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SPEED POST

F.No. 195/809-812/12-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: 21/4/15

Order No. **05 - 08 / 2015 - CX** dated **17/04/2015** of the Government of India passed by Smt. Rimjhim Prasad, Joint Secretary to the Government of India, Under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision applications filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.BC/117-120/M-III/2012-13 dated 26.6.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, Zone-II.

Applicant : M/s Aarti Industries Ltd., Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-III, Zone-II.

ORDER

These revision applications are filed by M/s Aarti Industries Ltd., Mumbai (hereinafter referred to as the applicant) against the Orders-in-Appeal No.BC/117-120/M-III/2012-13 dated 26.6.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai-III, Zone-II with respect to Orders-in-Original passed by the Assistant Commissioner of Central Excise (Rebate), Mumbai-III.

2. Brief facts of the case are that the applicant exported excisable goods on payment of duty, vide 19 (nineteen) shipping bills and filed four rebate claims with the original authority under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. The original authority rejected the rebate claims on the ground that the applicant has claimed drawback and cenvat credit, and hence, is not eligible for rebate claims.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals) to decide whether the applicant could avail the drawback of Customs duty component along with rebate of Excise duty paid in terms of provisions of Rule 18 ibid. Commissioner (Appeals) allowed the appeal to the extent of 18 shipping bills out of total 19 shipping bills involved in these cases by holding that as the applicant availed only custom portion of drawback, rebate of finished stage cannot be held inadmissible. In respect of shipping bill with regard to ARE-1 No.372 dated 01.11.2011, Commissioner (Appeals) held that copy of shipping bill submitted along with appeal memorandum is not legible and hence, veracity of applicant's claim that only custom portion of drawback was availed by them, could not be verified.

4. Being aggrieved with the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 From page 3 of copy of the shipping bill No. 6058404 dated 01/11/2011, it will be evident that the DBK serial number indicated is 2921421301 B & DBK rate is 2%. From the duty drawback schedule to the Notification 84/2010 Cus. (N.T.) for

chapter heading 2921421301, it will be evident from the said schedule that the rate of drawback rate is 2% in column No. A & B. Hence, it will be evident that the company has availed only the customs portion of the draw-back. Accordingly it is submitted that rebate claim in respect of shipping bill No. 6058404 dated 01/11/2011 pertaining to ARE-1 No. 372 dated 01.11.2011 shall be allowed and the applicant is eligible for refund claim of Rs.1, 18,656/- in view of the said order of Commissioner Appeal.

4.2 The Commissioner (Appeal) without application of mind has rejected the said rebate claim merely on the ground that the shipping bill was not legible. It is submitted that the Commissioner (Appeals) has neither sought any clarifications from the applicant nor have issued deficiency memo indicating that the said Shipping Bill copy was not legible. It is submitted that the Tribunal that in cases where the defects in the appeal are curable, at least a notice or deficiency memo be issued to the applicants asking them to rectify the error. Reliance is placed on the judgments of Tribunal, Kolkata in the case of Pradip Das Versus Commissioner of Customs (Prev.), Kolkata 2009 (238) E.L.T. 627 (Tri. -Kolkata).

4.3 In the present case the applicant had inadvertently filled the copy of the said shipping bill No. 6058404 dated 01/11/2011 along with the appeal memorandum which was not legible. The said defect could be easily cured had the Commissioner (Appeal) had sought any clarification or issued any deficiency memo. In view of above submission it is submitted that it was not incorrect on the part of the Commissioner (Appeal) to reject the rebate claim merely on the ground of the said shipping bill was not legible without giving any opportunity to cure the said defect. Further, it will be evident that the applicant had filed appeal in respect of 4 Order in Original with Commissioner (Appeal). Out of all the documents submitted along with the appeals only one shipping bill i.e. 6058404 dated 01/11/2011 was not legible. Thus it will be evident that the submission of the said copy was not intentional on part of the applicant. Thus it is submitted that the Commissioner (Appeals) should have adopted a reasonable approach towards the said defect and should have sought clarification from the applicant.

