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F.No.195/751-757, 753-A, 1264, & 1554-1574/12-RA-Cx  
195/261, 366 & 263, 876-881/13-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 4/4/14

ORDER NO. 103-141/14-CX DATED 31.03.2014 OF THE  
GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT,  
1944.

Subject : Revision applications filed under Section 35 EE of the Central  
Excise Act, 1944 against the orders-in-appeal passed by the  
Commissioner of Central Excise (Appeals), Tiruchirapally as  
detailed in table of para (1)

Applicant : M/s Sanmar Foundries Ltd., Pudukottai District

Respondent : Commissioner of Central Excise & Service Tax, Tiruchirapally

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**ORDER**

These revision applications are filed by M/s Sanmar Foundries Ltd., Pudukottai District against the orders-in-appeal passed by the Commissioner of Central Excise (Appeals), Tiruchirapally as detailed in table below with respect to orders-in-original passed by Deputy Commissioner of Central Excise Division-II, Tiruchirapally as mentioned in the relevant orders-in-appeal.

TABLE

Sl. No	Revision Application No.	Order-in-appeal No. & Date	Name of Applicant
(1)	(2)	(3)	(4)
1.	195/751/12-RA	82/2012 dt. 24.5.12	M/s Sanmar Foundries Ltd., Pudukottai District
2.	195/752/12-RA	79/2012 dt. 24.5.12	-do-
3.	195/753/12-RA	83/2012 dt. 24.5.12	-do-
4.	195/753-A/12-RA	84/2012 dt. 24.5.12	-do-
5.	195/754/12-RA	85/2012 dt. 24.5.12	-do-
6.	195/755/12-RA	86/2012 dt. 24.5.12	-do-
7.	195/756/12-RA	87/2012 dt. 24.5.12	-do-
8.	195/757/12-RA	112/2012 dt. 24.5.12	-do-
9.	195/1264/12-RA	116/2012 dt. 28.6.12	-do-
10.	195/1554/12-RA	186/2012 dt. 30.8.12	-do-
11.	195/1555/12-RA	189/2012 dt. 30.8.12	-do-
12.	195/1556/12-RA	185/2012 dt. 30.8.12	-do-
13.	195/1557/12-RA	179/2012 dt. 30.8.12	-do-
14.	195/1558/12-RA	180/2012 dt. 30.8.12	-do-
15.	195/1559/12-RA	182/2012 dt. 30.8.12	-do-
16.	195/1560/12-RA	184/2012 dt. 30.8.12	-do-
17.	195/1561/12-RA	190/2012 dt. 30.8.12	-do-
18.	195/1562/12-RA	188/2012 dt. 30.8.12	-do-
19.	195/1563/12-RA	187/2012 dt. 30.8.12	-do-
20.	195/1564/12-RA	183/2012 dt. 30.8.12	-do-
21.	195/1565/12-RA	191/2012 dt. 30.8.12	-do-
22.	195/1566/12-RA	192/2012 dt. 30.8.12	-do-

23.	195/1567/12-RA	181/2012 dt. 30.8.12	-do-
24.	195/1568/12-RA	195/2012 dt. 30.8.12	-do-
25.	195/1569/12-RA	197/2012 dt. 30.8.12	-do-
26.	195/1570/12-RA	204/2012 dt. 30.8.12	-do-
27.	195/1571/12-RA	205/2012 dt. 31.8.12	-do-
28.	195/1572/12-RA	207/2012 dt. 31.8.12	-do-
29.	195/1573/12-RA	210/2012 dt. 31.8.12	-do-
30.	195/1574/12-RA	215/2012 dt. 31.8.12	-do-
31.	195/261/12-RA	333/2012 dt. 26.11.12	-do-
32.	195/263/12-RA	308/2012 dt. 5.11.12	-do-
33.	195/366/12-RA	332/2012 dt. 26.11.12	-do-
34.	195/876/12-RA	76/2013 dt. 17.7.13	-do-
35.	195/877/12-RA	104/2013 dt. 20.8.13	-do-
36.	195/878/12-RA	92/2013 dt. 31.7.13	-do-
37.	195/879/12-RA	81/2013 dt. 31.7.13	-do-
38.	195/880/12-RA	111/2013 dt. 20.8.13	-do-
39.	195/881/12-RA	112/2013 dt. 20.8.13	-do-

