the Appellants have recovered the sales proceeds in the convertible foreign exchange & therefore the rebate is legally eligible to the Appellants. Commissioner (Appeals) failed to consider the said substantial submission of the Appellants

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& therefore the order of the Commissioner (Appeals) is liable to be quashed & set aside.

13. Commissioner (Appeals) erred in rejecting the claims only by relying upon the word 'exported' used in the text of Rule 18, Notification No. 19/2001-CE(NT) dt 06/09/2004 & para 8.4 under Chapter 8 of the CBEC Manual. Applicant submits that the rules, notifications and manuals have been framed by keeping in mind export in the normal situation. In the instant case relates to accidental loss of export goods which requires different look at rules framed. While interpreting the literal meaning of the words used in text of the rule, notification, the intention of law needs to be considered. In the instant case it cannot be said that goods have not been exported. Physically the goods have been cleared from the factory under supervision of Central Excise Officer by following all the procedures laid down for export. The export was on FOB terms. Therefore the sale was complete and the ownership of goods was transferred to buyer once the goods were delivered on board for delivering the goods to overseas buyer. This was for this reason that after the accident, the overseas buyer could send the proceeds of export goods. Since the goods were not been found by any of the agencies appointed for that work, it can be very well said that it has crossed Indian territorial waters and therefore the export is complete. Under the circumstances whether the accident takes place within the territorial water or outside the territorial water doesn't make any difference so far as the export proceeds in convertible foreign exchange is received in India. However if the accident would have happened outside the territorial waters, the claims would have been allowed without any hesitation in spite of all other things remain same. Therefore Intention of rule, notification and supplementary instructions in the manual, as relied upon by the Commissioner (Appeals) for rejecting the claim is certainly not to deny legitimate claims. Therefore since the export proceeds have been received in convertible foreign currency, the legitimate export incentive should be allowed to the exporter. On this ground alone the impugned order is required to be quashed or set aside.

14. The Commissioner (Appeals) erred in rejecting the claim relying upon the definition of word 'export' as given under Section 2(18) of the Customs Act, 1962. The word 'export' has been defined as 'taking out of India to a place outside India'. The applicant submits that the goods were removed from the factory and loaded on the ship for taking the same to a place outside India. The definition doesn't envisage that goods must reach in the hands of overseas buyer. However because of accident, goods did not reach the destination. Despite the accident, the ownership of goods was transferred to

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the overseas buyer, export was complete and therefore the overseas buyer claimed the insurance and remitted the proceeds in convertible foreign currency. The inference of the definition of 'export' as drawn by the Commissioner (Appeals) is therefore wrong and is not capable of handling the situation of accident. Therefore the order of commissioner (Appeals) liable to be quashed & set aside.

15. Commissioner (Appeals) erred in rejecting the rebate claim without considering the various representation made by the Federation of Indian Export Organisation & the Chairman of CBEC to issue necessary directions & clarification so that the exporters are not put to financial loss for no mistake of theirs. Appellants have also directly written to CBEC requesting to consider their case in view of the recovery of sale proceeds in convertible foreign exchange. Hereto annexed & marked **Exhibit H** is the copy of the letter dated 16.1.2012, addressed to CBEC from Paper Film & Foil Converter Association, Mumbai, Federation of Indian Exports Organisation, (FIEO) New Delhi letter dated 1.2.2012, Director General of Export Promotion(DGEP) New Delhi letter dated 18.1.2012, & the Appellants letter dated 10.1.2012. Commissioner (Appeals) failed to appreciate any of this representation made to the authorities & denied the request for keeping the said rebate claims in abeyance awaiting the instructions from these authorities. Therefore the order of the Commissioner (Appeals) is liable to be quashed & set aside.

17. Respondent erred in not considering following grounds which are specifically urged in the appeal memorandum filed by the Appellants:

a. Respondent erred in his findings that the customs officer has not signed on the ARE-1. Applicants submit that it is factually incorrect as observed from the reverse side of the ARE-1 annexed above that the Jurisdictional central excise officers have signed the ARE-1 at the time of stuffing the container at the factory & the said ARE-1 is also signed by Customs Preventive Officers at the Port of Shipment. More over the shipping bill issued for the said containers also contain the 'Let Export Order' passed by the Officers of Customs. The goods have been handed over to shipping agency namely Team Global Logistics Pvt. Ltd who have issued the Bill of Lading No. MTD:500130022295 dated 7.8.2010. Respondent simply ignored all the above documentary evidence available on records & rejected the claim only on the ground that ARE-1 not signed by the Customs. Therefore the order of Respondents is liable to be quashed & set aside & the rebate has to be paid to the Appellant.

b. Respondent erred in rejecting the rebate claim on the ground that the goods are lost within the Indian Territorial Waters and hence goods are not exported, consequently no rebate. Applicants submit that the goods have been handed over to the shipping agency on 27.7.2010 and the 'Let export orders' were also issued on 7.8.2010. Under 'FOB Contract' the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.7.2010 itself who have issued the Bill of Lading confirming goods on Board. The overseas customer, in terms of FOB contract, accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. In terms of rule 18 read with relevant notification, even if the export is made, unless the sale proceeds are realized from the overseas customer, the rebate claim is not payable and if paid already, the same is required to be refunded by the assessee. In the instant case due to collusion of ship which is beyond the control of human being, the goods have been lost in transit, on board. Simply sticking to the technical terminology i.e. 'non crossing of border of Indian territorial waters by the export goods' and ignoring realization of sale proceeds defeat the purpose of export. Main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the appellant. Since the sale proceeds were realized in view of the FOB contracts and Applicants have produced the Bank Realization Certificate (BRC) the Applicants are legally eligible for the export incentive by way of rebate. Applicants therefore submit that realization of Sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the Applicants in the present case. Therefore the Applicants are legally eligible for the rebate claim which is required to be paid immediately.

18. Applicants crave leave to add, alter and/or delete any of the submissions made herein above before or at the time of personal hearing.

19. Applicants wish to be heard in person before the appeal is finally disposed off.

B

**RELIEFS CLAIMED**

In view of the aforesaid grounds, Applicants pray that:

- a. the order of Respondent be quashed & set aside.
- b. It may be held that the rebate claim is eligible & order may be passed directing to settle the said claim
- c. Any other relief that may be deemed necessary & fit under the circumstances of the case be granted.

**APPLICANTS**

For Positive Packaging Industries Ltd.  
Flexibles Division



D. W. Deshpande  
General Manager, Indirect Taxes

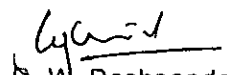
**VERIFICATION**

I, D.W Deshpande, the authorized signatory of the Appellant, do hereby declare that what is stated above is true to the best of my information & belief.

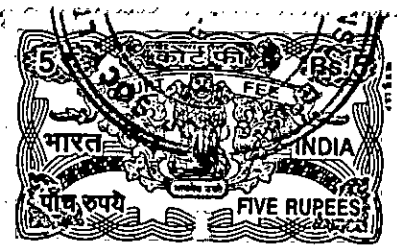
Verified today 10<sup>th</sup> day of July 2012

**APPLICANTS**

For Positive Packaging Industries Ltd.  
Flexibles Division



D. W. Deshpande  
General Manager, Indirect Taxes



**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS-II)  
MUMBAI**

3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E),  
Mumbai-400 051.

Tel.No.- 26573050 Fax.-26570525

Any person aggrieved by this Order-in-Appeal may, file an appeal / application to the authority as the case may be :-

(1) (i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1, if such order relates to :-

- (a) a case of loss of goods where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final product under the provisions of this act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No.2) Act, 1998.

The appeal / application shall be made in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee as below or as prescribed by the appropriate authority :-

- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;
- (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case of which the application relates is more than one lakh rupees;

in terms of Sub-Section (3) of Section 35EE of the Central Excise Act, 1944, and should be accompanied by a copy of TR-6 Challan evidencing payment of fee as mentioned above under Major Head of Accounts.

(ii) Under section 35B of the Central Excise Act, 1944 an appeal lies to the Customs, Excise & Service Tax Appellate Tribunal, West Zone Bench, Jai Centre, 4<sup>th</sup> Floor, 34, P.D'mello Road, Poona Street, Masjid Bunder (E), Mumbai-400 009.

An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee as below or as prescribed by appropriate authority :-

- (a) where the amount of duty demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

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the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (N.T) dated 06.09.2004.

Rule 18 of Central Excise Rules, 2002 states as follows.

**“RULE 18. Rebate of duty.** — *Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such 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.*

**Explanation.** - *“Export” includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.”*

Notification No. 19/2004 C.E. (N.T) dated 06.09.2004 states as follows.

*“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 (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar 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.”*

The sanction of rebate claim under the aforesaid provisions is governed by paragraph 8.4 of CBEC Manual of Departmental instructions which states as follows.

*“8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E.1 duly certified by Customs, and that the goods are of ‘duty –paid’ character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued.”*

From the above quoted section of Rule 18 and Notification No.19/2004 ibid shows that the goods have to be exported and, rebate shall be paid subject to conditions and limitations set by the Government of India and also fulfillment of prescribed procedures. The CBEC Manual of Departmental instructions Para 8.4, quoted above, further clarifies that goods have to be “actually exported”. In view of these stipulations it is found that the goods although were loaded





**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS-II)  
MUMBAI**

3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (E),  
Mumbai-400 051.

Tel.No.- 26573050 Fax.-26570525

Any person aggrieved by this Order-in-Appeal may file an appeal / application to the authority as the case may be :-

(1) (i) Under Section 35EE of the Central Excise Act, 1944, an appeal lies to the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1, if such order relates to :-

- (a) a case of loss of goods where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;
- (b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;
- (c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;
- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final product under the provisions of this act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under Section 109 of the Finance (No.2) Act, 1998.

