IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO 56 of 2020
G.A. NO. 1948 of 2019
G.A. NO. 1949 of 2019
APOT NO. 89 of 2019
W.P. NO. 1650 of 2010

Assistant Commissioner of Central Excise,
Haldia-II Division
Vs.
Haldia Petro Chemicals Limited & Ors.

Before:
The Hon'ble Justice Ravi Krishan Kapur
And
The Hon'ble Justice Atarup Banerjee

For the appellants : Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Tapan Bhanja, Advocate

For the respondent no.1 : Mr. Agnibesh Sengupta, Advocate
Mr. Gourab Karmakar, advocate
Ms. Upasana Bhattacharjee, advocate

Heard on : 07.10.2026

Judgment on : 13.11.2026

Ravi Krishan Kapur, J.:

1. In short, during the period September 2003 to November 2003, the writ petitioner/ respondent no.1 herein had exported three shipments of Pyrolisis Gasoline (PG Gas) after payment of excise duty. Subsequently, the writ petitioner filed a claim for rebate of excise duty under Rule 18 of the Central Excise Rules 2002 claiming Rs. 2,25,66,522/-. Such rebate was demanded after furnishing relevant documents including copies of the prescribed ARE-1 forms

duly certified by the Excise and the Customs Authorities upon being satisfied with the payment of excise duty and export of the above goods.

2. On August 24, 2004 a show-cause notice was issued to the writ petitioner alleging contravention of Rule 18 of the Central Excise Rules 2002 read with the Notification No. 43/02-Cus dated 19 April, 2002. By such notice, the writ petitioner was asked to explain as to why the claim for rebate should not be disallowed. The writ petitioner responded by a letter dated September 24, 2005. By an order dated 20 December 2005, the authorities disallowed the claim for rebate.

3. Being aggrieved by the order dated 20 December 2005, the writ petitioner filed a statutory appeal. By an order dated 29 March 2007, the Commissioner of Central Excise, (Appeals-1) Calcutta allowed such appeal and held that the claim for rebate was admissible.

4. Being dissatisfied with the order dated 29 March 2007, the appellant filed an application seeking revision of the order dated 29 March 2007 under section 35EE of the Central Excise Act, 1944. In this application, the authorities contended that the claim for rebate was inadequate and liable to be rejected on the ground of non-submission of relevant documents. By an order dated 21 July 2010, the Revisional Authority held that despite the claim for rebate of excise duty being admissible under Rule 18 of the Central Excise Rules 2002, the same required further examination since the writ petitioner had failed to produce the requisite documents evidencing export and duty payment. In such circumstances, the matter was remanded to the Original Authority to decide the case afresh and the writ petitioner was directed to produce all relevant and legible records before the Adjudicating Authority.

5. In this background, the writ petitioner challenged the order dated 21 July 2010 by filing this writ petition. By an order dated January 8, 2019 (the impugned judgment), the writ petition has been allowed recording that the writ petitioner had duly submitted the ARE-1 forms and that there were no grounds to withhold the claim for rebate.

6. On behalf of the appellant, it is contended that notwithstanding the filing of ARE-1 forms alongwith all supporting documents, the Revenue Authorities were fully justified in seeking additional documents for verification. Any consideration for rebate could only be completed after a comprehensive investigation following the Supplementary Instructions 2005. In such circumstances, there is no infirmity in seeking further information and the impugned order is liable to be set aside.

7. Rule 18 of the Central Excise Rules and Paragraph 8 of Supplementary Instructions which deals with export in respect of a claim for rebate are set out below:

> *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.*
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> ***8. Sanction of claim for rebate by Central Excise***
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> *8.1 The rebate claim can be sanctioned by any of the following officers of Central Excise:-*
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> *Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner.*
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> *8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.*
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> *8.3 The following documents shall be required for filing claim of rebate:*
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> *(i) A request on the letterhead of the exporter containing clam of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,*
> *(ii) original copy of the A.R.E. 1,*
> *(iii) invoice issued under rule 11,*
> *(iv) self attested copy of shipping Bill, and*
> *(v) self attested copy of Bill of Lading.*
> *(vi) Disclaimer Certificate [in case where claimant is other than exporter)"*

8. There is a distinction between the pre-conditions for seeking rebate and the procedure to be followed in claiming the same. Paragraph 8 of the Supplementary Instructions, 2005 mandate that the rebate claim should be accompanied by the documents stipulated therein. An assessee making a claim for rebate is required to substantiate its claim by cogent evidence. The claim is adjudicated on merits. A claimant can substantiate its claim on the basis of all or any of the documents mentioned in Paragraph 8 of the Supplementary Instructions, 2005 which deals with export under the claim for rebate or on the basis secondary evidence.

