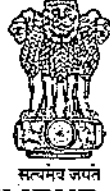


REGISTERED
SPEED POST



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. 195/740-741/13-RA / 403

Date of Issue: 01.02.2022

132-133
ORDER NO. /2022-CX(WZ)/ASRA/MUMBAI DATED 25.01.2022
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. Gujarat NRE Coke Limited

Respondent: Commissioner of Customs and Central Excise, Rajkot.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 175 to 176/2013
(Raj)CE/AK/Commr(A)/Ahd dated 04.04.2013 passed by the
Commissioner(Appeals-I), Central Excise, Rajkot.

ORDER

Two Revision Applications under F. No. 195/740-741/13-RA have been filed against Order-in-Appeal No. 175 to 176/2013(Raj)CE /AK/Commr(A)/Ahd dated 04.04.2013 passed by the Commissioner (Appeals-I), Central Excise, Rajkot as detailed hereunder:

S. No.	Applicant	Order-in-Original No./date	Amount of Rebate claimed	Amount of Claim rejected
1	Gujarat NRE Coke Limited Village: Dharampur, Taluka: Jamkhambhaliya, Dist. Jamnagar. Gujarat	AC/JAM/R-332 /2012-13 dated 30.08.2012	Rs.2,02,06,118/-	Rs.5,78,698/-
2	Gujarat NRE Coke Limited Village : Lunva, Taluka: Bhachau, Kutch, Gujarat	515/2012-13 dated 11.09.2012	Rs.1,57,79,625/-	Rs.3,52,491/-

2. Brief facts of the case are that the Applicant had filed two rebate claims as mentioned at s.no.1 & 2 above, claiming rebate of the Central Excise duties paid on export of excisable goods, Metallurgical Coke (CETSH 27031000), manufactured by them. The rebate sanctioning authority observed that as per the shipping bills, the quantity of exported goods was lesser than total quantity of Metallurgical coke cleared under various AREIs and Central Excise invoices from the factory as detailed below:

Order-in-Original No./date	Quantity cleared from factory in MTs	Export quantity as per Shipping bill in MTs	Quantity Short Shipped in MTs.
AC/JAM/R-332/2012-13 dated 30.08.2012	20825.435	20229.000	596.43
515/2012-13 dated 11.09.2012	16260.080	15900.000	360.080
Total	37085.515	36129.000	956.515

As there was a short shipment of 956.515 MTs, the rebate sanctioning authority restricted the rebate claim to actual 36129.000 MTs quantity of coke exported as against 37085.515 MTs quantity of coke cleared from the factory gate. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) rejected the appeal and upheld the order of rebate sanctioning authority.

3. Hence, the Applicant filed the impugned Revision Applications mainly on the grounds that:

i the observation of the Commissioner (Appeal) that the applicant had not been able to produce any concrete documentary evidence to prove his claim was given in spite of the fact that the applicant had produced various certificates of a Survey Agency, M/s. Stewart Surveyors & Assayers Pvt. Limited, having international repute that was responsible for the supervision, handling, quality and analysis of the cargo. The legality of such certificates as issued by the Survey Agency can be assessed from the following points:

a. The Survey Agency had conducted the draught survey of the whole vessel and based on which report, the EP copy of the shipping bill was finalized by the proper officer of the customs. The Customs officer relied on the certificate and various assessment were completed on the basis of such certificates.

b. On the basis of the certificate as issued by the Agency, the master of vessel issued the mate receipt in respect of exported goods.

c. On the basis of the Certificate issued by the Survey Agency, the applicant had issued Commercial invoice and after giving effect to excessive moisture content, the final value of the commercial invoice was determined and on the basis of the said Commercial invoice, FEMA compliance was effected under Foreign Exchange Management Act, 1999.

d. The certificate as issued by the survey agency is also acceptable in the international trades of the product. The agency given certificate almost whole consignment as exported from Kandla and Mundra Port.

ii it is settled legal position that the losses due to natural causes are considered and even excise duties are not levied in the Central Excise Act. Further the spirit of cases as cited before the Hon'ble Commissioner (Appeal) is really identical to the present case. However, he distinguished

the case laws and stated that the cases are not related to the rebate claim.

