

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

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F. NO. 195/273/13-RA/4584

Date of Issue: 10/10/19

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ORDER NO. 15/2019-CX (SZ) /ASRA/MUMBAI DATED 27-08-2019  
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

**Applicant :** M/s. M.M. Forgings Ltd.,  
Plant No. 2, Erasanayakanpatti,  
Virimalai - 621 316

**Respondent :** Commissioner, CGST, No. 1 Williams Road, Cantonment,  
Trichy - 620 001.

**Subject :** Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
316/2012 dated 19.11.2012 passed by the Commissioner  
of Customs & Central Excise ( Appeals) Trichirapalli 620  
001.

**ORDER**

This revision application is filed by M/s. M. M. Forgings Ltd., (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 316/2012 dated 19.11.2012 passed by the Commissioner of Customs & Central Excise ( Appeals) Trichirapalli 620 001.

2. The facts of the case, in brief are that the Applicant had filed a 76 rebate claims amounting to Rs. 48,37,938/-(Rupees Forty eight lacs Thirty seven Thousand Nine hundred and Thirty eight only) on 08.05.2012 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended in respect of duty paid on exported goods under ARE-1s. Among others, the lower adjudicating authority rejected the rebate amount in respect of four ARE-1s nos. 476, 477, 482 & 483 indicating discrepancies regarding the vessels name which did not tally with the Bill of Lading.

3. Aggrieved by this order the applicant filed appeal before the Commissioner (Appeals). The Commissioner ( Appeals) in his findings noted that as the vessel name mentioned in the Shipping Bill and the Bill of Lading the order of the lower authority does not warrant any interference and rejected the Appeal.

4. Being aggrieved and dissatisfied with the impugned orders-in-appeal, the applicant has filed this Revision Application inter alia on the following grounds;

4.1 The applicant submits that the order of the lower appellate authority is totally perverse and not in conformity with the Central Excise Act and Rules framed therein.

4.2 The Revision Applicant submits that they rectified the discrepancies noted by the department and the correct name of the vessel ie. "St. John Glory V-75" was informed to the department.

4.3 The wrong mention of the vessel name in the Bill of Lading is only a clerical mistake on the part of the Shipping Agent.

4.4 Since the Bill of Lading can only be corrected by the Steamer Agent/Container Agent and the name in the ARE-1 and Shipping Bill was correctly mentioned there was no need for any endorsement by the Customs Officer.

4.5 The applicants submit that, the discrepancies pointed out are adequately explained by the Applicants and hence these minor lapses should have been condoned.

4.6 Without prejudice to the above the Applicant submits that the duty paid nature of the export goods and the fact of their being exported are ascertained by the following documents viz., Shipping bill, Bill of lading, Bank realization certificate and can be very much correlated with the export goods to prove that the goods sent under the said ARE Is were ultimately exported. The respondent rejected the claim because he had not given due importance to the two basic facts ie, duty paid nature of the goods and the fact of they being exported.

4.7 The goods were actually exported to the place it was destined earlier as mentioned in the shipping bill and Bill of Lading. The typing of wrong vessel name in the Bill of Lading is a clerical mistake and there being no dispute with regard to the actual export of the goods, omission ought to have been condoned by the respondent.

4.8 The Applicant submits that in the case of In Re: Omsons Cookware Pvt. Ltd. Reported in 2011 (268) E.L.T. 111 (GOI) has held in Para 14..... *restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches.* In the Union of India vs A. V. Narasimhalu. 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed *the administrative authorities should instead of relying on technicalities, act in manner consistent with the broader concept of justice.* Similar observation was

made by the Apex Court in the *Formica India v. Collector of Central Excise*, 1995 (T E.L.T. 511 (S.C.) in observing that *once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed*".

4.10 The Applicants submit that as per the settled legal position substantial benefits cannot be denied because of procedural infractions. In relying on the case of *M/s Mangalore Chemicals and Fertilizers Ltd. v. DCCE* - 1991 (55) E.L.T. 437 (S.C.). In fact, it is now trite law that the procedural infractions of notifications/circulars should be condoned if exports have really taken place and the law is settled that substantive benefit cannot be denied for procedural lapses.

4.11 The Applicants prayed that the Hon'ble Revision Authority may be pleased to quash and set aside the impugned order in Appeal and consequently the order of the original authority with consequential relief and thus render justice.

