REGISTERED
SPEED POST

F.No. 195/132/11-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 11/12/12

ORDER NO. 1744/12-Cx DATED 10-12-2012 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 35 EE OF THE CENTRAL EXCISE, 1944 AGAINST THE ORDER-IN-APPEAL No. 324/ 2010 dated 29-11-2010 passed by Commissioner of Central Excise, (Appeals), Bangalore.
APPLICANT	:	M/s Mahindra Reva Electric Vehicles Pvt. Ltd., Bangalore.
RESPONDENT	:	Commissioner of Central Excise, Commissionerate, Bangalore-I.

****

ORDER

This revision application is filed by M/s Mahindra Reva Electric Vehicles Pvt. Ltd., Bangalore against the Order-in-Appeal No. 324/ 2010 dated 29-11-2010 passed by Commissioner of Central Excise, (Appeals), Bangalore, in respect of Order-in-Original No. 310/09 & 311/09 dated 30-10-2009 passed by the Assistant Commissioner, Division-III, Bangalore.

2. The brief facts of the case are that the applicants are engaged in the manufacture and clearance of excisable goods viz. electric motor cars falling under 87039010 of the first schedule to Central Excise tariff act, 1985 for export availing the benefit of advance licence under the DEEC scheme in terms of Notification No. 93/2004-Cus dated 10-09-2004. They are also availing the facility of Cenvat Credit on the inputs and input services under the Cenvat Credit Rules, 2004. This is a denovo order passed by the lower authority consequent upon issue of Order-in-Appeal Nos. 338 & 339/2008-CE dated 30-10-2008 wherein the case was remanded for denovo-decision with a direction for determination of value under section 4 of Central Excise Act, 1944. The lower authority in the impugned order after considering all the submissions made by the applicants found that the refund of rebate sanctioned for an amount of Rs. 7,99,768/- in terms of the initial Order-in-Original No. 64/08 (R) dated 04-04-2008 to be in order (warranting no fresh consideration) in as much as the amount so sanctioned to be in conformity with the section 4 transaction value and in line with Rule 18 of Central Excise Rules, 2002 read with section 11B of Central Excise Act, 1944 along with Notification No. 19/2004-CE (NT) dt. 06-09-2004 and the clarificatoty circulars issued there under. However, with reference to the rebate sanctioned in terms of Order-in-Original No. 65/08 (R) dated 04-04-2008, the denovo adjudicating authority found that in the corresponding ARE-Is, the terms of delivery is ex-works and CIF whereas in the shipping bills, the FOB value, freight and insurance incurred are shown separately. Transaction value in terms of section 4 of the act, is the value under which the finished goods are cleared for export from the place of removal which in the instant case is the factory gate. Freight & insurance including other incidental charges are

post removal components and such expenses incurred beyond the place of removal are not to be loaded so as to arrive at the transaction value and therefore an amount of Rs. 2,39,337/- incurred (beyond the place of removal) towards outward freight and insurance is to be separated from the CIF value so as to arrive at the section 4 value for the purpose of claim of rebate. On deducting the freight &* insurance, the ARE-1 value is Rs. 38,79,998/- and not Rs. 41,19,335/- towards an amount of Rs. 3,81,861/- which had been granted as rebate in cash in full originally ought to have been restricted to Rs. 3,54,437/- in cash and the balance amount of TRs. 27,424/- should have been granted as rebate in credit account to the claimant's Cenvat credit account in as much as and the erroneously rebate amount of Rs. 27,424/- granted in cash to be recovered in cash in terms of the said rule 18 of the Central Excise Rules, 2002 read with section 11B of the act along with the notifications and the clarificatory circulars issued there under. The denovo order also granted the claimant the liberty to take the amount of Rs. 27,424/- as credit in their cenvat account subsequent to its payment in cash account. As the rebate was claimed and subsequently granted erroneously, the denovo rebate sanctioning authority also upheld the demand for interest towards the erroneously claimed sum of Rs. 27,424/- under the provisions of section 11AB of the act. Aggrieved by the said order, the applicants have preferred this appeal.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who upheld the Orders-in-Original with modification to this extent dropping the proceedings with regard to demand of interest.

