

195/874/13-RA

SPEED POST
REGISTERED 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, Cuff Parade,
Mumbai- 400 005

F NO. 195/874/13-RA/2719

Date of Issue: ~~03.2021~~
12.04.2021

ORDER NO. 164/2021-CX (SZ) /ASRA/MUMBA IDATED 31.03.2021 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, RINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

Applicant : M/s Elgi Rubber Company,
2000, Trichy Road,
Singanallur, Coimbatore – 641 005.

Respondent : The Commissioner of Central Excise, Coimbatore.

Subject : Revision Applications filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No.CMB-CEX-000-
APP-245-13 dated 07.08.2013 passed by the Commissioner of
Central Excise (Appeals), Coimbatore.



ORDER

This revision application is filed by M/s Elgi Rubber Company, 2000, Trichy Road, Singanallur, Coimbatore - 641 005 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-245-13 dated 07.08.2013 passed by the Commissioner of Central Excise (Appeals), Coimbatore upholding the Order-in-Original No.02/2013 dated 29.04.2013 passed by the Assistant Commissioner of Central Excise, Pollachi Division, Coimbatore.

2. The issue in brief is that the applicant had filed a rebate claim for Rs. 2,19,376/- (Rupees Two Lakhs Nineteen Thousand Three Hundred Seventy Six Only) for export of excisable goods viz. Tyre Retreading Machinery Parts falling under Chapter 84 of 1st Schedule to Central Excise Tariff Act, 1985 exported them as Merchant Exporters vide ARE-1 No. 12 & 13 both dated 30.09.2011. The impugned goods exported were manufactured by M/s Titan Tyrecare Products Limited from their Factory Premises situated at Mettupalayam Village, Kovilpalayam, Coimbatore- 642 110 on payment of Central Excise Duty. On scrutiny of the rebate claims, the Rebate Sanctioning Authority observed that in respect of ARE-1 No.12, the manufacturer along with their own manufactured items have cleared some bought out items also. The duty involved in such bought out items was Rs. 1,67,073/- and the duty involved in the manufactured items was Rs. 52,303/-. As such the rebate to the extent of Rs. 52,303/- was sanctioned to the applicant vide Order in Original No. 111/2012 dated 27.03.2012 and a Show Cause Notice dated 27.03.2012 was issued to the applicant proposing denial of the balance amount of Rs. 1,67,073/-. The rebate amount of Rs. 1,67,073/- was rejected by the adjudicating authority vide Order in Original No. 02/2013 dated 29.04.2013.

3. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Central Excise (Appeals), Coimbatore. The Appellate Authority vide Order in Appeal No. CMB-CEX-000-APP-245-13 dated 07.08.2013 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order observed that :-



3.1 The records reveal that the bought out items were purchased from M/s Alfred Herbert Ltd., Bangalore during the year 2006 and 2008 by the applicant only and not by the manufacturer as claimed by them.

3.2 The description of goods in purchase invoice was different from the description of clearance invoice of the manufacture i.e M/s Titan Tyrecare Products Ltd., Pollachi.

3.4 The value, duty shown in the purchase invoices were not tallying with the clearance invoice.

3.5 It is not proved whether any manufacturing activity was carried out on the said bought out items.

3.6 The amount of duty claimed as rebate had been paid in the Cenvat Credit account, however documentary proof of the manufacturer had not been produced.

3.7 The goods were exported from the warehouse of M/s Merchant Exporter (SIDCO, Kurichi). Thus the goods were not cleared directly from the factory of manufacturer, which is violation of para (2)(a) of the Notification No. 19/2004-CE(NT) dated 06.09.2004.

3.8 The documentary proof and other description were not coincidence with the description of the said to be the bought goods.

3.9 The applicant had utilized the Cenvat credit in contravention of the provision for the Cenvat Credit Rules, 2004.

3.10 Request for re-credit of cenvat credit cannot be acceded, since there was no documentary proof for accounting the said bought out items and the credit in the books of account of manufacturer.

3.11 The additional submissions of the applicant were sent to the Adjudicator, Pollachi for want of comments. The adjudicator vide letter dated 02.08.2010 reiterated that the documentary proof was not clear about the goods exported with reference to the goods on which the duty was paid.



4. Being aggrieved by the impugned Order in Appeal, the applicant filed instant Revision Application on following grounds:-

4.1 The goods under both the ARE-1s were exported from the factory premises of manufacturer.

4.2 The exporter is free to export bought out items as such without subjecting them to any process.

4.3 The contention that the bought out goods were not exported directly from factory is not true otherwise the rebate sanctioning authority would have rejected the rebate claim in full.

4.4 The reason for not sanctioning rebate on bought out goods appears to be on the ground that they were not exported from the factory where they were originally manufactured. A manufacturer can purchase inputs from any other manufacturer, use it in the manufacture of his own final products. He can also remove the inputs as such on payment of duty. Rule 3(5) of the Cenvat Credit Rules, 2004 provides for it.

4.5 Neither the Notification No. 19/2004-CE(NT) dated 06.09.2004 nor the Board's instructions require the exporter to furnish the purchase invoices in respect of bought out inputs along with the rebate claim.

4.6 They had provided all the document and records that were sought to be examined by the department. Only after such examination the Range Superintendent gave his report to the rebate sanctioning authority.

4.7 The rebate cannot be rejected on the grounds of non furnishing of documents that are not required under the law for the purpose of sanctioning the rebate.