9. The proof required to make a claim for rebate under the above Rule are (a) that the excise duty has been paid on the concerned goods and (b) that the said goods have already been exported. The certifications provided by the Excise and Customs Authorities indicate both payment and export which satisfy the pre-requisites to claim rebate. In *UM Cables Ltd. v. Union of India. 2013 (293) ELT 651 (Bom),* the Division Bench has held as follows:

> ***12.*** *The procedure which has been laid down in the notification dated 6 September, 2004 and in CBEC's Manual of Supplementary Instructions of 2005 is to facilitate the processing of an application for rebate and to enable the authority to be duly satisfied that the two fold requirement of the goods having been exported and of the goods bearing a duty paid character is fulfilled. The procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations on the one hand subject to which a rebate can be granted and the procedure governing the grant of a rebate on the other hand. While the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory.*
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> ***13.*** *A distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner - 1991 (55 E.L.T. 437 (S.C.). The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other. The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve [at paragraph 11]. The Supreme Court held as follows :*
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> > *"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

> ***14.*** *The particulars which are contained in Form ARE-1 relate to the manufacturer of the goods, the number and description of the packages, the weight, marks and quantity of the goods and the description of the goods. Similarly, details are provided in regard to the value, duty, the number and date of invoice and the amount of rebate claimed. Part A contains a certification by the central excise officer to the effect inter alia that duty has been paid on the goods and that the goods have been examined. Part B contains a certification by the officer of the customs of the shipment of the goods under his supervision.*
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> ***16.*** *.....We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. – 2011 (271) E.L.T. 449] and Hebenkraft- 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise- 2009 (233) E.L.T. 367, Model Buckets & Attachment (P) Ltd. v. Commissioner of Central Excise- 2007 (217) E.L.T 264 and Commissioner of Central Excise v. TISCO- 2003 (156) E.L.T. 777.*

10. The above principles have also been reiterated in *Zandu Chemicals Ltd. v. Union of India 2015 (315) ELT 520 (Bom) paras 10-11, Rai Petro Specialties v. Union of India 2017 (345)ELT 496 (Guj) paras 63 and 64 and Ashland India Pvt. Ltd v. Union of India (2026) 40 CENTAX 175 (Guj) paras 23-25.*

11. The admitted facts of the case are that the writ petitioner had filed the ARE-1 forms alongwith supporting documents. The rebate applications were complete in all respects and had been duly certified by the Excise Authorities evidencing proof of payment of excise duty as well as after certification by the Customs Authorities corroborating export. Such attestation had never been questioned by the appellant, at any prior stage of the proceedings.

12. The writ petitioner had not only filed the ARE-1 forms but the same was accompanied by necessary supporting documents. The bank certificates had also been adduced to indicate export realizations. The originals of the shipping bills had also been produced for verification. The shipiing bill numbers had also been certified by the Customs Authorities. This is not a case of the ARE-1 forms

being incomplete or incorrect. The validity and genuineness of the ARE-1 forms have not even been questioned at any prior stage of the adjudication proceedings. In fact, the ARE-1 forms have been issued by the Revenue Authorities. In such circumstances, there was no material whatsoever for the appellant to suspect their own documents. The appellant cannot in a circuitous manner travel beyond the show cause notice and now attempt to reject the claim for rebate on the vague ground of non-furnishing of relevant documents. In view of the above, there is no infirmity nor perversity nor contravention of any law justifying any interference with the impugned order. The impugned order is reasoned and deals with all the contentions of the parties.

13. This is a case of an assessee seeking refund after duly complying with all statutory formalities. There was no infirmity nor mistake pointed out in the ARE-1 forms or any of the supporting documents submitted by the writ petitioner. The claim for rebate had been filed as far back as in 2004 after payment of excise duty and the fact of export having been substantiated. The zeal in collecting taxes must equally be reflected when it comes up to disbursing lawful entitlements whether in the form of rebate or refund.

14. For the above reasons, the impugned order does not warrant any interference. The appeal fails and is dismissed. All connected applications also stand disposed of.

(Ravi Krishan Kapur, J.)

I agree.

(Atarup Banerjee, J.)