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

4.1 The applicants submit that the rebate has been claimed for an amount equal to duty paid in respect of ARE-1 No. 106 dt. 31-12-2007 on the basis of transaction value of goods exported and that the value so declared is independent of freight &

insurance. No duty has been paid towards freight and insurance and accordingly no rebate has been claimed on the two components of freight and insurance.

4.2 The applicants submit that they have claimed rebate as per ARE-1 in terms of Board's Circular dt. 26-04-1996 & 03-02-2000 wherein it has been clarified that ARE-1 value has to be adopted as FOB value which may be more or less. In fact in the Board's Circular No. 510/06/2000-Cx dt. 03-02-2000, the Board has clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on goods covered by a claim. The applicants submit that this Circular has been followed in the case of Commissioner of Central Excise, Bangalore Vs. Maini Precision Products Pvt. Ltd. [2010(252) ELT 409 (Tri. Bang.)]:

4.3 The applicants submit that the legal position which emerges from the what has been stated in the aforesaid paras is that if an assessee discharges the duty liability on the value which is higher than the value and if the said assessment is not challenged by the revenue on the duty paying documents. Subsequently in an appeal whereby rebate has been sanctioned, the assessment cannot be called on for correctness.

4.4 The applicants further submit that refund cannot be denied on the ground that the rebate is admissible only on the duty as per FOB value and cannot CIF value as long as the same represents Transaction Value. The applicants rely on the following case laws in support of their contention.

(I) Sterlite Industries Vs. CCE, Tirunelveli-2009 (236) ELT 143 (Tri-Chennai).

4.5 The applicants submit that when no duty has been discharged on freight and insurance components as evident from ARE-1, there is no question of paying excess amount with interest and therefore, the original rebate sanctioned vice Order-in-original No. 65/2008 dt. 04-04-2008 is in order.

4.6 The applicants submit that in view of what has been stated in the aforesaid paras, the applicants submit that the order of the Commissioner (Appeals) is unsustainable in law.

5. Personal hearing scheduled in this case on 08-10-2012. Nobody appeared for personal hearing. The applicant party vide their letter dated 03-10-2012 have requested to decide the case on merit.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government notes that in this case matter the applicant exporter was sanctioned rebate claims by the original authority to the extent of duty payable on F.O.B. value as shown in respective shipping bills, which has been taken as "transaction value in terms of provisions of Section 4(3)(c)(iii) of the Central Excise Act, 1944. The applicant herein is claiming that their actual "transaction value" in these cases is the CIF value upon which the duty has actually been paid and hence their balance amounts of claimed rebate should also be granted to them. In support of their contentions, they are relying upon the case laws and actual contract/order of the foreign buyer as in para 4 above have also desired that in case of otherwise, they should be allowed "re-credits" of such disputed amounts.

8. Government observes that original authority has found the FOB value declared in Shipping Bills as the transaction value in terms of section 4 of Central Excise Act, 1944. He has given detailed findings which are upheld by Commissioner (Appeals) also. Government notes that this issue has already been decided by GOI order No.271/05 dated 25.7.05 passed in the case of CCE Nagpur Vs. Shri Bhagirath Textiles Ltd. reported as 2006(2002)ELT 147 (GOI). The said order was passed in revision application filed by department against the order-in-appeal No.SVS/*/NCP-II/2004 dated 26.11.04 passed by Commissioner of Central Excise (Appeals), Nagpur. The operative portion of GOI order is reproduced below:-