- a. in the case of BPL Display Devices Ltd reported ta 2004(174) ELT 5 (SC), the supreme court held that there cannot be denial of exemption if the inputs were imported for use in the manufacture of specified goods, shortage/ leakage/damage for such inputs during transit the exemption is not deniable. Therefore the spirit is that the exemption should not be denial on the ground that the imported goods are not used in the manufacture. The court held that the transportation losses are natural therefore the exemption must be granted to the assessee. Similarly, in the present case of appellant, since the losses are natural losses therefore the exemption as contained in the notification 19/20004-CE(NT) readwith rule 18 of the Central Excise Rules, 2002 should be available even on the goods losses due to natural causes
- b. In the case of M/s. Indian Metals & Ferro Alloys Ltd Vs CCE. C. & ST, Bhubaneswar-I reported at 2010 (249) ELT 548 (Tri - Kolkata) wherein the Tribunal Kolkata had fully relied on the said decision and set aside the demand and held that as no allegation was made that the impugned Coke diverted for other purpose, therefore the ratio of the decision of Supreme Court is fully applicable and therefore the appeal of the Assessee was allowed. This case is also related to the product COKE and the tribunal even considered the matter and observed that there shall be 5% loss due to moisture and transportation therefore the losses are considered and full exemption was granted to the assessee.
- c. In the case of CCE, Chennai vs Bhuwalka steel Industries Limited reported at 2010 (249) E.L.T. 218 (Tri. - LB) the larger bench of Tribunal held that as the differences in the weight of input is ignorable as per tolerance limit therefore the CENVAT

Credit are allowed full and not proportionate. Tolerance for hygroscopic, volatile and such other cargo to be allowed as per industry norms excluding unreasonable or exorbitant claims. No hard and fast rule can be laid down for dealing with different kinds of shortages. Therefore sir, similarly in our case, the appellant had claim that the appx 3% loss in weight is only due to the natural losses i.e. moisture loss and transportation loss and the fact is also certified by the Survey Agency having international repute therefore the restriction of the rebate claim is also not justified in view of the rpesnet cases

- d. In the case of M/S ROSHANLAL LALIT MOHAN vs CCE Delhi 111 reported at 2009 (238) E. L. T. 661 (Tri. - Del.), the Tribunal denied the remission of duty on the quantity losses due to moisture loss. The tribunal held that Variation in weight due to weather condition cannot result in loss or gain in quantum of goods. Further it held that Remission of duty under Section 23 of Customs Act, 1962 not granted on loss being that of organic extraneous matter and not of 'goods'. Similarly in our case, since the loss in weight is due to the natural causes therefore the exemption must be granted to the assessee in respect of goods lost due to natural causes.

In the light of the above submissions, the applicant prayed to set aside the impugned order with consequential relief.

4. Several personal hearing opportunities were given to the applicant viz. on 26.03.2018, 03.10.2019, 03.12.2019, 09.02.2021, 18.03.2021, and 15.07.2021. However, the applicant did not attend on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given, the matter is therefore taken up for decision based on available records.

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

6. Government observes that the matter in hand can be summarized as follows:

- i. The applicant holds central excise registration No. AABCG6225HEM002 at Jamnagar and AABCG6225HEM003 at Kutch for manufacturing excisable goods 'Metallurgical Coke' falling under Chapter Heading 27031000 of Central Excise Tariff Act, 1985.
- ii. They carried out exports of 'Metallurgical Coke' from Kutch (16260.08 MT) and Jamnagar (20825.435 MT) on 21.04.2012 and 23.05.2012 under claim of rebate.
- iii. The rebate sanctioning authority observed that the quantity of exported goods was lesser than total quantity shown to have been cleared from the factory and hence issued show cause notices.
- iv. The applicant explained that 'Metallurgical Coke' is hygroscopic in nature and always has moisture in it. For exporting 37085.515 MT, they had to first accumulate the goods at the port and then shift it to foreign going vessels. This activity took around 3-4 weeks time. As the goods were kept in open in summer (April-May), the weight of consignment got reduced by around 3% due to vaporization of moisture.
- v. Further, the consignment was transported in trucks and around 3000 trips took place in 16-17 days. Due to which handling losses occurred.