The appeal / application shall be made in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee as below or as prescribed by the appropriate authority :-

- (a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case to which the application relates is one lakh rupees or less;
- (b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by any Central Excise officer in the case of which the application relates is more than one lakh rupees;

in terms of Sub-Section (3) of Section 35EE of the Central Excise Act, 1944, and should be accompanied by a copy of TR-6 Challan evidencing payment of fee as mentioned above under Major Head of Accounts.

(ii) Under section 35B of the Central Excise Act, 1944 an appeal lies to the Customs, Excise & Service Tax Appellate Tribunal, West Zone Bench, Jai Centre, 4<sup>th</sup> Floor, 34, P.D'mello Road, Poona Street, Masjid Bunder (E), Mumbai-400 009.

An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee as below or as prescribed by appropriate authority :-

- (a) where the amount of duty demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;

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3/5/2012  
[Signature]

- 82
- (b) where the amount of duty demanded and penalty levied by any Central Excise officer in the case to which the appeal relates is more than one lakh rupees, one thousand rupees;

in the form of a crossed bank draft in favour of Assistant Registrar of Customs, Excise & Service Tax Appellate Tribunal, WZB, Mumbai.

If this order covers a number of Orders-in-Original, fee of Rs.200/- or Rs. 1,000/- or as prescribed by the appropriate authority as the case may be should be paid for each such Order-in-Original in the aforesaid manner notwithstanding the fact that one appeal to the Appellate Tribunal or one application to the Central Government as the case may be is filed to avoid scriptory work.

In case of Sr. No.(i) an application to Central Government should be in duplicate and be accompanied by two copies of the Order and two copies of the Order-in-original which has given rise to the Order.

One copy of each application, the Order appealed against and the order of the adjudicating authority, shall bear an item 6 of the Court Fee Act, 1870, as amended.

In case of Sr.No.(ii) the appeal to the Appellate Tribunal should be accompanied by four copies (one copy of which at least shall be certified copy).

(2) Any person aggrieved of the Order may file an appeal in prescribed form to the authority as mentioned above within three months from the date of communication of this Order and be addressed to the authority as the case may be.

(3) Attention is also invited to Rules governing these and other related matters contained in Central Excise (Appeals) Rules, 2001 & the Customs, Excise & Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 and various other statutory provisions.

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE (APPEALS)-II

MUMBAI.

3<sup>RD</sup> FLOOR, UTPAD SHULK BHAVAN, PLOT NO.C-24, SECTOR-E, BANDRA-  
KURLA COMPLEX, BANDRA (EAST), MUMBAI - 400 051.

Tel No.26573050

Fax No. 2657 0525

F.No. V2(A)422/RGD/2011 | 2572

Date : 25/04/12

Appellants : M/s Positive Packaging Industries Ltd.  
Respondent : Deputy Commissioner Central Excise, Khopoli Dn.  
Orders appealed against : Raigad/KPL/RC/3210/11-12 dated 31.05.2011  
Date of personal hearing : 08.02.2012

Order No. US/ 271 /RGD/2012

The appellants mentioned here-in-above have filed an appeal against Order-in-Original No. Raigad/KPL/RC/3210/11-12 dated 31.05.2011 passed by the Deputy Commissioner Central Excise, Khopoli Division, Raigad rejecting two rebate claim of Rs3,63,781/- and Rs. 3,35,718/- [ Total Rs. 6,99,499/-] on the ground that the goods were not exported.

It is contended in the appeal that-

1. The goods were loaded on vessel MSC Chitra on 17.08.2010 and a Bill of lading was also issued. The contract was FOB Mumbai and their obligation under the contract was complete and they also received the payment.
2. The adjudicating authority erred in holding that export was a pre-condition for grant of rebate. The ARE-1s are signed by the preventive office of Customs and the shipping bills also contain 'Let export' order.
3. The Federation of Indian Exporters Organization had represented to the CBEC for waiver of Central Excise duty on the goods lost on MSC Chitra and the appellants had requested the adjudicating authority to keep the matter pending. Some of the exporters have been granted matter of the duty and therefore, the benefit of rebate cannot be denied to the appellants.
4. The adjudicating authority wrongly held that the goods were lost in Indian territorial water and hence, not exported.

A personal hearing in the matter was held on 08.02.2012. Shri P. K. Shetty Advocate and Shri D. W. Deshpande, G. M. Indirect Taxation appeared for hearing. They reiterated the arguments advanced in the appeal.

I have gone through the case records and considered the averments made in the appeal. The short question involved in the appeal is whether the appellants were eligible for rebate under

the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (N.T) dated 06.09.2004.

Rule 18 of Central Excise Rules, 2002 states as follows.

**"RULE 18. Rebate of duty. —** *Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such 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.*

**Explanation. -** *"Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft."*

Notification No. 19/2004 C.E. (N.T) dated 06.09.2004 states as follows.

*"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 (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar 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."*

The sanction of rebate claim under the aforesaid provisions is governed by paragraph 8.4 of CBEC Manual of Departmental instructions which states as follows.

*"8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E. 1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duly certified by Customs, and that the goods are of 'duty -paid' character as certified on the triplicate copy of A.R.E. 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

From the above quoted section of Rule 18 and Notification No.19/2004 ibid shows that the goods have to be exported and, rebate shall be paid subject to conditions and limitations set by the Government of India and also fulfillment of prescribed procedures. The CBEC Manual of Departmental instructions Para 8.4, quoted above, further clarifies that goods have to be "actually exported". In view of these stipulations it is found that the goods although were loaded

for export but were actually not exported in view of the definition of export given under Section 2 (18) of the Customs Act, 1962. It is also important to keep in view that the rebate of duty paid is allowed, so that Indian goods are available in the international market at a competitive price and are not burdened with the duty and the Indian duties are not exported along with the goods. In this case, for whatever reasons the export has not taken place and therefore, the grant of rebate of duty paid does not arise under the stipulation of Rule 18 read with Notification No.19/2004 ibid.

In view of the above, the rejection of rebate claims in the instant case has to be upheld.

The alternative claim of remission of duty has no merits. There is no provision for remission of duty after the clearance of the goods on payment of duty. The law in this regard is settled. Rule 21 of Central Excise Rules 2002 which deals with remissions states as follows.

**“RULE 21. Remission of duty.** - *Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him by order in writing:”*

It was held by the CESTAT in Dharmapuri District Co-Op. Sugar Mills Ltd. v/s CCE 2006 (202) E.L.T. 707 (Tri. - Chennai) that-

*“5. We have given our earnest consideration to the facts of the case. Rule 49 of the erstwhile Central Excise Rules, 1944, provided for remission of duty on excisable goods which are lost or destroyed due to natural causes or unavoidable accident, or which the assessee claims to have become unfit for human consumption or marketing, before removal. The same provisions are contained in the present Rule 21 of the Central Excise Rules, 2002.”*

It was held by the CESTAT in Ginni Filaments Ltd. v/s CCE -2005 (188) E.L.T. 45 (Tri. - Del.) that-

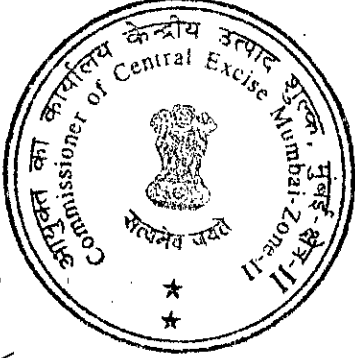
*“I find that the Commissioner has rejected the application for remission of duty on a correct ground that the remission under Rule 49 is allowable when the loss takes place within the factory. Rule 49 does not provide for remission of duty after clearance from the factory. Therefore, I do not find any merit in the appeal and the same is rejected.”*

It was held by the CESTAT in Jagjit Textile Dyeing & Print v/s CCE -2007 (6) S.T.R. 400 (Tri. - Ahmd.) that-

*“7. Since the goods have already been cleared from the factory after payment of duty the question of granting remission under Rule 21 does not arise.*

No valid grounds have been adduced to interfere with the order of the Commissioner."

In view of the above, the impugned order is upheld and the appeal is rejected.



To


M/s. Positive Packaging Inds. Ltd.

KM 16, Khopoli-Pen Road,

Village Ransai, Khopoli

Copy to:

1. Chief Commissioner, Central Excise, Mumbai Zone-II.
2. Commissioner, Central Excise, Raigad
3. Joint/Addl. Commissioner, Central Excise, Raigad.
4. Deputy Commissioner, Khopoli Division, Raigad
5. H.F./SC/EC.