5. Personal hearing scheduled in this case on 30.3.2015 was attended by Shri R.S. Sharma, Advocate on behalf of the applicant who reiterated the grounds of revision application. Ms Shweta Yadav, Assistant Commissioner attended hearing on behalf of the Department.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. On perusal of records, Government observes that the applicant's rebate claims under Rule 18 ibid read with Notification No.19/2004-CE(N.T.) dated 06.09.2004 in respect of duty paid on goods exported vide 19 shipping bills were rejected in toto by the original authority. The Commissioner (Appeals) in para 8 of the impugned Orders-in-Appeal partially allowed appeal as under:-

"In the instant case, the appellants have availed 1%, 2% and 3% of customs portion of drawback. There are 19 Shipping Bills involved in the impugned case. The percentage of Drawback availed in the corresponding Shipping Bills found tallied with the Drawback allowed as per the Drawback rate rules. Hence, what is availed is only customs portion of drawback which is allowed as per the above Notification. Out of the 19 Shipping Bills, one Shipping Bill No. (not legible) pertaining to impugned order date 28.03.2012 for Rs.9,42,062/-, in respect of ARE 1 No.372 dt.01.11.2011 and submitted along with the appeal memorandum is not at all legible. Hence, the veracity of the appellants cannot be cross verified. Accordingly, the appeal is allowed in respect of the remaining 18 Shipping Bills involved in the four impugned order."

Now, the applicant has filed these revision applications on grounds mentioned in para (4) above.

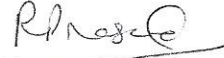
8. Government observes that limited issue involved in impugned Revision Application to be decided is whether in absence of legible copy of shipping bill in respect of ARE 1 No.372 dt. 01.11.2011, the rebate claim can be held inadmissible. Government finds that the applicant has admittedly filed illegible

copy of Shipping Bill in respect of ARE 1 No. 372 dt. 01.11.2011. Government finds force in plea of the applicant that in case of any deficiency, the same could have been clarified by Commissioner (Appeals) during appellate proceedings, which has not been done in this case. Under such circumstances, in the interest of justice, Government finds it proper to remand the case back to Commissioner(Appeals) for verification of the impugned EDI Shipping Bill in the line of other Shipping Bills in the impugned Orders-in-Appeal to establish veracity of claim of the applicant that they have availed only custom portion of drawback.

9. Government modifies impugned Orders to the extent discussed above and remands the case back to Commissioner (Appeals) for fresh consideration in light of the above observation. The applicant is directed to produce legible copy of Shipping Bill along with relevant original documents before the Commissioner (Appeals) to enable the authority to verify the same to its satisfaction and pass suitable orders. A reasonable opportunity of hearing to be afforded to the concerned parties.

10. Revision applications are disposed off in above terms.

11. So, ordered.




(Rimjhim Prasad)

Joint Secretary to the Government of India

M/s Aarti Industries Ltd.,
Udyog Kshetra, 2nd Floor
Mulund Goregaon Link Road
Mumbai West-400080

Attested


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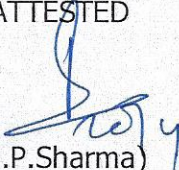
(रिज्जिम प्रसाद/Rimjhim Prasad)
सहायक सचिव/Assistant Commissioner
C&EC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI

Order No. 05 - 08/ 2015 - CX dated 17/04/2015

Copy to:-

1. The Commissioner of Central Excise, Mumbai-III, 4th Floor, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (West)-400604.
2. The Commissioner of Central Excise (Appeals), Mumbai-III 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614
3. The Assistant Commissioner of Central Excise (Rebate), Maritime Commissionerate, Central Excise, Mumbai-III, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (West)-400604
4. Shri R.S.Sharma, Advocate, C-9/9656, Vasant Kunj, New Delhi-110070
5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED


(B.P.Sharma)
OSD (Revision Application)