2. Brief facts of the case are that the applicant is engaged in the manufacture of non-alloy steel castings, stainless steel castings falling under Chapter 73 of the Central Excise Tariff Act 1985. The applicant filed applications in terms of Rule 18 of the Central Excise Rules 2002 claiming rebate of duties paid on export of goods. After following due process of law, the original authority rejected the said rebate claims except claims at S.No.(2) and (32) of table on the ground that there were certain discrepancies in ARE-1 forms. In respect of cases covered at Sl.No.(2) and (32), the original authority sanctioned rebate claims. The applicant filed the appeals in respect of cases except cases mentioned at Sl.No.(2) and (32) before the Commissioner of Customs and Central Excise (Appeals) and the same were rejected vide impugned orders-in-appeal. In respect of cases mentioned at Sl.No.(2) and (32) department filed appeal before Commissioner (Appeals), who decided the appeals in favour of department.

3. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

3.1 The order of Commissioner of Customs and Central Excise (Appeals) is arbitrary, erroneous and against the settled principles of law.

3.2 The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that there no dispute with reference to the value of goods referred to ARE-1 and there is also no dispute on the fact that the applicant has realized the value shown in ARE-1.

3.3 The Commissioner of Customs and Central Excise (Appeals) erred in rejecting the refund in many cases without appreciating the report given by the Range Officer in some cases. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the verification report given by the Range Officer has dealt with the issue. The Commissioner of Customs and Central Excise (Appeals) ought to have appreciated the fact that the Range Officer has verified all the documents and given a report in respect of the subject ARE-1 saying that the refund may be granted as the error is only typographical in nature.

3.4 The applicant has relied upon various case laws in favour of their contention.

4. Personal hearing scheduled in this case on 20.3.2014 at Chennai, was attended by Shri J.Ramdas, Executive Vice President (Finance) of applicant company; Shri Vaitheeswaran, and Shri L.Harikumar, Advocates on behalf of the applicants who reiterated the grounds of revision application. Nobody attended hearing on behalf of the department. The applicants during the course of personal hearing submitted a detailed chart showing correlation between goods cleared from factory as per excise documents and goods exported vide export documents.

5. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

6. Government observes that lower authorities rejected rebate claims mainly on the ground of various discrepancies noticed in excise documents and export documents. Applicant has filed these revision applications on grounds mentioned in para (3) above.

7. On perusal of records, Government notes that in these 39 revision applications rebate claims are rejected due to various discrepancies in ARE-1 forms. The applicant has given clarifications and the position of each revision application case is examined as under:

7.1 In case of revision application mentioned at Sl.No.(1) of table above, the rebate claim was rejected mainly on the ground that in part-B of ARE-1, the shipping bill No. was overwritten. The applicant contended that the shipping bill No. was not overwritten, but the shipping bill was written on top of printed matter of ARE-1. In this regard, Government observes that merely overwriting of shipping bill in part-B of ARE-1 cannot be a reason for rejection of rebate claims. The description/weight/value of the goods given in the ARE-1 and shipping bill has to tally with each other. Moreover the ARE-1 is also required to be mentioned in the shipping bill. If the said details match with each other, then the rebate claim cannot be denied. As such, the original authority needs to verify this from original records and if goods covered vide impugned ARE-1 found to be exported vide impugned shipping bill, rebate claim can be sanctioned.