vi. As it was an international supply, the applicant had to measure the moisture content of the consignment through a known survey agency. This task was carried out by M/s. Stewart Surveyor & Assayers Pvt. Ltd. The reports of this survey agency in regard to moisture content were submitted with the Department.

vii. The original adjudicating authority observed that *'I find that the claimant has produced copy of invoice(s), ARE—I (s) under which the export goods have been cleared from the factory. On perusal of invoices/ there does not appear any evidence to the effect of test result and moisture content of goods in question. These documents are very vital and crucial for deciding the claim, as these are the statutory documents in terms of sanctioning rebate claim as per Rule 18 of the CER, 2002 read with relevant Notification. There does not appear any provision to sanction claim beyond the quantity that actually have been exported.'*

'The claimant has submitted various other documents and reasons for likely losses, however, all these documents are only supportive documents and cannot take place the requirement of statutory documents. Therefore, it cannot be established as to what moisture content was there in the goods.'

The adjudicating authority therefore proportionately rejected the claim.

viii. The Appellate authority did not find any infirmity in the impugned Orders-in-Original and upheld them while dismissing the appeal.

7. Government observes that the Applicant had produced certain survey reports of goods at the port. These reports ascertain parameters at the time of loading at port. There is no dispute regarding quantity actually exported. However, the applicant has not produced any report regarding moisture content etc. at the factory. Therefore, their claim of loss due to moisture is not supported by any evidence. They could not produce any evidence to the satisfaction of authorities to substantiate reasoning for difference in quantity of goods cleared from factory vis-à-vis quantity of goods exported.

8. Applicant has mentioned several judgments in support of their contention. It is seen that same judgments were produced before Commissioner (Appeals) as well. The Commissioner (Appeals) in his order vide para 9 discussed all these judgments. The said para 9 is reproduced hereunder:

9. The appellant has also relied upon certain decisions of the higher appellate forums.

- a) BPL Display Devices Ltd, reported at 2004 (174) ELT 5 (SC): This case relates to shortage of goods and denial of exemption at the time of importation. I find that the facts mentioned in the above decision are quite different than the fact of the present case. Therefore, the same cannot be made applicable to present case.*
- b) M/s. Indian Metals & Ferro Alloys Ltd. Vs. CCE. C. & ST, Bhubaneshwar-I reported at 2010 (249) ELT 548 (Tri.-Kolkata): This case relates to demand of duty for shortage of goods. The demand was set aside on the premises that there was no allegation regarding diversion of goods for other purpose. I find that this decision is not squarely applicable as there is no demand but the same is relating to rebate of duty on export.*
- c) CCE Chennai Vs. Bhuwalka Steel Industries Ltd, reported at 2010 (249) ELT 218 (Tri.-LB): This case was for allowance of cenvat credit as per Rule 3 of Cenvat Credit 'Rules, 2004. This case is not squarely applicable looking to the facts of the case on hand.*
- d) Roshanlal Lalit Mohan Vs. CCE Delhi-III reported at 2009 (238) ELT 661 (Tri.-Del.): In this case the remission of duty was denied for losses in respect of imported goods adulterated not permitting to be cleared. Therefore the ratio of this case is not applicable with the present case.*

9. In view of the findings recorded above, Government finds no reason to annul or modify the impugned Order-in-Appeal No. 175 to 176/2013(Raj)CE/AK/Commr(A)/Ahd dated 04.04.2013 passed by the

Commissioner(Appeals-I), Central Excise, Rajkot and rejects the Revision Application filed by the Applicant.

10. The Revision Application is disposed of on the above terms.

Shrawan
25/1/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 132-133 /2022-CX (WZ)/ASRA/Mumbai dated 25.01.2022

To,
M/s. Gujarat NRE Coke Limited,
Village: Dharampur, Taluka: Jamkhambhalia,
District - Jamnagar, Gujarat - 361 170

Copy to:

1. Pr. Commissioner of CGST,
Central GST Bhavan,
Race Course Rd,
Rajkot, Gujarat 360 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.