4.8 M/s Titan Tyrecare Products Ltd. are manufacturer of 'Tyre Retreading Machines' and they are eligible to take cenvat credit on any inputs used in the manufacture of the machine. It is an admitted fact that the bought out items are inputs that could be used in the manufacture of machine. Just because the bought out inputs were removed for export 'as such' without utilizing them in the manufacture, the payment of duty through the Cenvat Credit Account could not become a wrong payment. Cenvat Credit Rule 3(5) provides for 'as such' removal of inputs on payment of duty.



duty paid so is refundable to the exporter. The Government has already held in the case of 2012 (282) ELT (GOI) in case of M/s Positive Packaging Industries Ltd. that payment under the said rule is proper payment of duty and rebate is available under Notification No. 19/2004-CE(NT).

4.9. Even if the duty paid on the bought inputs is considered as a wrong, the duty paid on them cannot be retained by Government. If it is not refunded in cash as rebate, the rightfully earned Cenvat credit which is alleged to have been utilized wrongly has to be allowed as re-credit to the Cenvat Credit.

4.10 It is known that M/s Titan Tyrecare Products Ltd. is the manufacturer. They paid the duty on the export goods by a debit in their cenvat credit account. The applicant is the merchant exporter and they are eligible for the rebate in cash since the manufacturer has given the necessary disclaimer certificate.

5. A Personal hearing in the matter was fixed on 09.02.2021, 23.02.2021. Shri V.V. Nayak, Assistant Commissioner attended the same on behalf of the department. He made written submission and informed that goods export exceeded 6 months and goods went through various places before being exported. The applicant vide email dated 22.02.2021 informed that they had made all submissions along with documents. The applicant further requested to waive the hearing and decide the issue on the basis of merit of written submissions made earlier.

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. It is noted that the appellate authority in his findings has categorically pointed out the observations and the reasons thereof for denial of rebate to the applicant. The applicant in their submissions have argued that the observations drawn by the appellate authority are based on the documents which are not required to be submitted along with rebate claims as per the procedure laid down in relevant notifications / Rules etc.

7.1 The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority



has to satisfy himself about eligibility of rebate. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

7.2 As such, the Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods. Further, rebate being export incentive, the rebate sanctioning authority needs to take necessary precautions to avoid the misuse of such incentive schemes. Further, being beneficiary of the scheme, in such a case, it is responsibility of 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 No. 19/2004-CE(NT) dated 06.09.2004 have been fulfilled.

7.3 In the instant case, it is observed that the appellate authority, on scrutiny of the documents provided by the applicant, has drawn observations which exhibit that the applicant did not follow apposite procedure stipulated under relevant Notifications / Rules and thereby also failed to establish the identity of goods exported and their duty paid nature.

7.4 The Government finds that there are in all 17 observations drawn by the appellate authority on scrutiny of documents submitted by the applicant. Some of the important observations drawn by the appellate authority were as follows :

- i. As per the copy of the two invoices submitted, the impugned items are purchased by M/s Elgi Rubber Company Limited, 2000, Trichy Road, Singanallur, Coimbatore.
- ii. The said items were purchased during the year 2006 and 2008 from M/s Alfred Herbert Ltd. , Bangalore.
- iii. The description of the goods in the purchase invoice (Bangalore Invoice) differs with the description in the clearance invoice (M/s TTPL Invoice) and in the shipping bill.



- iv. The value, duty shown in the purchase invoices were not tallying with the clearance invoice of M/s TTPL.
- v. It is clear that the goods were not cleared within 6 months from the date of clearance from the factory of manufacturer (at Bangalore).
- vi. And also no documents were produced for extension of time, permitted by the manufacturer's jurisdictional Commissioner.
- vii. The said items were cleared from TTPL to M/s Elgi Rubber Company Limited, A 4/1, Coimbatore Private Industrial Estate, SIDCO, Kurichi, Coimbatore- 641021.
- viii. Being bought out items, it is not known whether the goods were cleared in its original packed condition or otherwise form all the premises concerned.

On perusal of the observations, the Government finds that the appellate authority had taken conscientious efforts to arrive the decision of upholding the Order in Original. Further, it is also observed that the observations drawn by the appellate authority are fact based and not absurd.

7.5 The applicant was expected to give logical explanation with documentary proof to score out the said observations made by the appellate authority. Instead, the applicant has simply stated that the observations were based on the documents not required to be filed with the rebate claims. The Government, in this aspect, opines that the rebate sanctioning authority was in its right to call for any of the documents to check legitimacy of the rebate claim and preclude it being sanctioned erroneously.

7.6 The applicant, being aggrieved by the order of the appellate authority, ought to have produced collateral documents to negate the observations drawn in the impugned order in appeal. However, it is observed that the applicant has failed to submit such collateral documents / evidence in the submission made in the instant applicant.

7.7 Therefore, in the absence of any logical ground / explanation made by the applicant to contest the impugned order in appeal, the Government holds that the appellate authority has passed a well-reasoned order and thus needs no further intervention.



8. Government, therefore, does not find any reason to modify Order in Appeal No. CMB-CEX-000-APP-245-13 dated 07.08.2013 passed by the Commissioner of Central Excise (Appeals), Coimbatore and therefore refrains from exercising its revisionary powers in this Revision Application.

9. The revision applications are rejected being devoid of merit.

Shrawan
31/3/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 164/2021-CX (SZ) /ASRA/Mumbai DATED 31.03.2021

To,

M/s Elgi Rubber Company,
2000, Trichy Road,
Singanallur, Coimbatore - 641 005.

Copy to:

1. The Commissioner of CGST, Coimbatore Commissionerate, GST Bhavan, 6/7, A.T. Devaraj Street, Race Course, Coimbatore, Tamil Nadu- 641 018.
2. The Commissioner of GST & CX, Coimbatore Appeals 6/7, A.T. Devaraj Street, Race Course, Coimbatore, Tamil Nadu- 641 018.
3. The Assistant Commissioner of GST & Central Excise, Pollachi Division, Johi Nagar, 'D' Colony, Pollachi - 642 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED
CP. R. JOSHI
अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