  
(UMA SHANKER)

COMMISSIONER (APPEALS-II)  
CENTRAL EXCISE, MUMBAI

**प्रमाणित / ATTESTED**



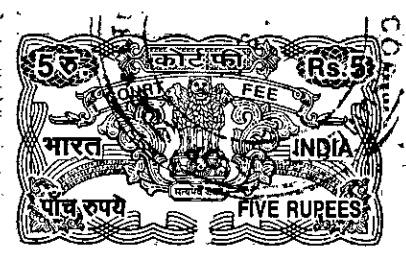
अधीक्षक (आपील्स)

Superintendent (Appeals)

केन्द्रीय उत्पाद शुल्क मुंबई-II,  
Central Excise, Mumbai-II

सहायक आयुक्त का कार्यालय, मंडल-

केन्द्रीय उत्पाद तथा, सीमा शुल्क, आयुक्तालय-



देश सं.: Rgd/KPL/RE/3210/11-12

आदेश की तारीख : 31/5/2011

फा. सं. V 18(DN-KPL)RB/4499/10

द्वारा पारित :- श्री अमर कुमार

4703  
11-07-2011

उप आयुक्त,  
केन्द्रीय उत्पाद शुल्क, मंडल- खापोली  
आयुक्तालय-

627  
12/7/2011

मूल आदेश

- 1) यह प्रति उस व्यक्ति के निजी उपयोग के लिये निःशुल्क प्रदान की गई है जिसके लिये यह आदेश जारी किया गया है।
- 2) कोई भी व्यक्ति जो अपने आपको इस आदेश से दुखी समझता है वह आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील), मुंबई क्षेत्र -II, 3 रा माला, उत्पाद शुल्क भवन, बान्द्रा- कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400051 के पास फार्म ई. ए.-I में अपील कर सकता है। इस आदेश के प्राप्त होने की तारीख से 60 दिनों के अन्दर आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क के पास अपील दायर किया जाना चाहिए। अपील के ऊपर 1.00 रु: कोर्ट फीस स्टैम्प लगा होना चाहिए तथा उसके साथ निम्नानुसार संलग्न हो :-
  - क) केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2002 के नियम 3 के प्रावधानों के अनुसार अपील के आधार तथा अपीलकर्ता (आवेदक) द्वारा विधिवत हस्ताक्षरीत सत्यापन फार्म तथा
  - ख) अपील फार्म संख्या ई. ए. 1 में हो जिसके साथ तथ्यों का विवरण व अपील के आधार दो प्रतियों में दायर करते हुये इस आदेश की प्रति भी संलग्न की जाये।
- 3) इस आदेश के विरुद्ध अपील के इच्छुक कोई भी व्यक्ति इस आदेश के अनुसार जिसके विरुद्ध अपील करना हो वांछित शुल्क अथवा दण्ड की राशि जमा करे और अपील के साथ ऐसे भुगतानों का सबूत पेश करे।
- 4) ऐसा न करने से केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35 (एफ) के प्रावधानों के तहत जरूरी अनुपालन न करने के कारण अपील खारिज किया जा सकता है।

12.7.11  
(Sagar Modak)

निर्धारिती का नाम : M/s Positive Packaging Industries Ltd.  
Village - Ransai, Khopoli Ren Road.  
Taluka - Khalapur, Dist. Raigad.

D.M. cum Secy No. V. 18(DN-KPL)RB/4499-4500/10-11/73  
dt. 20/4/2011

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**BRIEF FACTS OF THE CASE**

M/s. Positive Packaging Industries Ltd., Village. Ransai, Khopoli Pen Road, Taluka- Khalapur, District Raigad (hereinafter referred to as "the assessee) registered with Central Excise Department as manufacturer filed below mentioned the Rebate Claims in Central Excise, Khopoli Division, Raigad Commissionerate on 09.02.2011.

S. No.	ARE-1 No	Date	Goods Exported	Value (Rs)	Rebate claim (Rs)
1	0340	25.07.10	Printed Adhesive Laminated Flexible Packaging Material for Multi layers in form of Rolls	3531846	363781
2	0339	25.07.10	Printed Adhesive Laminated Flexible Packaging Material for Multi layers in form of Rolls	3259402	335718
			TOTAL		<b>699499</b>

2. During scrutiny of aforesaid claims it was noticed that:-

- (i) There was no endorsement from Customs on the reverse side of ARE-1s.
- (ii) There was no endorsement on Shipping Bill from Customs
- (iii) Copy of Mate Receipt not submitted.

3. Accordingly above discrepancies were conveyed to the assessee vide Deficiency Memo Cum Show Cause Notice (DM) vide F. No. V-18(Dn. KPL) RB/4499-4500/10-11 dtd. 20.04.2011. Also the assessee was granted personal hearing (PH) on 27.04.2011.

**DEFENCE**

4. The assessee vide their letter dtd. 27.04.2011 sought postponement of Personal Hearing on 04.05.2011, on the ground that they were trying to organize some more document in support of their claim.

5. Accordingly, Shri. D. W. Deshpande, General Manager, Indirect



Tax appeared for Personal Hearing (PH), on behalf of the assessee, on 04.05.2011. He pleaded that in the instant case the vessel "MSC Chitra" which was carrying the impugned goods met with an accident in the port area outside JNPT with MV Khalaja. The ownership of goods, was transferred to consignee the moment goods were loaded on the vessel. The assessee has received remittance and buyer has got insurance claim. Further, he contended that they are going to submit written reply shortly. He requested for favourable order.

6. Subsequently, Shri. D. W. Deshpande, filed written reply vide their letter Ref. no. PPIL/EXE-012/2011-12 dtd. 06.05.2011 received in this office on 09.05.2011, wherein it is stated that :-

"(i) Goods were loaded on vessel namely MSC Chitra at JNPT on 7<sup>th</sup> August, 2010. Team Global Logistics Pvt. Ltd. issued Bill of Lading No. MTD No. 500130022295 dated 07.08.2010 for both the consignments. It is evident from the Bill of Lading that freight was payable at Destination by the overseas customer.

(ii) The Vessel left the port on 7<sup>th</sup> August, 2010. It has been reported that immediately after leaving the port the vessel colluded with another vessel namely Khaleeja III on 7<sup>th</sup> August, 2010. The vessel in fact left the port for reaching to the destination. Thereafter exporters have no control over such accidents which is beyond anybody's control. Therefore such events whether within the territorial water or outside shall not affect the interest of the exporters.

(iii) In terms of INCOTERMS, the title of the export goods is passed on to the customer once the goods are handed over to the vessel at the port of loading. Accordingly, the overseas customer has remitted the export proceeds of USD 70856.55 & 76779.26 being the total invoice value of export goods. The Standard Chartered Bank has also issued the Bank Realisation Certificate (BRC) having realized the said amount.

(iv) We submitted that the contract for export of goods was on FOB basis i.e. Free on Board. Accordingly, once the goods are handed over to the Vessel the sale is complete and the ownership/title in the goods is passed on to the customer. This is also in line with International Contract Terms (INCOTERMS). Accordingly, the customer has paid for the goods in foreign currency though the goods have been destroyed in the transit. We submit that we have performed the contractual obligation in this contract and accordingly we are

eligible for rebate having earned the foreign exchange for the goods exported which is the basic purpose of export.

(v) We submitted that we are the members of Federation of Indian Export Organisation (Set up by Ministry of Commerce, Government of India). Since many exporters have lost their goods in the captioned collusion, they have made representation to the FIEO to take up the matter to the Ministry of Finance to provide the necessary relief. Accordingly, the Federation vide their letter No. FIEO/EP.3(6)/20011 dated 15.04.2011 made representation to CBEC, Ministry of Finance, New Delhi. Annexed hereto as Exhibit A is a copy of the said letter. We being the Two Star Export House also in the process of making a separate representation to the CBEC in the matter.

(vi) We alternatively submitted that if it is considered that goods have not been exported and the same is destroyed before export, the goods are eligible for remission of duty which are meant for export as held in the case of Kuntal Granites Ltd. V/s. CCE- 2007 (215) ELT 515 – Tri Bang). Annexed hereto as Exhibit B is a copy of the said judgment. In the instant case since the goods have been cleared on payment of duty and the same may be refunded after granting remission of duty for the goods destroyed in transit in terms of the said settled law by the Tribunal.

(vii) We further relied upon the Apex Court judgment in the case of CC V Sun Industries- 1988 (35) ELT 241 (SC).

(viii) It is evident from the provisions of Section 41 & 42 of the Customs Act, 1962 that Export Manifest was handed over to the proper officer before vessel leaving the custom station. On the basis of such manifest it is mandatory on the part of all subsequent officers to issue the proper documents required for claiming the export incentives. We therefore submitted that kindly allow us to take back the documents to custom authorities for getting the endorsements as pointed out in the deficiency memo.

(ix) Alternatively we submitted that refund may be granted by way of credit to Cenvat account instead of refund in cash.”

### **DISCUSSION AND FINDINGS**

7. I have carefully gone through both the rebate claims, its supporting documents, reply filed by the assessee to the Deficiency Memo

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referred above and oral submissions made during Personal Hearing by the representative of the assessee.

8. The representative of the assessee has requested to keep the matter in abeyance in view of representation dtd. 15.04.2011 of Federation of India Export Organisation, New Delhi to the Board (CBEC). However, the case is already heard and the same can not be kept pending adjudication unless it fits into the guidelines in this regard. The said guidelines do not cover the said situation brought forward by the representative of the assessee. Hence, I proceed to decide this case based on evidence available on records.

9. The issue to be decided is that whether assessee is entitled for Rebate in terms of Rule 18 of Central Excise Rules, 2002 in the situation when the goods are not 'exported'.

10. The situation of non-exporting of goods in question has been clarified by the representative of the assessee during Personal Hearing and in written submission dtd. 06.05.2011, is that the vessel on which the goods covered in both the said Rebate Claims were loaded colluded with another vessel immediately after leaving the port. Thus the goods in question were not "exported". This fact is further corroborated with the following discrepancies noticed in both the rebate claims which were communicated to the assessee on 20.04.2011.

- (a) There is no endorsement from Customs on the reverse side of ARE-1s.
- (b) There is no endorsement on Shipping Bill from Customs
- (c) Copy of Mate Receipt not submitted.

11. However, the assessee failed to comply with aforesaid discrepancies, which conclusively prove that the goods in fact were not exported.