5. A personal hearing in the case was held on 21.08.2019. The Applicants submitted that the rebate was denied due to minor discrepancies in the documents. The export of goods is not disputed and submitted case laws in favour of their case.

6. 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.

7. Government observes that rebate claim filed under four ARE-1s Nos. 476, 477, 482 & 483 was rejected by the Commissioner (Appeals) as the name of the vessel mentioned in the Shipping bill did not match with the vessel name in the Bill of Lading.

8. The Government notes that the brief facts of the case in the order of the lower authority clearly mentions the Applicants rebate claim was sent to the Range officer at Viralimai for verification and the Range officer has reported the authenticity of the duty payment in respect of the goods exported. The Range officer has also certified that the claim is in order and that no dues are pending realization from the Applicant and the rebate claim can be sanctioned. Thus, it can be safely assumed that the goods were duty paid. The Government also notes that the lower authorities do not dispute the fact of export of the goods and the export, therefore is not in doubt. The only reason for dis allowing the rebate claim appears to be that the name of the vessel does not tally with the one mentioned in the Bill of Lading.

9. Government observes that the Bill of Lading is issued by the carrier, or in the case of sea freight, by an Ocean carrier/ Steamer Agent/ Container Agent, who provides international transportation of goods. Under the circumstances the Bill of Lading can only be corrected by the Steamer Agent issuing the Bill of Lading. In addressing the issue the Revision Applicant has submitted that the said error was a clerical mistake on the part of the Steamer Agent/ Container Agent. On being informed they have taken up the matter with the Steamer Agent/ Container Agent and the Bill of Lading has been amended with the correct vessel name. Further, the observations in the Order in Original, requiring the amendment to be endorsed by the Customs Officer is unnecessary as the issuing authority have themselves amended the Bill of Lading.

10. Government observes that while deciding a similar issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed that "*.....it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which*

*were exported and that the goods which were exported were of a duty paid character. ....”*

11. Government finds that the rationale of aforesaid two Hon'ble High Court judgments, are squarely applicable to the instant case in so much as the original ARE-1s have been produced, albeit with a minor discrepancy of the name of the vessel. Further, In the case of *M/s Suksha International v. UOI*, 1989 (39) E.L.T. 503 (S.C.) relied upon by the Applicant, the Hon'ble Supreme Court has observed that *an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other*. The Government also relies on the judgement of the Apex court, relied upon by the Applicant, in the case of *Mangalore Chemicals and Fertilizers Ltd. v. DCCE* - 1991 (55) E.L.T. 437 (S.C.). Hon'ble Supreme Court while drawing a distinction between a procedural condition of technical nature and a substantive condition in interpreting statute observed that *“ procedural lapses of technical nature can be condoned so that substantive benefit is not denied for mere procedural infractions*.

12. Government further observes that the Applicant has submitted all the required documents along with these claims viz., Original copy of ARE-1, Invoice issued under Rule II, Self-attested copy of Shipping Bills, Self-attested copy of Bill of Lading, Disclaimer Certificate (in case when claimant is other than exporter) to the rebate sanctioning authority. Having done so, the department instead of dwelling on technical discrepancies, which being beyond the control of the Applicants, needs to ascertain whether the exports have genuinely taken place and the goods are of duty paid nature. As long as the factum of export is not in doubt rebate being a beneficial scheme, the same should not be denied.

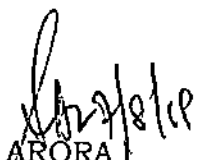
13. In view of the above, Government holds that ends of justice will be met if the impugned issue in respect of the four impugned ARE-1s are remanded back to the original adjudicating authority for the limited purpose of

verification of the claim with directions that he shall reconsider the claim for rebate on the basis of the aforesaid documents submitted by the applicant in the correct perspective and assess the claim after satisfying itself in regard to the authenticity of those documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. Government remands the case to the original adjudicating authority as ordered supra.

15. The revision application is disposed off in the above terms.

16. So ordered.

  
( SEEMA ARORA )  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 15 /2019-CX (SZ) /ASRA/Mumbai

DATED 27.08.2019

To,

M/s. M.M. Forgings Ltd.,  
Plant No. 2, Erasanayakanpatti,  
Virimalai - 621 316

Copy to:

1. Commissioner, CGST, No. 1 Williams Road, Cantonment, Trichy - 620 001.
2. The Commissioner of CGST & CX, (Appeals), No. 1 Williams Road, Cantonment, Trichy - 620 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.