7.2 In case of revision application mentioned at Sl.No.(2) of table above, one ARE-1, the rebate claim sought to be rejected for the reason that two sets of same ARE-1 was available and also that description, classification of product, quantity and value was not mentioned. Government finds that details such as description, classification, quantity and value are basic parameters of ARE-1, in absence of which correlatable character of goods cannot be established. Such lapses cannot be treated as procedure lapses and hence, the rebate claims is rightly rejected on this count. In the another ARE-1 of the

same revision application, the rebate claim was rejected on the ground that Let export order date was prior to sailing date. Government finds that Let export order date cannot be prior to sailing date of ship. The applicant failed to give any satisfactory explanation to these discrepancies and hence, rebate claims cannot be held admissible to that extent.

7.3 In case of rebate claims covered vide revision application No. mentioned at Sl. No.(3) of table above, the rebate claims were rejected mainly on the ground that there was wrong mentioning of shipping bill in ARE-1 or the shipping bill No. was overwritten on ARE-1. In this regard, Government finds that particulars of goods mentioned in ARE-1 may be tallied with the particulars mentioned in shipping bill and if the duty paid goods covered vide ARE-1 found to be exported vide impugned shipping bill, the rebate claims can be considered for sanction provided the discrepancies are properly explained by applicant. The original authority is required to carry out such verification on the basis of original documents taking into account the explanation given by applicant.

7.4 In revision application mentioned at Sl.No.(4) of table above, in respect of one ARE-1, the rebate claim was rejected on the ground that the commissionerate is mentioned as "V Mali". The applicant in this regard has stated that word "V Mali" is reference to Viralimalai, which is the place, where applicant company is situated and is covered by the Viralimalai excise range office. Government finds that neither the aspect of correlability nor the export of duty paid goods has been questioned. Mere wrong mentioning of commissionerate should not be a basis of rejection of rebate claim especially when export of duty paid goods has been proved. As regard to other discrepancies the correlation required to be seen from other collateral excise/export documents and if the correlation gets established by other documentary evidences and if factum of export of duty paid goods stands established, then rebate can be allowed. As regard to over-written shipping bill No. on ARE-1, the issue may be decided as discussed in para (7.3) above.

7.5 In case of revision application mentioned at Sl.No.(5) of table above, the rebate claim was rejected on the ground that in some ARE-1, case nos. are not tallying with shipping bill. In this regard, the applicant has stated that in one ARE-1, case nos. are tallying. However, no sound justification reason has been given for non-tallying of case nos. in other ARE-1. Under such scenario, co-reliability cannot be said to be established. As such, the export of duty paid goods cannot be categorically said to be established and hence, rebate claim is rightly rejected.

7.6 In case of revision application mentioned at Sl.No.(6) of the table above, the rebate claim was rejected on the ground that there are discrepancies in ARE-1 viz-a-viz export documents. In this regard Government observes that as part of correlability, it is required to be seen from supporting excise and export documents to see as to whether the duty paid goods have been exported. If the correlation gets established by way of other documentary evidences, the rebate claim can be allowed by ignoring procedural infractions.

7.7 In case of rebate claims covered vide revision application mentioned at Sl.No.(7) & (8) the rebate claims were rejected on ground of discrepancies in ARE-1 like variation in gross weight in ARE-1 and shipping bill, non-mentioning of shipping bill in ARE-1 etc. As discussed in para (7.5) above, the aspect of correlation may be examined on the basis of other documentary evidences in the form of various excise/export documents. If on such verification, the correlation gets established rebate claims should not be rejected for some discrepancies which are procedural in nature.

7.8 In rebate claims covered vide revision application mentioned at Sl.No.(9) to (22), the main allegation is that correction has been made without proper authentication. The applicant stated that authorized signatory did not countersign as an inadvertent omission; and that however, factum of export of duty paid goods is not in dispute. Government finds that there is no finding of lower authorities challenging correlability

of impugned goods. If the corrections made by applicant without authenticate found to be proper with reference to other supporting excise/export documentary evidences, then broad criteria of export of duty paid goods cannot be disputed. Under such circumstances, Government finds that the original authority is required to carry out necessary verification as discussed herein above. In some AREs-1, some other discrepancies have also been noticed by the original authority. As discussed in above para(s), the original authority may decide the issue of corelatibility on the basis of other excise/export documents and if on such verification, the export of duty paid goods is established, the rebate claims may not be rejected on ground of discrepancies which are procedural in nature. Similar issues are involved in cases covered vide revision application mentioned at Sl.No.23,25,26, 27,28,30,33 and issue in these revision applications may be decided as per foregoing observation of this para.

