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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. 198/236/12-RA/514

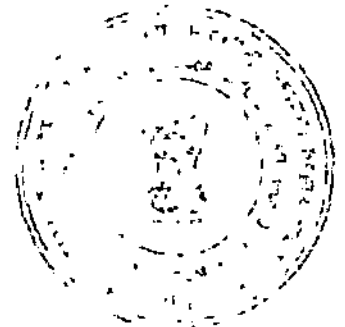
Date of Issue: 18th December 2017

ORDER NO. 19/2017 CX (WZ) /ASRA/Mumbai DATED 18.12.2017 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Mumbai-III.

Respondent : Inglobe Exports, Mumbai.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 by Commissioner of Central Excise, Mumbai-III Commissionerate, Mumbai, against the Order-in-Appeal No. BC/141/M-III/2012-13 dated 29.06.2012 passed by the Commissioner of Central Excise,(Appeals) Mumbai -III.



ORDER

This Revision Application has been filed by Commissioner of Central Excise, Mumbai-III (hereinafter referred to as the "applicant") against Order in Appeal No. BC/141/M-III/2012-13 dated 29.06.2012 passed by the Commissioner of Central Excise, (Appeals) Mumbai -III. The facts, in brief, giving rise to filing of the present revision are as below.

2. M/s Inglobe Exports, situated at Unit No 59/60, Udyog Bhavan, Sonawala Road, Goregaon (E), Mumbai, Merchant exporter, filed rebate claims for an amount of Rs. 1,47,254/- in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) and the same was rejected by the Assistant Commissioner (Rebate), Central Excise Mumbai III vide Order in Original (O-I-O) No. 207/R/RM/AC(RC)/M-III/11-12 dt.28.02.2012.

3. The grounds for rejection of the above rebate claims were :-

- the claimant have filed the claim for rebate as well as drawback in respect of the export clearances which was not proper .
- the description of goods & Chapter Sub-Heading mentioned on Central excise invoice/ ARE-1 and on Shipping Bill in respect of ARE-1 No 12/1112 dtd 20.10.2011 are different.

4. Being aggrieved by the above mentioned O-I-O, M/s Inglobe Exports (respondents) filed appeal before Commissioner (Appeals) and the Appellate Authority vide Order In Appeal No. BC/141/M-III/12-13 dtd. 29.06.2012 set aside the O-I-O passed by the Assistant Commissioner (Rebate) Central Excise Mumbai III thus, allowing the appeal of the respondents.

5. Being aggrieved by the Order-in-Appeal No. BC/141/M-III/2012-13 dtd. 29.06.2012, passed by Commissioner (Appeals) the applicant has filed the present Revision Application on the following grounds:-

5.1 that on scrutiny of the above documents submitted by the claimant it was observed in respect of the ARE-1 No 12/11-12 dtd. 22.10.2011 that the particulars such as description of goods & Chapter Sub Heading mentioned on Central Excise Invoice No 20



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dtd. 22.10.2011/ARE-1 No.12/11-12 dtd. 22.10.2011 and on Shipping Bill No 5938206 dtd. 21.10.2011 are different. The original adjudicating authority rejected the rebate claim by citing the above discrepancy as one of the ground for rejecting the rebate claim. The Commissioner (Appeals) while passing the subject OIA erred in not taking the cognizance of the findings of the original adjudicating authority as mentioned above.

5.2 that while sanctioning the rebate claim it is mandatory on part of the sanctioning authority to verify whether the duty paid goods removed from the factory have actually been exported or not. In the instant case the goods as mentioned on Central Excise Invoice 20 dtd. 22.10.2011 & ARE-1 No 12/11-12 dtd. 22.10.2011 have been classified under CSH 84369030 and are described as "Switch & Sockets" of various sizes whereas the goods as mentioned on supporting Shipping Bill submitted by the claimant describe it as "Articles manufactured out of GP Sheets" and have been classified under CSH 73269099. Therefore, it is not possible to ascertain that the duty paid goods removed from the factory have actually been exported. The original adjudicating authority had rightly rejected the rebate claim by making this discrepancy as one of the ground for rejecting the rebate claim.

5.3 that the Hon'ble Commissioner(Appeals) erred in not taking the cognizance of the findings of the original adjudicating authority in this regard.

In view of the aforesaid grounds of Appeal the applicant prayed for setting aside the Order in Appeal No. BC/141/M-III/12-13 dtd 29.06.2012 and pass any other order on merits as deemed fit.

6. A personal hearing in the matter was held on 27.11.2017, Shri P.K. Shetty, Advocate, duly appointed by the respondent company and Shri Nilesh, Export Manager of the respondent company attended the hearing. They reiterated the submissions made earlier and submitted synopsis dated 27.11.2017 enclosing five case laws intended to be relied on by them and pleaded that the SCN issued by Revisionary Authority be



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withdrawn. They further stated that the 'Revision' Application filed by the department be dismissed and Order-in-Appeal No. BC/141/M-III/2012-13 dtd. 29.06.2012 be restored.

