

REGISTERED SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 195/117/2018-RA

106

Date of issue: 12.01.2023

ORDER NO. 07/2023-CX (WZ)/ASRA/MUMBAI DATED 11.01.2023  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Elringklinger Automotive Components (I) P. Ltd.

Respondent: Pr. Commissioner of CGST, Pune-I

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-  
001-APP-1142-2017-18 dated 12.03.2018 passed by the  
Commissioner (Appeals-I), Central Tax, Pune.

## ORDER

This Revision Application has been filed by M/s. Elringklinger Automotive Components (I) P. Ltd., Plot No. G-2, Ranjangaon Industrial Area, Taluka - Shirur, Pune - 412 220 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. PUN-EXCUS-001-APP-1142-2017-18 dated 12.03.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods falling under Ch.84 and Ch.40. The applicant had filed a rebate claim application on 22.05.2017 for Rs.20,05,445/- in respect of Central Excise duty paid on for the export of excisable goods in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The adjudicating authority, vide Order-in-Original (OIO) No. 38/Refund/D-VII/CGST/17-18 dated 21.08.2017, sanctioned partial rebate claim Rs.10,01,382/- in cash and Rs.77,170/- through credit in Cenvat Account of the applicant while rejecting rebate claim amounting to Rs. 9,26,893/- in respect of one ARE-1 on the ground that it involved export of capital goods for modification purpose only; that the said goods had been imported back into India; that no foreign exchange was involved, hence the rebate claim does not comes under the purview of Rule 18 ibid. Aggrieved, the applicant filed an appeal against the said OIO which was rejected by the Appellate authority vide the impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) The Applicant submit that, in the month of June, 2016, the Applicants sent a tool for modification to their parent company in Germany. They paid duty of Rs.9,26,893/- vide Cenvat Credit Register Debit Entry No.25 dated 29.09.2016 on removing the tool from their factory. These details have also been clearly mentioned on

ARE-1 No.102 dated 29.06.2016, which has also been attested by the Preventive Officer, Indian Customs, Mumbai.

(b) The tool which was exported to Germany, was re-imported after the completion of modification. In fact, Excise Duty payment at the time of removal/export was not mandatory. However, the Applicants paid Excise Duty at the time of removal of such goods from the factory. And where duty was not payable in the very first place but was still paid, then in that case, the Applicants are liable get the rebate / refund of the duty paid.

(c) On perusal of the Rule 18 of the Central Excise Rules, 2002 and on perusal of Notification No.19/2004-C.E. (N.T.) dated 06.09.2004, it is clear that the Applicants have followed all the conditions of the said notification. Further, when goods are taken outside the territorial boundaries of India, rebate is to be granted of the excise duty paid on such goods. Therefore, although the tool was brought back into India after rebate of the excise duty is not deniable because there is NO specific provision in the Rule Or the said Notification which states that if the duty paid goods were exported and were imported after modification on the same, then rebate claim of the duty cannot be granted to the assessee.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal with consequential relief.

4. Personal hearing in the case was fixed for 23.11.2022. Ms. Tanuja Mantrawadi, Consultant attended the online hearing and submitted that rebate was rejected on sole ground of no remittance of foreign exchange. She submitted that there is no such condition for rebate and goods exported were for upgradation and for subsequent import, hence no foreign exchange remittance. She referred to the case law of Torrent Pharmaceutical 2019(370)ELT 1479 GOI. She requested to allow the claim.

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

6. Government observes that the applicant is a manufacturer-exporter. They had exported a tool, for carrying out modification, to their parent company in Germany on payment of duty amounting to Rs. 9,26,893/-. Subsequently, after the required modification, the tool had been re-imported. They had filed a rebate claim for Rs. 9,26,893/- under Notification No. 19/2004-CE (NT) dated 06.09.2004 which was rejected by the original adjudicating authority on the ground that export had been made without realization of foreign exchange.

7. From the relevant documents pertaining to the impugned export, Government observes as follows:

- i. In the ARE-1 No. 102 dated 29.06.2016 the remarks '*FOR MODIFICATION AND RETURN*' are conspicuously mentioned. The ARE-1 also mentions that a duty of Rs.9,26,893/- has been paid vide debit entry no. 25 dated 29.06.2016.
- ii. The export invoice and packing list both dated 28.06.2016 bear the remarks - "*RE-EXPORT OF USED GOODS (FOREIGN ORIGIN) FOR MODIFICATION AND RETURN*". These documents also have following remarks - "*No foreign exchange involved, value declared for customs purpose only*".
- iii. The Shipping Bill for Export dated 30.06.2016 has the remarks - "*RE-EXPORT OF USED GOODS (FOREIGN ORIGIN) FOR MODIFICATION AND RETURN*" and "*No foreign exchange is involved*" under the column 'Item Details'. It has a handwritten remark by the Examining Officer - "*Goods imported vide B/E No. 6191786/01.08.16*", evidencing return of impugned goods after required modification. The document also mentions about RBI Waiver No. 01/2016-17 dated 28.06.2016 against the column 'Forex Bank ACC'.

Thus, Government observes that the applicant had explicitly informed about the non-involvement of any consideration in foreign exchange in the impugned export transaction in the concerned export documents.

8. Government observes that as per procedure laid down in Paras 8.1 to 8.5 of Chapter 8 of the C.B.E. & C. Manual of Supplementary Instructions, rebate claims are to be submitted along with relevant documents. This list of documents does not prescribe submission of BRCs as one of the pre-conditions for claiming rebate. As such, a rebate claim under Rule 18 which is required to be filed within one year from the date of export is not required to be filed along with BRCs. However as per Reserve Bank of India's Circular AP (DIR Series) No. 37 dated 20-11-2014, the period of realization and repatriation to India of the amount representing the full export value of goods has been laid down as nine months from the date of export. Therefore, for any export done, exchange proceeds are to be received within nine months or extended period as permitted by the RBI. However, in the instant case, due to nature of transaction, the applicant has been granted waiver by RBI as mentioned in the concerned Shipping Bill.

9. Government observes that in the instant case it is a fact on record that capital goods were sent out of India for the purpose of carrying out required modification/upgradation. As it was not a sale transaction, hence there is no consideration involved. However, it is also an accepted fact that the applicant had cleared the impugned capital goods on payment of duty, though they had an option to export it under Bond. It is incumbent upon the lower authorities to verify the documentary evidences furnished by the applicant as resorting to rejection on technical grounds would not serve the purpose of justice. Therefore, Government concludes that the rebate of duty paid cannot be denied to the applicant merely on the premise held by the lower authorities that the said transaction is out of purview of Rule 18 of Central Excise Rules, 2002 and Notification issued thereunder, as no consideration in foreign exchange has been realized.

10. In view of the above discussions, Government sets aside the Order-in-Appeal No. PUN-EXCUS-001-APP-1142-2017-18 dated 12.03.2018 passed by the Commissioner (Appeals-I), Central Tax, Pune and allows the impugned Revision Application.

*Shrawan Kumar*  
11/1/23

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 07/2023-CX (WZ)/ASRA/Mumbai dated 11.1.2023

To,  
M/s. Elringklinger Automotive Components (I) P. Ltd.,  
Plot No. G-2, Ranjangaon Industrial Area,  
Taluka - Shirur, Pune - 412 220.

Copy to:

1. Pr. Commissioner of CGST,  
Pune-I, GST Bhavan,  
ICE House, Opp. Wadia College,  
Pune - 411 001

2. Sr. P.S. to AS (RA), Mumbai

3. Guard file

4. Notice Board.