

SPEED POST



F.No. 195/166/2018-R.A.
195/202/2018-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... 25/5/21

Order No. 111-112/2021-CX dated 24-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional 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 Order-in-Appeal No. 382(SRM)/CE/JDR/2017 dated 28.03.2018 and 686(CRM)/CE/JDR/2018 dated 29.06.2018 passed by the Commissioner (Appeals), Customs & Central Tax, Noida.

Applicants : M/s. Dynamic Engineers, Kota

Respondent : Commissioner of CGST, Udaipur.

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ORDER

Two revision applications, bearing nos. 195/166/2018-RA dated 10.07.2018 and 195/202/2018-RA dated 03.10.2018, have been filed by M/s. Dynamic Engineers, Kota (hereinafter referred to as the Applicant) against Orders-in-Appeal Nos. 382(SRM)/CE/JDR/2017 dated 28.03.2018 and 686(CRM)/CE/JDR/2018 dated 29.06.2018, passed by the Commissioner (Appeals), CGST & Central Excise, Jodhpur, wherein the appeals filed by the Applicant against Orders-in-Original Nos. 336/R/2013 dated 18.10.2013 and 169/R/2014 dated 21.05.2014, passed by Assistant/Deputy Commissioner of Central Excise, Kota, have been rejected.

2. Briefly stated, the Applicants were engaged in the manufacture of Glued Insulated Rail Joints falling under CETH 85 of the First Schedule to the Central Excise Tariff Act, 1985 and availing exemption of Central Excise Duty under Notification No 8/2003-CE dated 01.03.2003. The Applicant filed input stage rebate claims of Rs. 15,39,562/- and Rs. 42,88,061/- for exported goods. The said rebate claims were rejected by the original authority mainly on the grounds that they had availed drawback on their exported goods and input-output ratio was not got approved from the jurisdictional Assistant Commissioner as stipulated in Notification No. 21/2004-CE (NT) dated 06.09.2004. Aggrieved, the Applicant filed appeals, which were rejected vide the impugned Orders-in-Appeal.

3. The revision applications have been filed on the grounds that:

- (i) As per Notification No. 92/2012-Cus (NT) dated 04.10.2012, both the rates of drawback in respect of CTH No. 85301010, i.e. drawback when CENVAT facility has been availed and when CENVAT facility has not been availed, are same (3.2%). This means that the drawback availed is of the Customs portion only and rebate in respect of Excise duty paid on the inputs is available.

- (ii) The input/output ratio was already approved in case of export of insulated joints of 45 Kg. The inputs required for manufacture of glued insulated joints of 45 Kg and 60 Kg are the same, except that the length of rail used for both types of joints is different.

Written submission F.No. IV(16)30/R/UDR/368/2018/8584 dated 05.10.2018 have been filed by the respondent department.

4. Personal Hearing in the case was held, in virtual mode, on 17.05.2021 and Sh. Kamaljeet Singh, Advocate appeared for the Applicants. He reiterated the contents of the instant revision applications. Upon being asked, Sh. Singh clarified that:

- (i) Input Output (IO) ratio was fixed for 'Glued Insulated Rail Joints 45E-1 Rails'. The ratio was same for the export goods, namely, 'Glued Insulated Rail Joints 60Kg', though IO ratio was not fixed separately for this item.
- (ii) Other items exported were bought from the market and exported as such. The rebate has been claimed of the duty paid by them on such items.
- (iii) Drawback has been claimed only of Customs portion.
- Sh. Kamaljeet Singh also submitted additional submissions dated 20.05.2021 via email to substantiate their claim. No one appeared for the respondent department. No request for adjournment has also been received. Therefore, the matter is being taken up for decision based on records.

5. The RA No. 195/166/2018-RA has been filed with a delay of 05 days. This delay has occurred as the RA was sent to the earlier office address. Delay is condoned.

6.1 The Government has carefully examined the matter.

6.2 Rule 2(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 defines "drawback" as under:-

- (a) *"drawback" in relation to any goods manufactured in India and exported, means the rebate of duty on tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods"*

6.3 Declaration appended to Notification No. 21/2004-CE (NT) dated 06.09.2004, which prescribes the procedure for rebate of duty on excisable goods used in the manufacturing/processing of export goods, reads as under:-

"Declaration:

- (a) *We hereby certify that we have not availed facility of CENVAT credit under CENVAT Credit Rules, 2002.*
- (b) *We hereby declare that the export is not in discharge of export obligation under a value based Advance Licence issued prior to 31.03.1995.*
- (c) *We hereby declare that the materials on which input stage rebate is claimed are not sought to be imported under a Quantity Based Advance Licence issued prior to 31.03.1995.*
- (d) *We further declare that we shall not claim any Drawback on export of the consignment covered under this application.*
- (e) *If we hereby declare that the above particulars are true and correctly stated.*

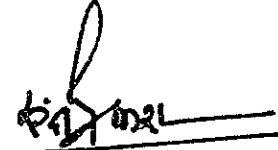
6.4 It is, thus, amply clear from the foregoing that drawback is given to compensate for the duty element suffered on the inputs used in the manufacture of export goods. The Applicant has already availed this facility and as such there is no room for a claim of rebate of the duty paid on inputs used in the manufacture of export goods as this will amount to double benefit being extended to the Applicant. The declaration in ARE-2 form also supports this fact that if rebate is sought vide Notification No. 21/2004-CE (NT) dated 06.09.2004, drawback cannot be claimed. Hence, if drawback has been claimed, the rebate is not admissible. It also appears that the Applicant intentionally deleted the word "not" from their declaration in ARE-2s to claim

drawback from the Customs Authorities. Thus, by deleting a requirement of the notification, the Applicants have rendered themselves ineligible to claim the benefits thereof.

6.5 As regards the fixation of IO ratio in respect of the goods exported, it is an admitted fact that this ratio was not fixed for the goods that were exported, which is a statutory condition for availment of benefits under Notification No. 21/2004-CE (NT) dated 06.09.2004.

6.6 Hence, on both the above counts, rebate under Rule 18 of Central Excise Rules, 2002 is not admissible to the Applicant and the impugned orders of the Commissioner (Appeals) do not merit any revision.

7. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

24.05.2021

M/s. Dynamic Engineers,
E-20, Chambal Industrial Area,
Opp. Multimetals, Kota- 324 003.

G.O.I. Order No. 111 -112/21-CX dated 24-5-2021

Copy to: -

1. The Commissioner of CGST, Udaipur.
2. The Commissioner (Appeals), CGST, Jodhpur.
3. Sh. Kamaljeet Singh, Advocate, Chamber No. 359, Delhi High Court, New Delhi-3.
4. P.S. to A.S. (Revision Application).
5. Guard File.

6. Spare copy.

ATTESTED

G. Bhatia
10/6/2021
(Gulshan Bhatia)
Superintendent