7. Government has carefully gone through the relevant case records available in case files, written submissions of the applicant, cross objections filed by the respondents and also perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government observes that the rebate claims of the respondent were rejected by the Assistant Commissioner (Rebate), Central Excise, Mumbai-III on the following two counts:-

- (i) that the claimant had filed the claim for rebate as well as drawback in respect of the export clearances which was not proper and
- (ii) the description of goods & Chapter Sub-Heading mentioned on Central excise invoice/ ARE-1 and on Shipping Bill in respect of ARE-1 No 12/1112 dtd 20.10.2011 were different.

9. Government further notes that, the Commissioner (Appeals) in Order-in-Appeal No. BC/141/M-III/2012-13 dtd. 29.06.2012 has given detailed findings on the issue whether the respondents are eligible for rebate of excise duty paid on the final products exported in terms of provisions of Rule 18 of Central Excise Rules, 2002 and the drawback portion of customs duty component on the inputs, Department in their revision application has not countered any argument of the Commissioner (Appeals) on this issue. Thus, Government is in agreement with the findings of Commissioner (Appeals) on this issue.

10. Government also notes that the only ground on which the department has filed the instant Revision application is that, the Commissioner (Appeals) while passing the impugned Order in Appeal has not taken the cognizance of the findings of the original adjudicating authority regarding the discrepancy observed in the description of goods & Chapter Sub Heading as mentioned on Central Excise Invoice No 20 dtd.22.10.2011/ARE-1 No 12/11-12 dtd. 22.10.2011 and on Shipping Bill No 5938206 dtd 21.10.2011. The original adjudicating authority rejected



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the rebate claim by citing the above discrepancy as one of the grounds for rejecting the rebate claim.

11. Government has perused the copies of Central Excise Invoice No 20 dtd. 22.10.2011, ARE-1 No 12/11-12 dtd. 22.10.2011 and Shipping Bill No 5938206 dtd. 21.10.2011 and has noted the discrepancy in description of goods & Chapter Sub Heading written on them. In this regard Government observes that in their initial reply to the show cause notice the respondent clarified that the description in the ARE-1 No 12/11-12 dtd. 22.10.2011 against Shipping Bill No 5938206 dtd. 21.10.2011, chapter heading given by M/s Navkar International as 84369030 is incorrect and should have been 85369030 and the same was an error made by the clerical staff in this particular excise invoice; that the Chapter heading given in the shipping bill for the purpose of claiming Drawback is 73269099, that the main heading 7326 is for "Other Articles of Iron and Steel", sub heading 9099 for "Others"; that they are submitting a regret letter from M/s Navkar International. The adjudicating authority i.e Assistant Commissioner (Rebate), in his order has observed that "as regards misclassification of goods, the exporter have clarified regarding difference in classification mentioned in ARE-I and Shipping Bill. But not submitted any evidence such as clarification letter from manufacturer M/s Navkar International as mentioned in their reply to SCN.

12. Government observes that the description/weight/value of the goods given in ARE-1 and shipping bill has to tally with each other. Details such as description, classification of the product, quantity and value are the basic parameters of ARE-1, in the absence of which correlatable character of goods cannot be established. Such lapses cannot be treated as procedure lapses. Government further notes that the mismatch in description, classification of goods between ARE-1, Invoices, Shipping Bills is unacceptable and the exporter has to be fully aware at the time of export of goods that there should not be a variance in Excise Invoices and the export documents like ARE-1, shipping bills and Bill of lading etc. In the instant case, Government observes that except for the figures 902 and 915 (denoting boxes) appearing in Excise invoice and

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corresponding shipping bill, there is nothing else to correlate the character of goods exported. Under the circumstances, Government holds that the rebate claim to the extent of Rs.72,471/- (Rupees Seventy Two Thousand Four Hundred Seventy One only) corresponding to Invoice No. 20 dtd. 22.10.2011, ARE-1 No 12/11-12 dtd. 22.10.2011 and Shipping Bill No 5938206, is rightly held inadmissible by the original adjudicating authority.

13. The Revision Application is partially allowed as aforesaid and Order-in-Appeal No. BC/141/M-III/2012-13 dtd. 29.06. 2012 is modified to that extent.

14. So ordered.

(Signature)
18.12.17
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 19/2017-CX (WZ) /ASRA/Mumbai DATED 18.12.2017

To,
M/s. Inglobe Exports,
Unit No.15/16/59/60,
Udyog Bhavan, Sonawala Road,
Goregaon(E), Mumbai-400 063.

True Copy Attested

(Signature)
18/12
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex (RA)

Copy to:

1. The Commissioner of GST & CX, Mumbai South Commissionerate.
2. The Commissioner, Central Excise, (Appeals) -II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Mumbai South .
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

