

**REGISTERED**  
**SPEED POST**



**F.No.195/801/12-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue.....29/1/16.....

**ORDER NO. 22/2016-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.88/2012 dated 24.05.2012 passed by the Commissioner  
of Customs & Central Excise (Appeals), Tiruchirapally.

Applicant : M/s Xomox Sanmar Ltd., Viralimalai.

Respondent : Commissioner of Customs & Central Excise, Tiruchirapally.

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## ORDER

This Revision Application is filed by M/s Xomox Sanmar Ltd., Viralimalai against the Order-in-Appeal No.88/2012 dated 24.05.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapally with respect to Order-in-Original passed by the Deputy 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 applicants filed a rebate application on 02.06.2011 for Rs.11,56,593/- under Section 11 B of the Central Excise Act 1944 read with Rule 18 of the Central Excise Rules, 2002 in respect of the duties paid on the goods exported under 13 ARE-1s during the month of December 2010. The lower authority vide impugned order sanctioned Rs.8,74,619/- as rebate in cash under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002, ordered excess paid duty of Rs.62,721/- as liable to be refunded under Section 11B of the Central Excise Act, 1944 and allowed the same to be taken as Cenvat Credit under respective head as the duty was debited originally in the Cenvat account and ordered rejection of Rs.2,19,253/- as inadmissible claim in respect of 4 number of ARE-1s.

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) 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 method adopted by the airline for calculating the freight cannot be compared with the actual quantity to conclude the excess or shortage and failed to appreciate that the airline usually calculates the charge using a formula namely, length x breath x height x number of packages, then the resultant amount would be divided by 6,000/-.

4.2 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 and 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.

4.3 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. The Deputy Commissioner of Customs and Central Excise (Appeals) failed to appreciate that the verification report given by the Range Officer has dealt with the issue and concluded that the applicant is eligible for refund.

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 Sehekhar, 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 ARE-1s, and Air Way Bills, the sealing date is not correct in one of the ARE-1 and the vessel/make, flight No. does not tally with Airway Bill, Bill of Lading 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 total 13 ARE-1s, covering rebate claim of Rs.11,56,593/- was taken up for scrutiny by the original authority. The original authority sanctioned cash rebate of Rs.8,74,619/- and allowed Cenvat credit of Rs.62,721/- in account of the applicant in respect of nine(9) ARE-1s. Regarding remaining four(4) ARE-1s, the original authority rejected part rebate to the tune of Rs.2,19,253/- on ground that there was discrepancies as regard to flight/vessel date and no. and also in weight between excise documents and export documents. The applicant has challenged this rejection of Rs.2,19,253/- before Commissioner (Appeals).

9. Government notes that the rejection of above said amount of Rs.2,19,253/- was on ground of certain discrepancies as regard to vessel/flight no. and date and difference of weight in excise viz-a-viz export documents. The appellate authority has observed that the applicant could not bring any documentary evidences before him to contradict the rejection by the original authority. Government further observes that during this revisionary proceedings also no such documentary evidences were produced to controvert above said observation of lower authorities. Under such circumstances, Government finds no infirmity in order of Commissioner (Appeals) upholding impugned Order-in-Original. As such, Government upholds the impugned Order-in-Appeal.


10. Government also observes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the judgment in the case of Mihir Textiles Ltd. Versus Collector of Customs, Bombay, 1997 (92) ELT 9 (S.C.) wherein it is held that:

*"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

As such, there is no merit in the plea of the applicant that the lapse on their part be considered as procedural lapse of a technical nature which may be condoned.

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


12. So, ordered.

  
( RIMJHIM PRASAD )  
Joint Secretary to the Government of India

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

Attested

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Ministry of Revenue, Government of India  
New Delhi

**ORDER NO. 22/2016-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 Deputy Commissioner of Central Excise & Service Tax, Division-II, 'A' Wing, 3rde 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)

(सहायक सचिव/Assistant Commissioner)  
सहायक सचिव/Assistant Commissioner  
CBE & C.E. (Revision Application)  
विभागाध्यक्ष (आय / टिक्का)  
Minister of Finance (Deptt. of Revenue)  
श्री. भारत सरकार / Ministry of India  
नई दिल्ली / New Delhi

