

REGISTERED
SPEED POST



F.No. 195/270-272/2014—R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 5.7.1.1.8.

Order No. 11-13 / 2018 -CX dated 03-01-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional 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 Act, 1944 against the Order-in-Appeal No. 78-80/CE/DLH/2014 dated 08/05/2014 passed by Commissioner of Central Excise (Appeals), Delhi-I, Delhi.

Applicant : M/s. Honda Trading Corporation India Pvt. Ltd., Gurugram

Respondent : Commissioner of Central Excise, Gurugram

ORDER

Revision Applications Nos. 195/270-272/2014—R.A. dated 22/08/2014 are filed by M/s Honda Trading Corporation India Pvt. Ltd., Gurugram (hereinafter referred to as applicant) against orders-in-appeal no. 78-80/CE/DLH/2014 dated 08/05/2014, passed by Commissioner of Central Excise (Appeals), Delhi-I, Delhi.

2. The brief facts leading to the present proceeding are that the applicant, as Merchant Exporter, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT) dated 06/09/2004, for excise duty paid on the automobile parts exported out of India after submitting disclaimer-cum-no-objection certificates from their supplier-manufacturer, M/s Asti Electronics. The rebate claims were rejected by the jurisdictional Deputy Commissioner of Central Excise on the ground that the description of the goods mentioned in the ARE-1s and excise invoices (both prepared by M/s Asti Electronics) did not tally with the description mentioned on the shipping bills and commercial invoices (both prepared by M/s Honda Trading Corporation i.e. the applicants) and thus the goods mentioned therein were not co-relatable.

3. Personal hearing was granted on 13/11/2017 which was attended by Mrs. Raghav Khurana, Advocate, on behalf of the applicant who mainly

reiterated the grounds of revision already pleaded in the revision application. However, no one appeared for the respondent.

4. On examination of the revision application, Commissioner (Appeals)'s orders and all other relevant records in this case, it is absolutely clear that there is no dispute about the fact that the description of the goods as mentioned in the ARE-1 and excise invoices do not tally with the description of the shipping bill and commercial invoice as well as purchase orders placed by the applicant. Further it has also been observed by the Commissioner (Appeals) that not only the description of the goods in the ARE-1 and Tax Invoice is different from the description of the goods in the Commercial Invoice, even the country of destination in certain ARE-1s is different from the destinations shown in other documents and even the gross/net weight in some ARE-1s and Packing List also are different.

5. The applicant has advanced an argument that while the manufacturer has given engineering description of the goods in their documents (ARE-1s and excise invoices), the applicant has been provided commercial description of the goods in their documents namely commercial invoices and shipping bills. But no explanation has given as to how the manufacturer gave engineering description when the applicant had placed an order for different description of the goods and how the different descriptions given by the manufacturer were accepted at the time of purchasing the goods

by them. Above all, the applicant has not provided any basis to support their claim that the engineering and commercial description of the same goods is different. No authentic engineering or commercial source has been cited as per which the same goods can be described differently. Further, their above contention is contradicted by even other important facts also in as much as not only the descriptions of the goods are different in the documents issued by the manufacturers and the applicant, but even part numbers are also different for the goods mentioned in the documents of these two entities. The difference in the part numbers is very intriguing and crucial evidence in this case and it cannot be justified by any kind of argument as the part number at least cannot be different for commercial and engineering purposes. To support their claim the applicant has simply placed reliance on certificate of a chartered engineer dated 19/02/13 and a declaration of the manufacturer to the effect that the goods cleared by the manufacturer and the goods exported by the applicant are the same and the part numbers mentioned by the applicant for the exports are different from the part numbers mentioned on the same invoices of M/s Asti Electronics India Pvt. Ltd., the manufacturers; because the part numbers given by the applicant are commercial part numbers and those given by the manufacturer are the engineering part numbers. Thus the Chartered Engineer has given his certificate exactly on the lines of the above line argument taken by the applicant. But in this certificate

also the learned Chartered Engineer has not given any reason, not to speak of any cogent reason, as to how the part numbers of motor vehicle parts can be different from commercial and engineering point of view. Generally common auto parts like gear box, clutch plates or brake shoes, nuts and bolts, wheels, steering etc. are known by these names only both in engineering parlance as well as in the market. Moreover, numbering any part is simply a mathematical subject and even a layman can understand that mathematics doesn't differ in engineering and commercial areas. The date of the certificate also fully demonstrates that it is issued to the applicant only when the description of goods in different export documents was pointed out by the office of the jurisdictional deputy Commissioner of Central Excise. Above all, it is clearly mentioned in the certificate of the Chartered Engineer that it has been issued after inspection of similar parts with above part numbers being supplied by M/s Asti Electronics to the applicant for export purposes. From this observation of the Chartered Engineer in the certificate itself it is explicit that he has not examined the goods which are subject matter of consideration in this case and thereby there is no basis with him to say that the goods supplied by the manufacturer earlier were also the same as were exported by the applicant. Even the declaration/undertaking dated 14/02/2013 given by the manufacturer M/s Asti Electronics is almost a repetition of the Chartered Engineer's certificate and no explanation has been given as to why they gave

different description in this document in spite of the Purchase Order of the applicant was for different goods. No reason for even providing the different part numbers for the same goods has been submitted by the manufacturer. Apparently the above certificate and declaration are not based on facts and have been provided post-facto to help the applicant overcome the indefensible irregularities. By any yardstick the above two documents cannot be considered as substitute of the export documents issued initially by the manufacturer and the applicant. Their other argument that the exported goods were examined by the officers of the department at the time of export is also not found of any relevance in this context as the exported goods were never examined either by the central excise officers or by the customs officers as per Part A and Part B of the ARE-1s produced by the applicant

6. The first and the foremost condition specified at Para 2(a) of Notification No. 19/2004 is that the excisable goods must be exported after payment of duty and thereby it should be established that the goods exported are duty paid for which the exported goods should be clearly identifiable and correlated with the duty paid goods cleared from the factory. Since in this case the descriptions of the exported goods do not tally with the documents issued by the manufacturer, the Government is also convinced that the applicant has not discharged the onus to establish that they have exported the same goods which were cleared by the manufacturer under ARE-1s on

payment of duty for export thereof. CBEC has also clarified in its Circular No. 294/10/97-CX dated 30/01/97 that exporters have to submit a proof that the goods that have actually been exported are the same that were cleared on payment of duty from the factory and that has to be up to the satisfaction of the rebate sanctioning authority.

7. In the light of the above discussions, the government does not find any reason to interfere with the order of the Commissioner (Appeals) and the revision application is rejected.

(R. P. Sharma)
3-1-18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s Honda Trading Corporation India Pvt. Ltd.,
Plot No. 197, Sector-4, IMT Manesar,
Gurugram-122 050
G.O.I. Order No. 11 - 13 / 18-Cx dated 03-01-2018

Copy to:-

1. Commissioner of Central Excise, Delhi-III, Plot No.36-37, Sector-32, Gurgaon.
2. Commissioner of Central Excise (Appeals), Delhi-I, IP Estate, New Delhi.
3. Commissioner, Central Excise, Division-III, Gurgaon.
4. Shri-V. Lakshmikumar, Advocate, No. 5, Link road, Jangpura Extension, New Delhi-110014.
5. PA to AS(Revision Application)
6. Guard File

ATTESTED

(Debjit Banerjee)
Sr. Technical Officer (R.A.)