12. The relevant provisions of statute for grant of rebate are contained in Rule 18 of Central Excise Rules, 2002(CER). The relevant portion of said Rule 18 is reproduced below:-

*" where any goods are **exported** the Central govt. may by Notification :- grant rebate of duty paid on such excisable goods ....."*

13. From above, it is clear that in terms of Rule 18 CER, the rebate is admissible provided the goods are "exported" and not otherwise. As elaborated

earlier, in the instant case the goods were not "exported". Moreover, the assessee has failed to produce proof for such export as much as they could not produce - (a) Mate Receipt, (b) Endorsement of Custom on reverse side of ARE-1s, (c) Endorsement on Shipping Bill from Customs.

14. As the goods in question are not "exported", the rebate thereof is not admissible to the assessee.

15. In view of the above, I pass the following order:

**ORDER**

I reject both the Rebate Claims for Rs. 3,63,781/- and Rs. 3,35,718/- totally amounting to Rs. 6,99,499/- (Rupees Six Lakhs Ninety Nine Thousand Four Hundred Ninety Nine Only) filed by M/s. Positive Packaging Industries Ltd. against ARE-1 Nos. 0340 & 0339 both dtd. 25.07.2010, respectively, due to non fulfillment of conditions of Rule 18 of Central Excise Rules, 2002.

*अभय कुमार*  
(ABHAY KUMAR) 31.05.11  
DEPUTY COMMISSIONER,  
CENTRAL EXCISE: KHOPOLI DVN.

F. No. V.18 (Dn.KPL)RB/4499/10

New Panvel, the May'2011

To,

M/s. Positive Packaging Industries Ltd.,

Village. Ransai,

Khopoli Pen Road,

Taluka- Khalapur, District Raigad

- Copy to:-
- (i) Deputy Commr. (Review), C. Ex., Raigad.
  - (ii) Deputy Commr. (Audit), C. Ex., Raigad.
  - (iii) Supdt., C. Ex., Range Khopoli-II, Khopoli Dvn. He should hand over copy of this order to the assessee and forward dated acknowledgement thereof to this office
  - (iv) Master file
  - (v) Spare.

31/3/2016



REGISTERED  
SPEED POST



F.No. 195/686/2012-RA-CX  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

ORDER NO. \_\_\_\_\_/16 CX DATED \_\_\_\_\_ 2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 35 EE of the Central Excise, 1944 against the Order-In-Appeal No.US/271/RGD/2012 dated 25.04.2012 passed by Commissioner of Central Excise, (Appeals)-II, Mumbai

Applicant : M/s Positive Packaging Industries Ltd.

Respondent : Commissioner of Central Excise, Raigad

\*\*\*\*\*

only for the purpose of verifying export of goods which the revisionist has filed, whereas ARE-I is for giving all details of export and later on other export documents such as shipping bills, bill of lading, etc. as a proof of customs verification. The filing of ARE-I instead of ARE-II is merely a procedural lapse without effecting the rebate of excise duty on export and shall be condoned.

9. The learned Assistant Commissioner on the basis of the calculation (Annexure 2), passed total 6 Order-in-Original Nos. 218-R; 219-R; 220-R; 221-R; 222-R and 223-R all dated 30.07.2008 granting the total refund amounting to Rs. 49,15,971/- only. A true copy of the O-I-O dated 30.07.2008 bearing no. 219-R is annexed hereto and marked as **Annexure 3**.
10. The photocopies of the said Order-in-Original(s) were received by the Revisionist on 21.10.2008 from the Department. However, the original copies of the Order-in-Original has not been received till date as contrary to the submissions of the department that the order had been allegedly dispatched on 30.07.2008 and thereafter the same was received by one of the representative of the revisionist on 21.08.2008 against an endorsement in the dispatch register.

For Pawan Jain and Sons  
Prop./Adm. Signatory

## ORDER

This revision application is filed by M/s Positive Packaging Industries Ltd, (hereinafter referred to as applicant) against the Order-In-Appeal No. US/271/RGD/2012 dated 25.04.2012 passed by Commissioner of Central Excise, (Appeals), Raigad with respect to Order-In-Original No .Raigad/KPL/RC/3210/11-12 dated 31.05.2011 passed by the Deputy Commissioner of Central Excise Khopoli Division, Raigad.

2. Brief facts of the case are that the applicant have filed the rebate claims in Central Excise, Khopoli Division, Raigad on 09.02.2011. During scrutiny of aforesaid claims it was noticed that:-

- (i) there was no endorsement from Customs on the reverse side of ARE-1s
- (ii) there was no endorsement on shipping bill from Customs
- (iii) Copy of mate receipt not submitted

2.1. Accordingly above discrepancies were conveyed to the applicant vide Deficiency Memo Cum Show Cause Notice (DM)

2.2. The Show Cause Notice was adjudicated. Original authority in impugned Order-In-Original observed that the vessel in which the goods covered in both rebate claims were loaded colluded with another vessel immediately after leaving the port and as such the goods cannot be treated as exported. Hence rebate claims are not admissible.

3. Aggrieved by the said order the applicant filed appeal before the Commissioner (Appeals) who vide Order-In Appeal No. US/271/RGD/2012 dated 25.04.2012 rejected the same.

4. Being aggrieved by the impugned Order-In-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

copy of the same is annexed hereto and marked as **"Annexure - 1"**.

7. That the learned Assistant Commissioner partially sanctioned the rebate amount in respect to the rebate application filed by the Revisionist by allowing Input - Output Norms in the ratio of 1.3 : 1.0 (SION C-832 fixed by DGFT for S.S. Coil) of SS Utensils manufactured from SS Flat/Bars whereas the actual consumption was in the ratio of 1.882: 1.000 for export of SS Utensils made out of SS Flats which was also approved by learned Assistant Commissioner of Central Excise, Division - I, 8 Deepshikha Building, Rajendra Place, New Delhi vide their letter C. No. V(87)18/REF/IO/PJS/D-I/2003 dated 18.03.2004. The learned Assistant Commissioner, in respect of the all 6 rebate claims, granted the claim, though partially, as per the table which is annexed hereto and marked as **Annexure - 2.**

8. The Appellant has been exporting the goods under the Self Removal Procedure (SRP) under which the ARE-2 has to be filed within 24 hours of removal from factory only for the information to the department about the removal of the goods from the premises and not the permission for export. The ARE-II form is a condition

For Pawan Jain and Son  
Prop./Auth. Signatory



4.1. The department is erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods and receipt of export sale proceeds in foreign exchange. That the said certificate was enclosed to the rebate claim, the department merely brushed aside the said submission of the applicants. That the department also erred in stating that for payment of rebate under Rule 18, export is a pre-condition to be fulfilled. That the goods have been exported under FOB contract which stipulates that the responsibility of the exporter is to handover the goods Free On Board (FOB) under the International Contract Terms (INCOTERMS). That once the goods are handed over to the ship, the title in goods is transferred to the customer and any loss in transit is sole responsibility of the overseas buyer. That in the instant case the goods were exported under FOB terms and the export proceeds are also realized in foreign exchange, which completes the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. That once the said condition is complied with, rebate on the said goods cannot be denied and therefore the order of department is liable to be quashed and set aside.

4.2. The department erred in rejecting the claim only on the ground that the goods have actually not exported. That the department failed to appreciate that the goods have actually been taken on board in the ship and the necessary Bill of Lading is issued by the shipping agency and the ship was physically moved from the port. That there is no dispute to the fact that necessary duty has been paid on the said goods and a certificate is issued by Superintendent of Central Excise verifying the said duty payment details. That the applicants have completely discharged their obligation on their part and therefore the burden of duty paid on the said goods exported should not fall on the exporter having completed and discharged the obligation on their part therefore the order of department is liable to be quashed and set aside.

4.3. The adjudicating authority rejected the rebate on the ground that there is no endorsement of the Customs officers on the reverse side of the ARE-1, shipping bill and copy of mate receipt is not submitted. That the Commissioner (Appeals) failed to extend his independent finding on this order but traversed beyond the finding of

Output Ratio fixed from the Office of the Assistant Commissioner of Central Excise, Division - I, New Delhi, and as such he was never informed by the Range Officer as well when he was making the exports and submitting ARE-1 as a proof of export that he needs to get the norms fixed for S.S. Coils / Sheets / Strips and with respect to SS Flats / Bars as per the conditions of the Notification No. 41 / 2001 dated 26.06.2001.

- 6: It is submitted that the SS Flats / SS Bars and SS coils / Sheet / Strips were purchased as raw materials. The SS Flats / SS Bars were sent to the job worker for conversion into SS Patti (i.e. intermediate product). During the course of conversion, irrecoverable wastage comes to 11%. These are converted into Patta - Patti (which are like sheet) for manufacture of exported materials. The wastage in case of manufacture of S.S. Utensils made of S.S. Flat is that of 47% which is equivalent to 1: 1.882 per kg. Here it is pertinent to mention that the revisionist applied for the fixation of IO norms on dated 08.01.2004 and also the same were fixed by the learned Assistant Commissioner of Central Excise, Division - I, 8 Deepshikha Building, Rajendra Place, New Delhi vide their letter C. No. V(87)18/REF/IO/PJS/D-I/2003 dated 18.03.2004. The

For Pawan Jain and Sons  
Prop./Auth. Signatory

the adjudicating authority. That the Commissioner (Appeals) simply rejected the appeal filed by the applicant on the grounds that the goods have not been exported. That in the present case the goods have been lost after the vessel left the port, the applicants have recovered the sales proceeds in the convertible foreign exchange and therefore the rebate is legally eligible to the applicant.