7.9 In case of revision application mentioned at Sl.No.(24) of table above, the rebate claim was rejected on the ground that time limit of filing rebate claims exceeds one year in case of ARE-1 No.1769 and ARE-1 No.1876. The applicant contested that rebate claim was filed on 21.3.11, while sailing date for ARE-1 No.1769 dated 25.3.10 and ARE-1 No.1876 sailing date was 12.4.10. As such, the rebate claim was filed within one year from date of export. Government finds that date of filing of rebate claim to be computed from date of export i.e. date of sailing of ship as per provisions of Section 11B of Central Excise Act 1944. The factual position is to be verified and if applicant's claim is found correct then the rebate claim cannot be treated as time barred.

7.10 In respect of revision applications mentions at Sl.No.31,32,35,36,38 and 39, part the rebate claims were rejected for the reasons amongst other reasons that there is mismatch in description of goods between ARE-1, shipping bill and bill of lading. Government finds that the applicant is a manufacture exporter. While preparing ARE-1, the applicant was fully aware that goods required to be exported and export documents like shipping bill and bill of lading etc. are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description



between excise documents and export documents. Applicant as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation, which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible.

7.11 In respect of rebate claims covered vide revision application mentioned at Sl.No.(34) the rebate claims were rejected for non-submission of original/duplicate copies of AREs-1. In this regard, Government observes that Hon'ble High court of Bombay in its judgement dated 24.4.13 in the case of M/s U.M.Cables Vs. UOI (WP No.3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, in the light of principle laid down by Hon'ble High Court of Bombay in the said case, is of the view that original authority has to consider the input rebate claims on the basis of collateral evidences where original and duplicate ARE-1 form is not submitted. If export of duty paid goods is established and claim is otherwise found admissible, then rebate claims will not be rejected on grounds of non-submission of ARE-1.

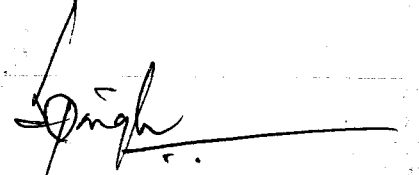
8. In view of above position, Government do not find any infirmity in the impugned orders-in-appeal mentioned at Sl.No.2,5,31,32,35,36,38,39 of the table in para (1) and therefore upholds the same. The revision applications at Sl.No.2,5,31,32,35,36,38,39 of table are therefore rejected being devoid of merits.

9. However, Government sets aside the impugned orders which are not mentioned in para.(8) above, only to the extent of above said disputed/rejected rebate claims and remands the cases to the original authority for deciding the cases afresh after conducting the necessary verification and also by taking into account the observations made in foregoing paras. The applicants are directed to submit all the relevant records

and their written clarification/reply before original authority. A reasonable opportunity of hearing will be afforded to the concerned parties before deciding the matter.

10. Revision applications are disposed off in above terms.

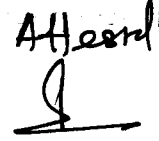
11. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Sanmar Foundaries Ltd.  
87/1, Vadugapatti Village  
Viralimalai  
Pudukottai District-621316



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

G.O.I. Order No. 103-141/14-Cx dated 31.03.2014

Copy to:-

1. The Commissioner of Central Excise, No.1, William Road, Cantonment, P.O.Box No.105, Tiruchirapalli-620001
2. The Commissioner of Central Excise (Appeals), No.1, William Road, Cantonment, Tiruchirapalli-620001
3. Assistant Commissioner of Central Excise, Karur Division, No.15, Gowripuram Extn, Annanagar, Karur-639002
4. Guard File.
5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)