" 9.4 In the instant case it is not the case of Revenue that the seller and buyer of the goods are related person. Govt., therefore, would agree with the contention of the applicant Commissioner that the excise duty on the goods should have been paid on transaction value as defined under section 4(3) (d) of the Central Excise Act, 1944. CBEC vide their Circular No. 203/37/96-CX dated 26.4.96 have also clarified that AR4 value should be determined under section 4 of the Central Excise Act, which is required to be mentioned on the invoices issued under rule 52 A of the Central Excise Rules, 1944. In the instant case the respondents themselves have admitted in their letter of cross objection dated 26.5.2005, that they have paid Central Excise duty on CIF value of the impugned goods for purpose of claiming rebate under rule 18 of the Central Excise Rules, 2002. Govt. therefore, would agree with the contention of the Applicant Commissioner that as per provisions of section 4(1) (a) and 4(2) (d) of Central Excise Act, 1944 the value in terms of section 4 should be the amount that the buyer of the exported goods is liable to pay. In the instant case, the buyer of the exported goods had paid an amount as shown in the Bank realization certificate. In any case the respondents are not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on transaction value of the goods as prescribed under section 4 of the Central Excise Act, 1944. However, it is also fact that the respondents have paid excess duty to the tune of Rs.2,35,192/- which is to be refunded to the respondents in the manner in which it was paid.

9.5 In view of facts and circumstances, Govt. is of the considered opinion that the impugned Order-in-Appeal is not maintainable and Govt. accordingly sets aside the impugned Order-in-Appeal. Govt. also permits the respondents to take back the Cenvat Credit of Rs.2,35,192/- which is related to Central Excise duty paid on CIF value of the impugned goods."

As such the CIF value cannot be the value in terms of section 4 of Central Excise Act, 1944.

9. Applicant has relied upon CBEC circular No.510/06/2000-CX dated 3.2.2000 and contended that jurisdiction to determine correct value of goods cleared from factory is with jurisdictional officers of the factory and not with the office of Maritime

Commissioner. In this regard Government notes the procedure from claim rebate of duty paid on exported goods is prescribed in Notification No.19/04-CE (NT) dated 6.9.04 issued under rule 18 of Central Excise Rule 2002. Para 3 (b) of said Notification stipulates as under:

" *(b) Presentation of claim for rebate to Central Excise:-*

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.* "

The provisions contained in said para 3 (b)(ii) clearly stipulate that Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise having jurisdiction over factory of manufacture or the Maritime Commissioner of Central Excise if satisfied after scrutinizing the rebate claim that said claim is in order, he shall sanction the rebate either in whole or in part. The sanctioning of rebate claim in whole or in part will depend on admissibility of claim as per laid down parameters. So the provisions of Notification authorizes the Maritime Commissioner of Central Excise to sanction the rebate claim only to the extent it is admissible. The CBEC circular dated 3.2.2000 was issued to prior to the said Notification No.19/04-CE (NT) dated 6.9.2004. So the provision of Notification will prevail.

10. Any other plea of scope of limits of rebate sanctioning authority as not to check the correctness of assessments. In this regard it is emphasized that when

cited case Laws are read alongwith M/s. Jain Shudh Vanaspati Ltd. Case (1996 (86) ELT 460 (SC)), in proper perspective then it is transpired that when there are inbuilt provisions in separate self-sufficient rebate sanctioning provisions than the rebate sanctioning authority should neither wait nor depend upon any other action of review process or otherwise by any jurisdictional authority.

11. Government notes that the original rebate sanctioning authority has already examined the rebate claims in the manner elaborated above. Further the Commissioner (Appeals) herein has also after due consideration of the same has upheld the sanction of said rebate claims upto the limit of duty payable on FOB value which was transaction value of goods in this case. Government finds itself in conformity with the findings in said orders. Government therefore upholds the impugned Order-in-Appeal being perfectly legal and proper.

12. Revision Application thus stands rejected being devoid of merit.

13. So Ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s Mahindra Reva Electric Vehicles Pvt. Ltd.,
122 E, Bommasandra Industrial Area, Anekal Taluk,
Bangalore- 560099.

ATTESTED

10/12

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C -O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Reva)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

Order No. 1744/12-Cx dated 10-12-2012

Copy to:

1. The Commissioner of Central Excise, Commissionerate, Bangalore-I.
2. The Commissioner of Central Excise (Appeals-I), 16/1, 5th Floor, SP Complex, Lalbagh Road, Bangalore-560027.
3. The Assistant Commissioner of Central Excise, Div-III, 7th Floor, "C" Wing, Kendriya Sadan, Koramangala, Bangalore-560034.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)