4.4. The Commissioner(Appeals) erred in rejecting the claims only by relying upon the word 'exported' used in the text of Rule 18, Notification No. 19/2004-CE(NT) dated 06.0-9.2004 and para 8.4 under Chapter 8 of the CBEC Manual. That the present case relates to accidental loss of export goods which requires different look at rules framed. That physically the goods have been cleared from the factory under supervision of Central Excise Officer by following all the procedures laid down for export. That the export was on FOB terms and the sale was complete and the ownership of goods was transferred to buyer once the goods were delivered on board for delivering the goods to overseas buyer.

4.5. The Commissioner (Appeals) erred in rejecting the claim relying upon the definition of word 'export' as given under Section 2(18) of the Customs Act, 1962. That the applicants submit that the goods were removed from the factory and loaded on the ship for taking the same to a place outside India. That the definition doesnot envisage that goods must reach in the hands of overseas buyer. That because of accident, goods did not reach the destination. That because of accident the goods did not reach the destination. That despite the accident, the ownership of goods was transferred to the overseas buyer, export was complete and therefore the overseas buyer claimed the insurance and remitted the proceeds in convertible foreign currency. That the inference of the definition of export as drawn by the Commissioner (Appeals) is wrong and is not capable of handling the situation of accident.

4.6. The Commissioner (Appeals) erred in rejecting the rebate claim without considering the various representation made by the Federation of Indian Export Organisation and the Chairman of CBEC to issue necessary directions and clarification so that the exporters are not put to financial loss for no mistake of theirs. That the applicants have also directly written to CBEC requesting to consider their case in view of the recovery of sale proceeds in convertible foreign exchange.

stipulated under the Rules. Further, a request was made by the Revisionist to condone the procedural lapse of filing ARE-1 instead of ARE-2 and non fixation of the I.O. norms at the time of exports, on the grounds that the Jurisdictional Assistant Commissioner has fixed the I.O. norms during the export period and further the goods have been exported and the value has been realized in foreign exchange and that there is no unjust enrichment of duty.

4. The Revisionist further submitted that the ex-factory price was the sale price for the goods and as much they have not passed on the burden of incidence of duty to the consignee. Also, the Duty Drawback under the Duty Drawback Scheme was also not claimed. A request was made that the rebate of Central Excise Duty paid on inputs be paid to them by crossed cheque and it shall not be credited to their CENVAT account. The rebate claim was filed within a prescribed period under the Act. The goods were not being sold in the local market and manufactured goods were basically exported out of India.
5. As regards the fixation of I.O. norms, the Revisionist was not knowing the exact procedure to get the Input -

For Pawan Jain and Son  
Prop./Auth. Signatory

4.7. The department erred in not considering that the Customs officer has not signed on the ARE-1. That it is factually incorrect as the jurisdictional Central Excise officers have signed the ARE-1 on the reverse side of the document at the time of stuffing the container at the factory and the said ARE-1 is also signed by Customs Preventive officers at the port of shipment.

4.8. The department erred in rejecting the rebate claim on the ground that the goods are lost within the Indian territorial waters and hence goods are not exported consequently no rebate. That under FOB contract the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.07.2010 itself who have issued the bill of lading confirming goods on board. That the overseas customer in terms of FOB contract accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. That the main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the applicant and the sale proceeds were realized in view of the FOB contracts and applicants have produced the BRC and are legally eligible for the export incentive by way of rebate. That realization of sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the applicant. Therefore they are legally eligible for the rebate claim which is required to be paid.

5. Personal hearing scheduled in this case on 03.08.2015 was attended by Shri P.K. Shetty, Advocate on behalf of the applicant who reiterated the grounds of revision application and also stated that once the goods were shipped on board the ownership stood transferred to the buyer particularly as the sale is on FOB basis and that the payment for the goods has been received by them as is evident from the BRC. Therefore, they should not be penalized for circumstances beyond their control. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-In-Original and Order-In-Appeal.

STATEMENT OF FACTS

1. The Applicant, **M/s PAWAN JAIN & SONS**, D-38, SMA Industrial Area, G.T.K Road, New Delhi-110033, having Central Excise Registration No. **AAOPJ7853NXM001** have been engaged in the business of manufacturing and export of S.S. Utensils etc.
2. The Applicant had filed 6 Rebate Claims seeking rebate of duty amounting to a total of Rs. 97,74,926/- paid on inputs used in the manufacture of end product i.e. S.S. Utensils exported under Rule 18 of the Central Excise Rules, 2002 after clearances from their factory premises under erstwhile Notification No. 41/2001-CE(NT) dated 26.06.2001 as amended. The Revisionist submitted all the relevant documents at the time of claiming such rebate claim such as copies of purchase invoice, Bill of Lading, Shipping Bills, ARE-1s and BRC as proof of export in support of their rebate claim.
3. On a personal hearing attended by Sh. Pawan Kumar Jain, Proprietor of the Revisionist on 13.07.2005 and on 28.04.2006 it was submitted that the goods were removed from the factory under the Notification No 41/2001 dated 26.06.2001 and thereafter directly exported within six months of the removal of the goods as

For Pawan Jain  
Prop./Auth. Signature

7. On perusal of records, the Government observes that the applicant has filed the rebate claims in their jurisdictional Division. During scrutiny of the rebate claims it was noticed that there was no endorsement from Customs on the reverse side of ARE-1s, that there was no endorsement on shipping bill by Customs and that copy of mate's receipt not submitted. Accordingly, Deficiency Memo Cum Show Cause Notice (DM) was issued. The Deputy Commissioner vide impugned Order-In-Original rejected the rebate claims as the goods had not been 'exported'. The applicant filed appeal before the Commissioner (Appeals) who rejected the same. Now the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the grounds stated at para 4.

8. Government observes that the issue to be decided is that whether the applicant is entitled for rebate in terms of Rule 18 of Central Excise Rules, 2002 in the situation when the goods are not "exported".

8.1. Government observes that Rule 18 of Central Excise Rules, 2002 deals with rebate of duty which reads as follows:-

*"Where any goods are exported the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure as may be specified in the notification.*

**Explanation-** *Export includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft".*

8.2. Further, the word export is defined in Section 2 (18) of the Customs Act, 1962 as under:

*"(18) 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India".*

8.3 As per Section 11B of Central Excise Act, 1944 the rebate claim is to be filed within one year of relevant date. Explanation B defines relevant date as under:-

"(a) In the case of goods exported out of India where a refund of excise duty paid is available in respect of goods themselves or as the case may be the excisable material used in the manufacture of such goods :-

- (i) If the goods are exported by sea or air, the date on which the Ship on the aircraft in which such goods are loaded leaves India or
- (ii)

8.4. Further, the sanction of rebate claim under the aforesaid provisions is governed by paragraph 8.4. of CBEC Manual of Departmental instructions which states as follows:-

*"8.4. After satisfying himself that the goods cleared for export under the relevant ARE1 applications mentioned in the claim were actually exported as evident by the original and duplicate copies of ARE 1 duly certified by Customs and that the goods are of duty paid character as certified on the triplicate copy of ARE1 received from the jurisdictional Superintendent of Central Excise, the rebate sanctioning authority will sanction the rebate in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued".*

9. The harmonious reading of the above said provisions reveals that export takes place when goods leave India to a place outside India. It is abundantly clear that the goods have to be exported and rebate shall be paid subject to conditions and limitations set by the Central Government upon fulfilment of prescribed procedures. The CBEC Manual of Departmental Instructions further clarifies that goods have to be actually exported.

10. Government further notes that following case laws lend support to the view that rebate of duty paid on exported goods can be allowed only when the goods have actually been exported.

10.1 Government draws support from the ruling of the Hon'ble Supreme Court in an identical case of Union of India vs. Rajinder Dyeing and Printing Mills 2005 (180) ELT 433 (SC), where the goods had been dispatched ~~Ship~~ <sup>to the</sup> for export but due to accident, the ~~Ship~~ <sup>goods</sup> sunk and goods were destroyed. The exporter claimed drawback on the ground that goods were actually exported. The Apex Court placing reliance on the concept of movement of goods outside the territorial waters of India to



complete the export, held the claim of drawback as inadmissible. It was observed as under:

3. "Drawback" is defined by Rule 2(a) of the said Rules. Drawback is available to 'goods manufactured in India and exported'. For the purposes of the Rules, 'export' is defined to mean, 'taking out of India to a place outside India.....'.

4. Learned counsel for the appellants contends that, in the instant case, there was no export as contemplated by the said Rules in as much as the said cargo had not been taken out of India to a place out of India; in fact, the vessel had sunk and the said cargo was destroyed within the territorial waters of India. Our attention was drawn to the judgment of this Court in *Collector of Customs, Calcutta vs. Sun Industries, 1988 (35) ELT 241*. This was a case where goods had been loaded on to a vessel in India and the vessel had sunk after it moved out of the territorial waters. This Court said:

"When the ship got clearance and moved out of the territorial waters, the export was complete..... But the expression 'taking out to a place outside India' would also mean a place in high seas. It is beyond the territorial waters of India. High seas would also mean a place outside India, if it is beyond the territorial waters of India. Therefore, the goods were taken out to the high seas outside territorial waters of India, they will come within the ambit of expression 'taking out to a place outside India'. Indubitably the goods had been taken out of India."

5. The emphasis in the judgment afore-mentioned is on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have taken place. In the instant case, the said cargo was destroyed when the vessel sunk within the territorial waters of India. There was, therefore, no export of the said cargo. Accordingly, no duty drawback was available in respect of the said cargo.

6. The civil appeal is allowed."

~~Even though a case of drawback, the ratio~~  
10.2 Further, the Hon'ble Supreme Court in the case of *Commissioner of Customs, Calcutta vs. Sun Industries 1988 (35) ELT 241 (SC)* has categorically held that export will happen only when the goods are taken to a place outside India as mentioned below:

\* Context of admissibility of drawback under Section 75 the ratio of ~~the case~~ <sup>the decision</sup> is squarely applicable to the present case as under both rebate and drawback arise only upon export of goods.

