



REGISTERED
SPEED POST

F.No. 195/169/11-RA
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.. 20/2/13

ORDER NO. 139 /13-Cx DATED 20.02.2013 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 Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
302/2010-CE dated 15.11.10 passed by Commissioner Of
Central Excise (Appeal-I), Bangalore.

APPLICANT : M/s Kar Mobiles Limited, Tumkur

RESPONDENT : Commissioner of Central Excise, Bangalore-II
Commissionerate

ORDER

This revision application is filed by the applicant M/s Car Mobiles Limited, Timkur against the orders-in-appeal No.302/2010-CE dated 15.11.10 passed by the Commissioner of Central Excise (Appeals-I), Bangalore with respect to order-in-original No. 15/2009 dated 28.04.09 passed by Assistant Commissioner of Central Excise 'A' Division, Bangalore-II Commissionerate.

2. Brief facts of the case are that the applicants have filed a rebate claim for Rs.7915352/- being rebate of Central Excise duty paid on goods exported out of India. The applicants have exported goods manufactured by them to their customers in Germany, UK and USA under DEPB scheme on payment of excise duty. The Range Officer has verified and certified that the duty has been paid by the assessee in respect of the invoices involved in the ARE-1s on which the rebate has been claimed and further certified that the valuation is as per Section 4 of Central Excise Act 1944 and certified that no other expenses, such as miscellaneous expenses at the port has been included. After due process of law the adjudicating authority held the rebate admissible.

3. The said order was reviewed by the Commissioner of Central Excise Bangalore-II and an appeal was filed before Commissioner (Appeals) on the grounds that there is no mention by the rebate sanctioning authority that Section 4 value has been correctly arrived at and duty correctly paid thereon. Only the Range officer has quoted as having certified the value in invoice and in the ARE-1 is as per Section 4 of Central Excise Act, 1944 it is not known whether the ARE-1 value has been arrived at after deduction of the Freight, insurance and handling charges etc. from the contract price will result in FOB price which is Section 14 value under the Customs Act and has been taken as Rs.5,49,42,609/- for the shipment instead of Section 4 value. Further department alleged that Original authority seems to have relied only on the verification of Range officer without mentioning in his findings about type of shipping bill filed, as to whether it is free shipping bill, Draw back shipping bill

or the shipping bill under any other Scheme. The Commissioner (Appeals) set aside the impugned order-in-original and allowed the appeal of the department.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Applicant submits that prima facie from the grounds of appeals filed by the department before the Commissioner (Appeals) it is evident that there is no dispute perse with reference to the fact that all the goods covered under the ARE-1 indicated in the order have been duly exported and appropriate duty of excise was discharged by the applicant at the time of removal.

4.2 The applicant submits that precisely the issue involved in the appeal is regarding adopting the Assessable value in terms of Section 4 of the Central Excise Act 1944. The contention of the Commissioner is only that the range officer has verified the ARE-1 and the assessable value and given a verification report on the basis of which the Assistant Commissioner has granted the rebate, without giving his individual findings on verification.

4.3 The applicant submits that they have adopted the FOB price indicated in the shipping Bills after deducting insurance and freight from the total price, and the said price represents the FOB value arrived at by the Department and the rebate sanctioned by the authority is in accordance with the provisions of law. Assuming that any amount is still deductible from the assessable value, the effect would be that to that extent the rebate has to be sanctioned in the form of credit to cenvat account and to that extent the applicant is required to re pay the rebate received in cash from the department along with interest. In any case

the total amount of rebate to be sanctioned would remain same and only the amount to be sanctioned in cash and in the form of credit to cenvat account would vary. In any case there cannot be any reduction in amount of rebate to be sanctioned. The rebate of duty is totally eligible as clear from the grounds of appeal and the impugned order.

4.4 In view of the above it is submitted the commissioner appeals ought to have considered the merit, and called for a verification report from the Department if required and ordered the amounts to be sanctioned in cash or in the form of credit to cenvat account. Instead the Commissioner has allowed the appeal filed by the department without giving any logical conclusions in the order which has put the applicant in great difficulty. The Assistant Commissioner based on the FOB value indicated in the shipping bill and is in order. However if the review authority finds that it is necessary to cause proper verifications, the authority may please remand the case to the Assistant Commissioner for needful action.

5. Personal hearing scheduled in the case on 13.12.12. Shri A.P.Ravi, Advocate and Shri Prasad V.S.G, Asstt. Manager appeared on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records Government observes that the adjudicating authority sanctioned the rebate on the basis of endorsement of customs officers on ARE-1 and Shipping Bills and verification report submitted by the Range Officer. He restricted the rebate on the FOB Value or ARE value whichever was less. Commissioner (Appeals) observing that the rebate claim was sanctioned without detailed verification of ARE-1 to arrive at proper

valuation, allowed the appeal of the department. Now the applicants have filed this revision application on the grounds as stated at para (4) above.

