

REGISTERED
SPEED POST



F.No.195/258/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 29/1/16

ORDER NO. 21/2016-CX DATED 28.01.2016 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 application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No.331/2012 dated 26.11.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapally

Applicant : M/s Xomox Sanmar Ltd., Viralimalai

Respondent : Commissioner of Customs & Central Excise, Tiruchirapally

ORDER

This Revision Application is filed by M/s Xomox Sanmar Ltd., Viralimalai against the Order-In-Appeal No.331/2012 dated 26.11.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapally with respect to Order-In-Original passed by the Assistant Commissioner of Central Excise & Service Tax, Division-II, Tiruchirapally.

2. The brief facts of the case are that the applicants are holders of Central Excise Registration No.AAACX0247KXM001 for the manufacture of industrial valves & spares falling under Chapter 84818030 and 84819090 of the First Schedule to the Central Excise Tariff Act, 1985 and they are availing Cenvat credit facility in respect of duties/taxes paid on the inputs, capital and input services. The applicants are clearing their finished goods both for home consumption and for export on payment of duties. The applicant originally filed a rebate claim on 25.03.2011 for Rs.24,42,270/- and the Deputy Commissioner of Central Excise, II Division vide Order-In-Original No.43/2011 dated 22.06,2011 sanctioned an amount of Rs. 15,79,699/- and rejected an amount of Rs.8,62,571/- for reasons citing various discrepancies in export/excise documents . The applicant went on appeal to Commr (A) who vide Order-in-Appeal No.66/2012 dated 29.03.2012 directed the lower authority to take fresh decision in respect of claim pertaining to the rejected amount of Rs.8,62,571/- after following principles of natural justice as the applicants were not issued with Show Cause Notice or offered an opportunity to be heard in person before passing the said order. Accordingly, the issue was taken up by the lower authority and after due process of law, the lower authority ordered sanction of Rs.6,01,190/- under Section 11 B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 and rejected an amount of Rs.2,61,381/- under Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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 Commissioner of Customs and Central Excise (Appeals) erred in disallowing the rebate claim pertaining to three numbers of ARE-1s on the ground that there is variation in weight mentioned in Shipping bill/Air Way Bill with ARE-1. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the above mentioned errors are in the nature of procedural lapse and rebate claim

cannot be denied especially when the substantial conditions are satisfied. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that there is no shortage or excess on the quantity removed from the factory and the quantity exported. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that in the case of transportation through air cargo, the air freight is being charged by the airline using their own scientific method of calculation and not based on actual. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the method adopted by the airline for calculating the freight cannot be compared with the actual quantity to conclude the excess or shortage. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the airline usually calculates the charge using a formula namely, length x breadth x height x number of packages, then the resultant amount would be divided by 6,000/-. The Commissioner of Customs and Central Excise (Appeals) ought to have appreciated the fact that the airway bill contains 2 columns namely, one for actual quantity and another quantity for freight.

4.2 The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the weight mentioned in all these cases is only a reference weight and the value as stated in the invoice is final which can be further established by the fact that the full value of the proceeds have been received for such invoices from the overseas customers, which is also evident from the bank realization certificate (BRC) submitted to RBI. The Commissioner of Customs and Central Excise (Appeals) failed to appreciate that there is no dispute with reference to the value of goods referred to ARE-1 and there is also no dispute on the fact that the applicant has realized the value shown in ARE-1.

4.3 The Commissioner of Customs and Central Excise (Appeals) failed to appreciate the fact that the Range Officer has verified all the documents and given a report in respect of the subject ARE-1 saying that the refund may be granted as the error is only typographical in nature.

4.4 The applicant has relied upon various case laws in favour of their contention.

5. Personal hearing scheduled in this case on 20.3.2014 & 6.7.2015. Hearing held on 6.7.2015 was attended by Smt. Radhika Chandra Shekhar, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of the department.


6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned Order-In-Original and Order-In-Appeal.

7. Government observes that the part rebate claims of Rs.261381/- was rejected on ground that there is huge variation of weight between AREs-1 and Air Way Bills and as such, it cannot be proved beyond doubt that the goods under the said AREs-1 have been exported. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the original authority had taken up rebate claim total amounting to Rs. 8,62,571/- covered vide (8) ARE-1s. In all 8 ARE-1s, there was difference of weight between ARE-1 and Airway Bill. Out of 8 ARE-1s, the original authority allowed rebate claim of Rs. 6,01,190/- with regard to five (5) ARE-1s, where the difference in weight was marginal. However, in import of 3 ARE-1s, the original authority observed that there was huge variation of weight; that the applicant failed to give any valid reason for such a vast difference of weight; and that as such, it cannot be proved beyond doubt final the goods under said 3 ARE-1s have been exported. Accordingly, original authority rejected the rebate claim amounting to Rs. 2,61,381/-. Government notes that neither before original authority nor before Commissioner (Appeals), the applicant could give any valid reason for such vast difference of weight. As, such, the orders of lower authorities which has duly allowed substantial portion of rebate and only part claim was rejected on above said ground, is just and proper. As such, Government finds no infirmity in order of Commissioner (Appeals) and hence, upholds the reason.

9. Revision Application is thus rejected being devoid of merits.

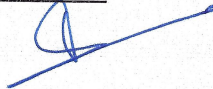
10. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Xomox Sanmar Ltd.
89/1, Vadugapatti Village
Viralimalai

Attested



ORDER NO. 21/2016-CX DATED 28.01.2016

Copy to:-

1. The Commissioner of Customs & Central Excise, No.1, William Road, Cantonment, P.O.Box No.105, Tiruchirapalli-620001
2. The Commissioner of Customs & Central Excise (Appeals), No.1, William Road, Cantonment, Tiruchirapalli-620001
3. The Assistant Commissioner of Central Excise & Service Tax, Division-II, 3rd Floor, No.1, Williams Road, Tiruchirapalli-620001
4. M/s K.Vaitheeswaran & Radhika Chandrasekhar; V.S.Manoj, Advocates & Tax Consultant Flat No.3, I Floor No.9, Thanikachalam Road, T.Nagar, Chennai-620001
5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

(OFFICE OF THE ASSISTANT COMMISSIONER,
CUSTOMS & CENTRAL EXCISE COMMISSIONER,
C.B.E.C. (A), Tiruchirapalli Cantonment,
Tiruchirapalli, Tamil Nadu)
NO. 21/2016-CX dt 28.01.2016
BY: B.P. SHARMA, OSD