"The export means that the goods must be taken out to a place outside India. The expression 'taking out to a place outside India' would also mean a place in high sea if it is beyond the territorial waters of India. 'Place means a particular point or portion of space, especially that part of space occupied by a belonging to a thing under consideration, a delicate locality or location. It also means an open space in a city. Therefore, in international trade the ship beyond the territorial waters of a country would be a place outside the country'".

~~103~~ ~~on the~~ ~~above~~ ~~judgments~~ ~~though~~ ~~rendered~~ ~~to~~ ~~the~~

11. In the present case, the Government observes that the goods although were loaded for export but were actually not exported. Government also notes that Commissioner (Appeals) has rightly observed that the purpose of rebate of duty paid is to allow the goods to be available in the international market at a competitive price so that taxes are not exported along with the goods. Admissibility of rebate therefore, ~~proposes the availability of the goods in the course of international flow of trade.~~ <sup>rest upon rest upon joining joining</sup> In this case, whatever be the reasons, <sup>NO</sup> the export has not taken place and therefore the grant of rebate of duty paid does not arise under the stipulation of Rule 18 read with Notification No. 19/2004 *ibid*.

12. ~~Therefore, Government holds that export takes place only when the ship leaves or sails out of India.~~ Upon perusal of records, Government observes that the applicant in their written submission dated 06.05.2011 has informed the department that the vessel on which the goods covered in the said rebate claims were loaded ~~collided~~ <sup>collided</sup> with another vessel immediately after leaving the port. That the goods in question were not exported. The same is further corroborated with the other discrepancies noticed in rebate claims by the <sup>original authority</sup> ~~jurisdictional Deputy Commissioner of Division.~~ This clearly shows that the goods in fact were not exported and question of any rebate of duty paid on exported goods does not arise.

Collided

13. Government <sup>Nso</sup> places reliance on the ruling of the Hon'ble Supreme Court in the case of Collector of Central Excise, Vadodara Vs Dhiren Chemical Industries 2002 (143)ELT 19 (SC), Paper Products Ltd. Vs Commissioner of Central Excise 1999(112)ELT 765(SC) and ITC Ltd. Vs CCE 2004 (171)ELT 433 (SC) in which the Apex Court has held that strict and plain reading of the statute are to be strictly adhered to and all the authorities working under the respective Central

Excise/Customs Acts are to ensure strict applicability of all the relevant Notifications/Circulars as issued for the purpose.

14. The applicant has contended that rebate is admissible as despite the accident, the ownership of the goods had got transferred to the overseas buyer as the sale was on FoB and not CIF basis. In this regard, Government notes that as per the provisions of law, <sup>is not one of</sup> the requirements for eligibility of rebate is not transfer of ownership of goods. The entitlement of rebate benefit will arise not ~~only~~ from change of ownership of goods <sup>per se</sup> but ~~also~~ only when they have been exported. ~~But~~ In the present case, the actual export of goods ~~which~~ has undeniably not taken place ~~in this case~~ as the ~~ship~~ had admittedly capsized within the Indian territorial waters.

15. Government also does not <sup>hold</sup> paid as tenable the contention of the applicant that as foreign exchange has been realized, rebate cannot be denied. Rebate is allowed on the act of export of goods and if goods have not been actually exported, question of any rebate does not arise in terms of Rule 18 read with Notification 19/2004-CE(NT) dated 06.09.2004.

16. In view of the above, Government is of the considered opinion that given the circumstances of the case, <sup>and thus</sup> the export cannot be said to have been completed/rebate claim has rightly been held as inadmissible on this ground alone. Government, therefore, finds no infirmity in the Order of the Commissioner (Appeals) and hence upholds the same.

17. The Revision Application is thus rejected being devoid of merits.

18. So, ordered.

**(RIMJHIM PRASAD)**  
**JOINT SECRETARY TO THE GOVERNMENT OF INDIA**

M/s Positive Packaging Industries Ltd.,  
Village Ransai, Khopoli Pen Road,  
Taluka-Khalapur, District Raigad.

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F.No. 195/686/2012-RA-CX  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....

ORDER NO. \_\_\_\_\_/16 CX DATED \_\_\_\_\_ 2016 OF THE GOVERNMENT  
OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT,  
1944.

Subject : Revision application filed, under Section 35 EE of the Central  
Excise, 1944 against the Order-In-Appeal No.US/271/RGD/2012  
dated 25.04.2012 passed by Commissioner of Central Excise,  
(Appeals)-II, Mumbai

Applicant : M/s Positive Packaging Industries Ltd.

Respondent : Commissioner of Central Excise, Raigad

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6.1 The case records, however, clearly indicate that in order to ascertain the actual date of delivery of the above mentioned Orders-In-original and their receipt by the appellants, the then Commissioner(Appeals) called for the relevant details from the office of the jurisdictional authorities and recorded these facts in the impugned Orders-In-Appeal. On the basis of the information received, the then A.A. has held that the declaration of the appellants about the date of communication mentioned in column 4 of the appeal memorandum as 21.10.08 is incorrect and without any evidence; that the impugned orders were delivered to the representative of the appellants by hand on 21.08.2008. The then Commissioner(Appeals) observed that the appeals were filed on 06.01.2009 i.e. after 139 days of the date of communication i.e. 21.08.2008.

6.2 Further, as the appellants themselves stated that the Orders-In-original were received after a long gap from the date of receipt of cheques. It is surprising to note that the appellants then did not feel the need to know the reasons for the issuance of these cheques and also failed to enquire from the department about the orders against which these cheques have been issued to them. On the main issue of time-bar, the appellants neither explained as to how and from whom the Orders-In-original were suddenly received by them on 21.10.2008 nor they produced any evidence to negate the genuineness of the records maintained in the jurisdictional office of Central

For Pawan Jain and Sons  
Prop. / Adv. / Secretary



## ORDER

This revision application is filed by M/s Positive Packaging Industries Ltd, (hereinafter referred to as applicant) against the Order-In-Appeal No. US/271/RGD/2012 dated 25.04.2012 passed by Commissioner of Central Excise, (Appeals), Raigad with respect to Order-In-Original No .Raigad/KPL/RC/3210/11-12 dated 31.05.2011 passed by the Deputy Commissioner of Central Excise Khopoli Division, Raigad.

2. Brief facts of the case are that the applicant have filed the rebate claims in Central Excise, Khopoli Division, Raigad on 09.02.2011. During scrutiny of aforesaid claims it was noticed that:-

- (i) there was no endorsement from Customs on the reverse side of ARE-1s
- (ii) there was no endorsement on shipping bill from Customs
- (iii) Copy of mate receipt not submitted

2.1. Accordingly above discrepancies were conveyed to the applicant vide Deficiency Memo Cum Show Cause Notice (DM)

2.2. The Show Cause Notice was adjudicated. Original authority in impugned Order-In-Original observed that the vessel in which the goods covered in both rebate claims were loaded colluded with another vessel immediately after leaving the port and as such the goods cannot be treated as exported. Hence rebate claims are not admissible.

3. Aggrieved by the said order the applicant filed appeal before the Commissioner (Appeals) who vide Order-In Appeal No. US/271/RGD/2012 dated 25.04.2012 rejected the same.

4. Being aggrieved by the impugned Order-In-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

wants rebate of duty paid on inputs for the goods exported based on input-output norms fixed.

5. I have carefully gone through the facts of the case and the submissions made by the appellants. As per the directions passed under Order No. 1103-1108/11-CX dated 25.08.2011, the appellants were accorded reasonable opportunity to personally represent their case.

6. Firstly the issue to be decided is whether the six appeals filed by the appellants against Orders-In-Original No.218-R to 223-R all dated 30.07.2008 with the then appellate authority were barred by time or not. The appellants emphasised that they received the copies of the Orders-In-Original on 21.10.2008 and enclosed a copy of the affidavit stating therein that these were received on 21.10.2008 only. Here it is pertinent to mention that the appellants except filing an affidavit have not put across any documentary evidence in their support. In their written submissions dated 10.01.2012, the appellants have themselves admitted that the copy of the Orders-In-Original were received by them on 21.10.2008 'after a long gap from the date of receipt of cheques for the sanctioned rebate amounts'. The appellants in their submissions have not bothered to mention about the mode of delivery of the Orders-In-Original and the cheques, such as by hand or by post, to them.

For Pawan Jain and Sons  
Prop. Jain. Signate



4.1. The department is erred in rejecting the rebate claims in spite of submitting the 'Bank Certificate of Export Realization' evidencing the export of goods and receipt of export sale proceeds in foreign exchange. That the said certificate was enclosed to the rebate claim, the department merely brushed aside the said submission of the applicants. That the department also erred in stating that for payment of rebate under Rule 18, export is a pre-condition to be fulfilled. That the goods have been exported under FOB contract which stipulates that the responsibility of the exporter is to handover the goods Free On Board (FOB) under the International Contract Terms (INCOTERMS). That once the goods are handed over to the ship, the title in goods is transferred to the customer and any loss in transit is sole responsibility of the overseas buyer. That in the instant case the goods were exported under FOB terms and the export proceeds are also realized in foreign exchange, which completes the condition of rebate which basically casts obligation on the exporter to collect the export proceeds in foreign exchange for the goods exported. That once the said condition is complied with, rebate on the said goods cannot be denied and therefore the order of department is liable to be quashed and set aside.

