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**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, Cuff Parade,
Mumbai- 400 005

F.No. 195/793/13-RA | 138

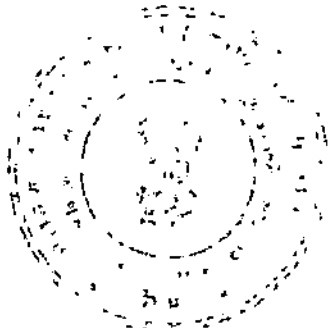
Date of Issue: 20.04.2018

ORDER NO. 131/2018-CX (WZ) /ASRA/Mumbai DATED 19.04.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Three Gee Engineers Pvt. Ltd.,
Plot No. A-476, Road No.26, Wagle Inds. Estate, MIDC,
Thane-400 604.

Respondent : Commissioner of Central Excise (Appeals), Mumbai-III,
Navi Mumbai-400614.

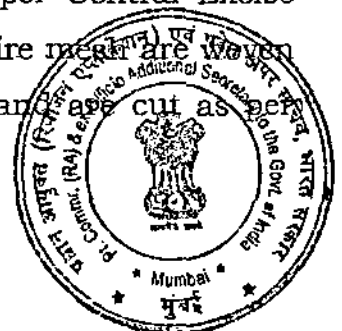
Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/46/M-III/2013-14 dated 30.04.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.



ORDER

This Revision Application is filed by M/S. THREE GEE ENGINEERS (P) LTD, (hereinafter referred to as 'the applicant) against the Order in Appeal bearing No. BC/46/M-III/2013-14 dated 30.04.2013 passed by Commissioner (Appeals) Central Excise, Mumbai - III) upholding the Order-in-Original No. R-S4/12-13 Dated 9/11/2012 passed by the Deputy Commissioner, Central Excise, Wagle Division - I, Mumbai - III.

2. The applicant are holders of Central Excise Registration and are engaged in Manufacture and Export of Central Excise goods SS Wire mesh Filter falling under Chapter sub heading 73262090 of the Central Excise Tariff Act, 1985. The applicant had filed two rebate claims totally amounting to Rs. 45,716/- under Rule 18 of the Central Excise Rules 2002 read with Notification No. 19/2004 CE (NT) dated 6.9.2004 for the goods exported. Show Cause Notice F. No. V/Rebate/18-35&36/12-13/1834 dated 24/9/2012 was issued to the applicant on the grounds that the chapter sub headings as mentioned in the Central Excise invoices did not tally with the chapter sub headings mentioned in the respective Shipping Bills and therefore it was apparent that the applicant had not exported the goods which were cleared for export vide the respective ARE1s and invoices. The applicant filed their reply at the time of personal hearing dated 23/10/2012. It was stated that they were manufacturing articles of iron & steel wire like wire mesh filter etc falling under Chapter heading 7326 and perforated sheets falling under Chapter heading 7301 and that they were exporting these products. The shipping bills were prepared by the Department of Customs and they had noticed the error and had submitted the original Shipping Bills to the Customs for rectification. The description of the goods i.e. SS wire mesh filter shown in the invoices and as shown in the Shipping Bills is the same. The Chapter heading 73262090 as per Central Excise Tariff Act (CETA) is articles of iron and steel wire. The wire mesh are woven through weaving machine from SS Wire as wire mesh and are cut as



required size of the customers. They also submitted samples of SS wire mesh filter that was exported alongwith the catalogue. The description of the goods shown in the Shipping Bills is SS wire mesh filter but the Chapter heading is shown as 84213990 which stands for Air purifier or cleaner. This is the only clerical error that had occurred.

3. The original adjudicating authority while deciding the Show Cause Notice F.No. V/Rebate/18-35&36/12-13/1834 dated 24/9/2012 vide Order in Original no. R-S4/12-13 dated 9.11.2012, had accepted that the goods were excisable and the claimant had cleared the goods for export. His only exception was that the description of the goods shown in the Shipping Bills was SS wire mesh filter under Chapter Sub heading 73262090 as per CETA but the Chapter Sub heading as shown was 84213990 which stood for Air purifier or cleaner. Further, one of the basic requirements of sanction of rebate was that it should be established beyond reasonable doubt that the captioned goods exported are the same as declared in the excise invoice and the said SB. In view of the same, he held that as the captioned goods said to be exported did not tally in description as per the Chapter heading as shown in the invoice and Shipping Bills, the claimant was not eligible for the rebate claim and therefore rejected the two rebate claims amounting to Rs. 45,716/-.