8. Government observes that the relevant statutory provisions for determination of value of excisable goods are as under:-

8.1 As per section 4(1) (a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall.

(a) In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b) In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

8.2 The word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows:

" 'Sale' and 'Purchase' with their grammatical variations and cognate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

8.3 Place of Removal has been defined under Section 4(3)(c) (i),(ii), (iii) as:

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

- (iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

8.4 The rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) rules, 2000 is also relevant which is reproduced below:-

"Rule 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. - "Cost of transportation" includes -

- (i) The actual cost of transportation; and
(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

8.5 Further, CBEC vide its (Section) 37B order 59/1/2003-CX dated 03-03-2003 has clarified as under:-

"7. 'Assessable value' is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [section 4(4)(b), sub-clauses (i),(ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal"

was amended with effect from 1-7-2000, the point of determination of the assessable value under section 4 remained substantially the same. Section 4(3) (c) (i) [as on 1-7-2000] was identical to the earlier provision contained in section 4(4)(b)(i), section 4 (3)(c)(ii) was identical to the earlier provision in section 4(4)(b)(ii) and rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale".

8.6 In this regard, the Government observes that w.e.f. 1.7.2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act. Though the CBEC circular 203/37/96-Cx dated 26.4.96 was issued when transaction value concept was not introduced yet the said circular clearly states that AR4 value of excisable goods should be determined under section 4 of Central Excise Act, 1944 which is required to be mentioned on the Central Excise invoices. Even now the ARE-1 value is to be the value of excisable goods determined under section 4 of Central Excise Act, 1944 i.e. the transaction value as defined in section 4(3)(d) of Central Excise Act. CBEC has further reiterated in its subsequent circular No.510/06/2000-Cx dated 3.2.2000 that as clarified in circular dated 26.4.96 the AR4 value is to be determined under section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of rule 12 and 13 of Central Excise Rules. The AR4 and rule 12/13 are now replaced by ARE-1 and rule 18/19 of Central Excise Rules, 2002. It has been stipulated in the notification No.19/04-CE(NT) dated 6.9.04 and the CBEC circular No.510/06/2000-Cx dated 3.2.2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provision of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a

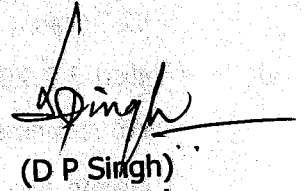
voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI has decided as under:

"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

9. Government notes that in the instant case, Department has not determined the place of removal (point of sale) in this case. Therefore the factual details regarding place of removal are required to be verified to determine the transaction value under section 4(i)(a) of Central Excise Act, 1944. Under such circumstances, Government sets aside the impugned order and remands the cases back to the original authority to decide afresh in light of above discussion and by conducting the requisite verification as stated above. A reasonable opportunity of hearing is to be provided to the Respondents before deciding the same.

10. Revision application is disposed of in terms of above.

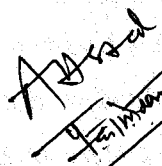
11. So ordered.



(D P Singh)

Joint Secretary (Revision Application)

M/s Kar Mobiles Limited,
Plot No.36B and 37
Hirehalli Industrial Area
Tumkur-572168


K. R. रामेश्वराराम / K. RAMESHWARAM
जि.स. कार्यालय, अति. / OSD-II (RA)
जि.स. कार्यालय, (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 139 /2013-Cx dated 20.02.2013

Copy to :

1. Commissioner of Central Excise, Bangalore-II, C.R. Building, Queen's Road, Bangalore - 560 001.
2. Commissioner of Central Excise (Appeals-I), Central Excise, 16/1, 5th Floor, S P Complex, Lalbaug Road, Bangalore-560 027.
3. The Assistant Commissioner of Central Excise, Devangere A-Division, No,131, Bhagwan Mahaveer Road, Bangalore-560001
4. Shri A.P.Ravi, Advocate, Swamy Associates, G-8, Fortune Icon Apartment, Sahakara Nagar, Bangalore - 560 092.
5. ~~PA to JS (RA)~~
6. Guard File
7. Spare copy

ATTESTED



(P. K. Rameshwaram)
OSD (Revision Application)

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

The second part of the document outlines the specific procedures for recording transactions. It details the steps involved in the accounting cycle, from identifying the transaction to posting it to the ledger and finally preparing financial statements.

The third part of the document discusses the role of internal controls in ensuring the accuracy and reliability of financial information. It highlights the importance of segregation of duties, authorization, and independent verification.

Date	Description	Debit	Credit
1/1/20	Balance forward		100.00
1/5/20	Revenue	50.00	
1/10/20	Expenses	20.00	
1/15/20	Revenue	30.00	
1/20/20	Expenses	10.00	
1/25/20	Revenue	40.00	
1/30/20	Expenses	15.00	
2/1/20	Balance forward		170.00