4.2. The department erred in rejecting the claim only on the ground that the goods have actually not exported. That the department failed to appreciate that the goods have actually been taken on board in the ship and the necessary Bill of Lading is issued by the shipping agency and the ship was physically moved from the port. That there is no dispute to the fact that necessary duty has been paid on the said goods and a certificate is issued by Superintendent of Central Excise verifying the said duty payment details. That the applicants have completely discharged their obligation on their part and therefore the burden of duty paid on the said goods exported should not fall on the exporter having completed and discharged the obligation on their part therefore the order of department is liable to be quashed and set aside.

4.3. The adjudicating authority rejected the rebate on the ground that there is no endorsement of the Customs officers on the reverse side of the ARE-1, shipping bill and copy of mate receipt is not submitted. That the Commissioner (Appeals) failed to extend his independent finding on this order but traversed beyond the finding of



2.1 Aggrieved by the impugned Order-In-Appeal of the then Commissioner (Appeals), the appellants filed a Revision Application with the Govt. Of India in response to which Order No. 1103-1108/11-CX dated 25.08.2011 was passed by the Joint Secretary(Revision Application) of the Government Of India, Ministry of Finance (Department of Revenue) under Section 35 EE of the Central Excise Act, 1944 in which the impugned Order-In-Appeal was set aside and the case was remanded back to this appellate office to decide the case afresh on merit after affording reasonable opportunity of hearing to the appellants.

3. Accordingly, the appellants have now filed the subject appeals on the grounds that the Orders-In-Original were received by them on 21.10.2008 and that they enclosed a copy of the affidavit with regard to the fact that the said Orders-In-Original dated 30.07.2008 were received by them on 21.10.2008 only. They also added that the deductions in the respective rebate claims as made by the department were wrong and that the same should have been calculated in terms of the norms fixed by the department and not as per the SION of DGFT.

4. On 09.10.2012, I heard Shri Rajiv Tuli and Shri Akshit Kapoor, both Advocates, who appeared on behalf of the appellants. Sh. Rajiv Tuli, Advocate, reiterated the submissions given in appeal. He added that their appeal was wrongly dismissed as time-barred ; that their rebate claims should be passed as input-output norms were fixed under Notification No. 41/2001-CE (NT) dated 26.06.2001; that he

For Pawan Jahn and Sons  
Signature



the adjudicating authority. That the Commissioner (Appeals) simply rejected the appeal filed by the applicant on the grounds that the goods have not been exported. That in the present case the goods have been lost after the vessel left the port, the applicants have recovered the sales proceeds in the convertible foreign exchange and therefore the rebate is legally eligible to the applicant.

4.4. The Commissioner(Appeals) erred in rejecting the claims only by relying upon the word 'exported' used in the text of Rule 18, Notification No. 19/2004-CE(NT) dated 06.0-9.2004 and para 8.4 under Chapter 8 of the CBEC Manual. That the present case relates to accidental loss of export goods which requires different look at rules framed. That physically the goods have been cleared from the factory under supervision of Central Excise Officer by following all the procedures laid down for export. That the export was on FOB terms and the sale was complete and the ownership of goods was transferred to buyer once the goods were delivered on board for delivering the goods to overseas buyer.

4.5. The Commissioner (Appeals) erred in rejecting the claim relying upon the definition of word 'export' as given under Section 2(18) of the Customs Act, 1962. That the applicants submit that the goods were removed from the factory and loaded on the ship for taking the same to a place outside India. That the definition doesnot envisage that goods must reach in the hands of overseas buyer. That because of accident, goods did not reach the destination. That because of accident the goods did not reach the destination. That despite the accident, the ownership of goods was transferred to the overseas buyer, export was complete and therefore the overseas buyer claimed the insurance and remitted the proceeds in convertible foreign currency. That the inference of the definition of export as drawn by the Commissioner (Appeals) is wrong and is not capable of handling the situation of accident.

4.6. The Commissioner (Appeals) erred in rejecting the rebate claim without considering the various representation made by the Federation of Indian Export Organisation and the Chairman of CBEC to issue necessary directions and clarification so that the exporters are not put to financial loss for no mistake of theirs. That the applicants have also directly written to CBEC requesting to consider their case in view of the recovery of sale proceeds in convertible foreign exchange.

**ORDER-IN-APPEAL**

Present six appeals (i.e. Central Excise Appeals No. 01 to 06) have been filed by M/s Pawan Jain & Sons, D-38, SMA Industrial Area, G.T. Karnal Road, New Delhi-110033 (hereinafter also referred to as the appellants) in pursuance of the directions given under Order No. 1103-1108/11-CX, dated 25.08.2011 of the Government Of India, passed in response to the Revision Application filed by the appellants under Section 35 EE of the Central Excise Act, 1944 against Orders-in-Appeal No. 195 to 200/CE/DLH/09 dated 29.09.2009 passed by the then Commissioner (Appeals) Central Excise, Delhi-I, C.R. Building, I.P.Estate, New Delhi.

2. Briefly stated, six refund claims in question filed by the appellants were scrutinized and calculated by the jurisdictional refund sanctioning authority in accordance with the SION norms (input-output ratio fixed by the DGFT for the subject items) and the refund of admissible amount was granted to the appellants vide Orders-In-Original No.218-R to 223-R all dated 30.07.2008. The appellants opined that the department calculated the amounts of refund in each claim as per SION norms, which are not applicable in their case and they filed an appeal with the then Commissioner (Appeals), who after confirming the relevant facts from the jurisdictional office, rejected all the six appeals as time barred.

For Pawan Jain and Sons  
Prop./Auth. Signatory



4.7. The department erred in not considering that the Customs officer has not signed on the ARE-1. That it is factually incorrect as the jurisdictional Central Excise officers have signed the ARE-1 on the reverse side of the document at the time of stuffing the container at the factory and the said ARE-1 is also signed by Customs Preventive officers at the port of shipment.

4.8. The department erred in rejecting the rebate claim on the ground that the goods are lost within the Indian territorial waters and hence goods are not exported consequently no rebate. That under FOB contract the ownership in goods passes to the buyer immediately on handing over the goods on board and in the present case the goods have been handed over to the shipping agency on 27.07.2010 itself who have issued the bill of lading confirming goods on board. That the overseas customer in terms of FOB contract accepted the loss of goods and remitted sale proceeds in convertible foreign exchange for the goods lost in transit. That the main purpose of allowing the incentive in respect of export is to earn convertible exchange for the country that has been achieved by the applicant and the sale proceeds were realized in view of the FOB contracts and applicants have produced the BRC and are legally eligible for the export incentive by way of rebate. That realization of sale proceeds in foreign currency is a condition precedent to rebate claim which has been fulfilled by the applicant. Therefore they are legally eligible for the rebate claim which is required to be paid.

5. Personal hearing scheduled in this case on 03.08.2015 was attended by Shri P.K. Shetty, Advocate on behalf of the applicant who reiterated the grounds of revision application and also stated that once the goods were shipped on board the ownership stood transferred to the buyer particularly as the sale is on FOB basis and that the payment for the goods has been received by them as is evident from the BRC. Therefore, they should not be penalized for circumstances beyond their control. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-In-Original and Order-In-Appeal.



For Pooja Jain and Son  
 Prop. Law Signator

1. यह प्रति निम्न व्यक्ति को जारी की जाती है उनके निजी प्रयोग के लिए निर्यक्त की जाती है।
2. इस आदेश के विरुद्ध अपील सीमा शुल्क, उच्चाद शुल्क तथा सेवा कर अधिनियम 1944 के अन्तर्गत प्रदत्त आदेश नंबर 2, आर के प्रथम, नई दिल्ली को इस के सम्मथन की तिथि से 3 महीने के अन्दर कर सकता है।
3. अपील को कर्षीय उच्चाद शुल्क (अपील) नियमों 2001 के नियम 6 के प्राधानों के अनुसार तथा कर्षीय उच्चाद शुल्क अधिनियम 1944 की धारा 35 की (6) के प्राधानों के आधार पर कर्षीय उच्चाद, सीमा शुल्क एवं कर सेवा अधिनियम (कार्यवाही) नियम 1982 में निहित प्राधानों के साथ पठित कोल के साथ दापर की जाती होगी।
4. कर्षीय उच्चाद शुल्क अधिनियम 1944 की धारा 35 की उद्देश्य के प्रथम प्राधान में कर्षीय उच्चाद शुल्क (अपील) के द्वारा पारित आदेश पर आदेश के विरुद्ध रिटायन में अपील नहीं की जायेगी और ऐसे मामलों में उक्त अधिनियम की धारा 35 ई ए तथा 35 ई ई में निहित प्राधान को देखा जाए।

कर्षीय उच्चाद शुल्क अधिनियम, 1944, की धारा 35 ए (3) के अन्तर्गत पारित अपील संख्या 1-6-CE/  
Appn 2012 के संक्षेप में श्री/शुभ्री Ashtok K. Mehta द्वारा पारित।  
 कर्षीय उच्चाद शुल्क (अपील), दिल्ली-1 द्वारा पारित।  
 मसूदा Jayaram Jain & Sons, NDella  
 के मामले में सुलेखिका आग्रह, कर्षीय उच्चाद शुल्क संख्या 1-6-CE/  
 नई दिल्ली, द्वारा पारित दिनांक 30-07-2008 में आदेश संख्या 218-R-223-R  
 के फलस्वरूप

अपील आदेश संख्या 68-73/सी ई/सी एन एच/2012

सी नं: 01-06-CE/APPN/Div-2/Deletn-1/09/5163 / दिनांक: 29/10/2012

कनरा नं. 134, कर्षीय राजस्व भवन, इन्डस्ट्रियल एस्टेट, नई दिल्ली  
कर्षीय उच्चाद शुल्क आग्रह (अपील) का कार्यालय, दिल्ली-1.