4. Aggrieved by the said Order in Original no. R-S4/12-13 dated 9.11.2012, the applicant filed appeal before the Commissioner (Appeals), Central Excise, Mumbai - III. Commissioner (Appeals) vide Order in Appeal No. BC/46/M-III/2013-14 dated 30.04.2013 observed that submission of proper documents is mandatory requirement for rebate claim; as the applicant are manufacturers exporters they were well aware of the provisions of the Central Excise Act and in other words they were the best judge of the classification of the goods manufactured and exported by them; therefore it was imperative on their part to ensure that chapter sub heading of the goods manufactured and exported by them and mentioned in the

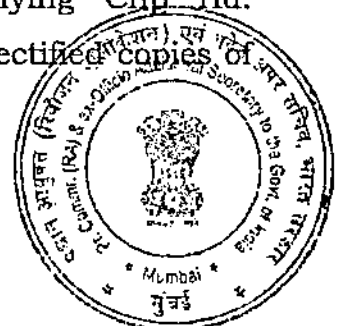


ARE1 / invoice tallies with the description of the same goods shown in the Shipping Bills; it amounts to not following the conditions itself and is violation of the mandatory requirements. Commissioner (Appeals) relied on the case of M/s. Steel Strips decided by the Larger Bench of the Tribunal and the case of Hari Chand Shri Gopal decided by the Apex Court to hold that mandatory requirements of exemption conditions must be obeyed or fulfilled exactly. He also observed that the applicant had not attended the personal hearings despite being given several opportunities nor had produced the corrected copy of the shipping bills as contended in their appeal. Accordingly, Commissioner (Appeals) rejected the appeal filed by the applicant.

5. Aggrieved by the aforesaid order of Commissioner Appeals, Central Excise Mumbai - III, the applicant filed the present Revision Application on the grounds that

5.1 the Appellate Authority has not appreciated the facts of the case on merits and erred in passing the impugned order. It needs to be appreciated that the description of the goods shown in the ARE1 and the invoice as well as the Shipping bills was SS wire mesh filter. There is no dispute on this count.

5.2 The said item actually falls under Chp Hd. 73262090 as per CETA. There is no dispute on this count also. The only dispute is about the Chp Hd shown in the Shipping Bills which was 84213990 which appears to be of typographical error. The Customs Department who prepare the Shipping bills have been informed of the said discrepancy vide letter dated 12/3/2013 and were requested to kindly rectify and correct the same. They have now received the corrected copies of the said shipping bills amended by the Supdt of Customs, rectifying Chp Hd. 73262090 in place of Chp Hd.84213990. The rectified copies of



the Shipping bills No. 8209991 and 8210006 both dated 27.3.2012 are submitted alongwith this revision application.

- 5.3 The case laws cited by the Commissioner (A) are different in nature and scope and cannot said to be applicable to the instant case under revision.

On the basis of aforesaid grounds the applicant prayed for setting aside the impugned Order in Appeal.

6. Personal hearing in the matter was held on 31.01.2018 which was attended by Shri Shirish Gharat and Shri Prashant Navalkar, Consultants, duly authorized by the applicant. They reiterated the submissions filed in Revision Application and written brief filed during the personal hearing. It was pleaded that since the Chapter heading in the Shipping Bills have been got corrected from Customs, Order in Appeal be set aside and Revision Application be allowed.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. Government observes that the only dispute in this case is regarding the Chapter Sub heading 73262090 (SS wire mesh) which was wrongly mentioned as 842139990 by the Customs in the Shipping Bills No. 8209991 and 8210006 both dtd. 27.03.2012.

8. Government notes that the only ground on which the department has rejected the rebate claim of the applicant is the afore stated discrepancy observed in the Chapter Sub Heading as mentioned on Central Excise Invoice No. 196/29.03.2012, 197/29.03.2012 and Shipping Bills No. 8209991 and 8210006 both dtd. 27.03.2012 respectively. Government also observes that the applicant had requested the Customs Authorities to rectify the error and necessary rectification has been carried out by the Customs Authorities and correct Chapter Sub heading No. 73262090 has been shown.



on the respective Shipping Bills, thereby removing any doubt that goods cleared for export vide respective ARE-1s/Invoices are the same goods exported under the relevant Shipping Bills. The copies of these corrected Shipping Bills are already on record and enclosed alongwith the present Revision Application at pages 17 to 26.

9. Government further observes that the applicant has submitted the following documents to the rebate sanctioning authority along with his claims:

1. Original and duplicate copies of ARE-1 duly endorsed by the Customs officials, certifying that the goods have been exported;
2. Triplicate copy of ARE-1s duly endorsed by the Supdt in-charge of the manufacturing unit for payment particulars.
3. Excise Invoices under which the export goods were removed from the factory of manufacturer,
4. Self attested copies of the relevant Shipping Bills /Bills of Lading and Airway Bill
5. Copy of relevant extract of RG 23 A Pt.II showing duty debit particulars in respect of each consignment.

10. In view of the fact that the Customs have rectified the relevant Shipping Bills and that the export of goods or the payment of duty at the time of clearance or receipt of remittances is not in doubt, the substantive benefit of rebate cannot be denied merely on the basis of minor technical infraction. Therefore, Government remands the matter back to the original adjudicating authority for verification of the rebate claims with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the applicant. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.



11. In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. BC/46/M-III/2013-14 dated 30.04.2013.

12. The revision application is disposed off in terms of above.

13. So ordered.

(Signature)
19.04.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. [3] /2018-CX (WZ) /ASRA/Mumbai DATED 19.04.2018.

To,
M/s. Three Gee Engineers Pvt. Ltd.,
Plot No. A-476, Road No.26,
Wagle Inds. Estate, MIDC,
Thane-400 604

True Copy Attested

(Signature)

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of GST & CX, Thane Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Thane. 12thFloor, Lotus Info Centre, Near Parel Station (East), Mumbai - 400 012.
3. Deputy Commissioner Division - VI of CGST, Thane, Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