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7. On perusal of records, the Government observes that the applicant have filed the rebate claims in their jurisdictional Division. During scrutiny of the rebate claims it was noticed that there was no endorsement from Customs on the reverse side of ARE-1s, that there was no endorsement on shipping bill from Customs and that copy of mate receipt not submitted. Accordingly Deficiency Memo Cum Show Cause Notice (DM) was issued. The Deputy Commissioner vide impugned Order-In-Original rejected the rebate claims. The applicant filed appeal before the Commissioner (Appeals) who rejected the same. Now the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the grounds stated at para 4.

8. Government notes that the lower authorities have held rebate claims irrespective of the ground that as the vessels on which impugned exported goods were loaded, collided with another vessel immediately after leaving the port and as such, the goods were not actually exported. In contrast, the applicant contended that as the export was on FOB terms and sale was complete and the ownership was transferred to overseas buyer, the export was complete. Since, remittance was also received by the applicant, there is no reason for denial. In view of rival submission, Government proceeds to decide the issue on the basis of prevalent statutory provisions.

8.1. As per section 4(1) (a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall-

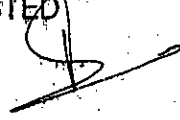
- (a) In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.
- (b) In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

Order No. 373/14-Cx dated 04-12-2014

Copy to:-

- 1. The Commissioner of Central Excise, Delhi-I, CR Building, I P Estate, New Delhi.
- 2. The Commissioner of Central Excise (Appeals), Delhi-1, C R Building, I P Estate, New Delhi.
- 3. The Assistant Commissioner, Central Excise, Division-I, Deepshikha Building, Rajendra Place, New Delhi.
- ✓ 4. Shri Rajiv Tuli, Advocate, Vaidat Legale Services, Advocates & Solicitors, A-415, Defence Colony, New Delhi - 110024.
- 5. PS to JS(Revision Application)
- 6. Guard File
- 7. Spare Copy.

ATTESTED



(B.P.SHARMA)  
OSD (Revision Application)

For Pawan Jain and Sons



8.2 The word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows:

" 'sale' and 'purchase' with their grammatical variations and cognate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

8.3. It has been a settled position that once the goods are loaded on ship, the ownership is transferred to foreign buyer and FOB value will be transaction value. Conversely, if FOB value is transaction value, then the ownership of goods gets transferred once the goods are loaded in vessel. In this case also the term of payment was FOB and as such, the applicant as an exporter no more remains owner of the goods.

8.4. Further, as per explanation (A) to Section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 11B of Central Excise Act, 1944. The explanation (A) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since refund claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim means:-

*"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods.-*

*(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are load, leaves India, or"*



9. In view of above, Government sets aside impugned orders-in-appeal and remands the case back to appellate authority to decide the same afresh on merits. Reasonable opportunities of hearing may be afforded to party to present their case.

10. Revision application is disposed off in above terms.

11. So, ordered.

*Archana Pandey*  
24/12/14

(Archana Pandey Tiwari)

Joint Secretary to the Government of India

M/s Pawan Jain & Sons  
D-38, SMA Industrial Area,  
GTK Road, New Delhi-110033.

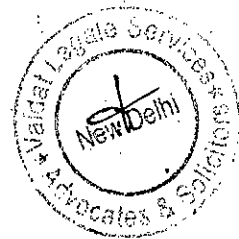
*Attested*

(सहायक सचिव/सहायक सचिव)  
सहायक सचिव  
C.B.C. & O.S. (Revision App. Section)  
वित्त मंत्रालय (सहायक विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

For Pawan Jain and Sons

*P. V. J.*

Prop. Auth. Signatory



Government finds no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

8.5. Going by harmonious interpretation of above <sup>provision</sup> position, the inference can be drawn that as the term of payment was FOB, ownership of exported goods does not remain with the exporter and that as the export order was given by the Customs, the export cannot be said to be not complete. Further, export benefit scheme like rebate is introduced to promote export to earn foreign exchange. In this case, foreign remittance has also been realized, hence, liberal interpretation of stature should be done to meet the basis spirit of such export related scheme.

9. In view of above, Government is of considered opinion that given the peculiar circumstances of the case, the export cannot be said to be not completed and hence rebate claims cannot be held inadmissible on the above ground.

10. In view of above, the impugned Order-In-Appeal is set aside and Revision Application allowed.

11. Revision Application thus recedes in above terms.

12. So, ordered.

**(RIMJHIM PRASAD)**  
**JOINT SECRETARY TO THE GOVERNMENT OF INDIA**

M/s Positive Packaging Industries Ltd.,  
Village Ransai, Khopoli Pen Road,  
Taluka-Khalapur, District Raigad.

*Central Excise Act, 1944, it was obligatory on the part of the Revenue, either to tender a copy of the decision to the assessee or to sent it by registered post with acknowledgment due to the assessee or its authorized agent. In the present case, neither of the above have been complied with by the Revenue. Accordingly, the contention of the assessee that a copy of the order of Commissioner of Central Excise (Appeals) was received for the first time on 26th February, 2010 would have to be accepted. Consequently, the decision of the CESTAT that the appeal filed by the assessee was time-barred cannot be sustained."*

8.2 On perusal of above judgement, it is quite evident that in terms of Section 37C(1)(a), the order needs to be sent by registered post with acknowledgement due, for whom it is intended or his authorized agent, if any. In this case, the impugned orders-in-original were shown to have been issued on 30.7.2008. However, the department claimed that the impugned orders were received by some representative of the applicant company on 21.8.2008. No satisfactory reasons have been given by the department as to why the orders have not been sent by post in spite of having shown as issued on 30.7.2008, and the same orders have been handed over to the representative of the applicant company. If same orders have been shown as issued on 30.7.2008 through post, the same orders cannot be handed over to any person by hand. No satisfactory explanation has been given by the department for such contradiction. Further, the department could not bring on record any valid authorization by the company authorizing the person, who has purportedly received the impugned orders-in-original. Under such circumstances, the impugned orders-in-original cannot be said to have been served to the concerned party. There is also no proof of service of orders, if sent by post to the applicant. Under such circumstances, Government has no option but to accept the applicant's contention that they were not served the impugned orders-in-original either through post or through hand delivery as claimed by the department. As such, applicant's contention regarding receipt of the impugned orders-in-original, only on 21.10.2008 required to be accepted and that the the appeals were filed before Commissioner (Appeals) on 6.1.2009, within condonable time limit of 90 days. Hence, the appeals cannot be treated as time barred and may be decided on merits.

For Pawan Jain and Sons  
*P. J.*  
Prop./Auth. Signatory



*"the exporter is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on the transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944". It is thus clear from the order that in any case, duty is not to be paid on the CIF value.*

Hon'ble Supreme Court in its order in Civil Appeal No. 7230 of 1999 and CA No.1163 of 2000 in the case of M/s Escort JCB Ltd. Vs CCE Delhi reported on 2002 (146) ELT 31 (SC) observed (in para 13 of the said judgement) that :

*"in view of the discussions held above in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable".*

Further, CBEC vide its (Section) 37B order 59/1/2003-CX dated 03-03-2003 has clarified as under:-

*7. 'Assessable value' is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [section 4(4)(b), sub-clauses (i),(ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under section 4 remained substantially the same. Section 4(3) (c) (i) [as on 1-7-2000] was identical to the earlier provision contained in section 4(4)(b)(i), section 4 (3)(c)(ii) was identical to the earlier provision in section 4(4)(b)(ii) and rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.*

*8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods."*

10. Government observes that the applicant has relied upon the CBEC Circular No. 510/06/2000-Cx dated 3.02.2000. In this regard, Government observes that w.e.f. 01.07.2000, the concept of transaction value was introduced, for valuation of goods under Central Excise Act. Though the CBEC circular 203/37/96-CX dated 26.04.1996 was issued when transaction value concept was not introduced yet the said circular clearly states that AR4 value of excisable goods should be determined

under Section 4 of Central Excise Act, 1944 which is required to be mentioned on the Central Excise invoices. Even now the ARE-1 value is to be the value of excisable goods determined under Section 4 of Central Excise Act, 1944 i.e. the transaction value as defined in section 4(3)(d) of Central Excise Act. CBEC has further reiterated in its subsequent circular No.510/06/2000-CX dated 03.02.2000 that as clarified in Circular dated 26.04.1996, the AR4 value is to be determined under Section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of Rule 12 and 13 of Central Excise Rules. The AR4 and Rule 12 and 13 are now replaced by ARE-1 and Rule 18 and 19 of Central Excise Rules, 2002. It has been stipulated in the Notification No.19/04-CE(NT) dated 06.09.2004 and the CBEC Circular No.510/06/2000-Cx dated 03.02.2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provision of Central Excise Act and determined accordingly. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. Analogously, Board's Circular No. 21/89-CX.6 dated 04.04.1989, relied upon by the applicant, will also be inapplicable to present case.

11. Government notes that said Notification No. 19/04-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be following for claiming as well as sanctioning rebate claims of duty paid on exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions should be in order. He does not have the mandate to sanction claim of obviously excess paid duty and then initiate proceeding for recovery of the erroneously paid rebate claim. Therefore, the Circular dated 03.02.2000 as relied upon by applicant cannot supersede the provisions of Notification No. 19/04-CE(NT). Adjudicating authority has therefore rightly sanctioned part rebate claim and also rightly held that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and it has to be treated a voluntary deposit with the Government which is required to be returned to the assesses / respondents in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.09.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

*"Rebate/Refund - Mode of payment - Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable - Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty - Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."*

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of