

**SPEED POST**



F.No. 195/11-27/2020-R.A.  
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. 16/11/21

Order No. 231-247/2021-CX dated 15-11-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional 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 Orders-in-Appeal Nos. NOI-EXCUS-001-APP-924-937-19-20 dated 09.09.2019 & NOI-EXCUS-001-APP-940-42-19-20 dated 09.09.2019 passed by the Commissioner (Appeals), CGST Noida.

Applicants : M/s AGTEC Industries Pvt. Ltd., Greater Noida.

Respondent : The Commissioner of CGST, Gautam Budh Nagar, Greater Noida.

\*\*\*\*\*

**ORDER**

The revision applications, bearing nos. 195/11-27/2020-R.A. all dated 24.02.2020, have been filed by M/s AGTEC Industries Pvt. Ltd. (Formerly known as ANG Automotive Components Pvt. Ltd.), Greater Noida (hereinafter referred to as the Applicants) against the common Order-in-Appeal No. NOI-EXCUS-001-APP-924-942-19-20 dated 09.09.2019 passed by the Commissioner (Appeals), CGST, Noida. The revision applications do not cover the appeals decided vide sl. nos. 938 & 939 of the aforesaid OIA dated 09.09.2019.

2. Briefly stated, the Applicants herein are the manufacturers of "Timber Wedge, Log Splitter and other tools" falling under Chapter Heading No. 82019000 of the First Schedule to the Central Excise Tariff Act, 1985. The Applicants had exported the said goods and filed several claims for rebate in respect of Central Excise duty paid on the exported goods. However, aggrieved by the sanction of rebate claims, the Respondent department filed appeals before the Commissioner (Appeals). The department contended that, (i) the goods exported i.e. "Timber wedge, Log Splitter and other tools of a kind used in forestry" falling under Chapter Heading No. 82019000 are unconditionally exempted from payment of duty under Notification No. 12/2012-CE dated 17.03.2012; (ii) in view of sub-section 1A of the Section 5A of the Central Excise Act, 1944, the manufacturer of absolutely exempted excisable goods is not required to pay Central Excise duty on such goods; and (iii) as no duty was required to be paid at the time of clearance of subject goods being unconditionally exempt, for the export, and thus in the absence of any legitimate duty they were

not required to pay it and, as such, there is no question of claiming rebate whatsoever. However, the Commissioner (Appeals), vide Order-in-Appeal No. NOI-EXCUS-002-APP-1756-1763-16-17 dated 29.03.2017, held that the Applicants herein had, by mistake, mentioned the wrong classification on the invoices/ARE1s as 82019000 or 84329900 instead of correct classification under 84659600 and 84669200. Accordingly, the Commissioner (Appeals) held that the rebate had been correctly sanctioned and rejected the appeals filed by the department. Similar orders were passed, vide Orders-in-Appeal Nos. NOI-EXCUS-002-APP-1764-1769-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-1770-1771-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-858-17-18 dated 15.09.2017 and NOI-EXCUS-002-APP-859-860-17-18 dated 15.09.2017. The department preferred five revision applications against the said Orders-in-Appeal dated 29.03.2017, 29.03.2017, 29.03.2017, 15.09.2017 & 15.09.2017, before the Government which were decided vide Order No. 702-707/18-CX dated 24.12.2018. The Government, vide the said Order dated 24.12.2018, set aside the aforesaid Orders-in-Appeal and remanded the matter back to the Commissioner (Appeals) for re-examination of the main issue, i.e., whether the exported goods classified by the Respondents (Applicants herein) themselves under sub-heading 8201 were absolutely exempted under Notification No. 12/2012-CE and whether the rebate of duty could be granted even when they were not required to pay any duty of excise. Pursuant thereto, the Commissioner (Appeals), vide the impugned Order-in-Appeal, decided the appeals filed by the department afresh. The Commissioner (Appeals) held that the goods were cleared after self assessment by classifying them under CETH 8201 which was followed by the Applicants in their annual returns, invoices and ARE1s etc., which was absolutely exempted from

payment of whole of the Central Excise duty under Notification No. 12/2012-CE. Further relying upon the provisions of Section 5A of the Central Excise Act, 1944, the Commissioner (Appeals) held that the Applicant were not required to pay duty at the time of clearance of subject goods and, as such, the question of rebate under Rule 18 of the Central Excise Rules, 2002, does not arise. Accordingly, the Commissioner (Appeals) allowed the appeals filed by the department.

3. The revision applications have been filed, mainly, on the grounds that the Order-in-Appeal dated 09.09.2019 has been passed ex-parte without following the principles of natural justice; that the Commissioner (Appeals) has proceeded to decide the case against them on the basis that the classification under sub-heading no. 82019000 or 84369900 was claimed by themselves whereas the said goods fall under a different Tariff Heading which attracts duty; that classification is a legal issue forming the very basis as to whether any duty or exemption/benefit is legally admissible or not; that the classification of goods is to be decided as per Central Excise Tariff and not as per what is mentioned in their own documents; that the goods exported by them are correctly falling under sub-heading 84659600 and 84669200 and therefore, the impugned Order-in-Appeal cannot be sustained. The department has filed Written Submissions, vide letter C. No. IV(18)/Ref./AGTEC/GBN/D-1/328/18/ dated 02.11.2021.

4. Personal hearing, in virtual mode, was held on 12.11.2021. Sh. Ram Awatar Singh, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the instant RA arises out of an order of Commissioner (Appeals)

which has been passed ex-parte. Sh. Singh submitted that their factory address had changed in 2018 and, hence, they did not receive the hearing notices of the proceedings before the Commissioner (Appeals). In the circumstances, he requested for the matter to be remanded to the Commissioner (Appeals) for de-novo consideration. Sh. R.P. Joshi, Superintendent appeared for the department and reiterated the contents of the written submissions dated 02.11.2021.

5. The Government has carefully examined the matter. The preliminary issue raised by the Applicant herein is that the impugned Order-in-Appeal has been passed ex-parte allegedly in violation of principles of natural justice. The Government, however, observes that the Commissioner (Appeals) had afforded five opportunities of personal hearing to the Applicant herein, i.e., on 24.04.2019, 07.05.2019, 30.05.2019, 20.08.2019 and 06.09.2019, which the Applicants did not avail. It is also observed that in the proceedings before the Government culminating in the aforesaid Order dated 24.12.2018 also, the Applicants did not appear for personal hearing. It is the contention of the Applicant that they did not receive the hearing notices of the proceedings before the Commissioner (Appeals) as their factory address had changed in 2018. The Applicants herein are established manufacturers and the Government finds it inconceivable that they were not aware of the proceedings involving them before the Government or before the Commissioner (Appeals) for a period spread over one and a half years. As such, the contention that there has been a violation of principles of natural justice by the Commissioner (Appeals) is not sustainable.

6. The main issue involved herein is whether the rebate of Central Excise duty is admissible since the goods had been classified by the Applicants themselves under sub-heading 8201 which was exempted under Notification No. 12/2012-CE. The Government observes that in an earlier proceeding arising out of the revision application filed by the Respondent department in the case of the same Applicant (Respondent therein) in respect of export of same goods, the Government has, vide Order No. 99/2021-CX dated 12.05.2021, decided the matter against the Applicants herein for the reasons that *"the respondent was operating under self-removal procedure and the assessment of goods and duty payable was also done by themselves. Hon'ble Supreme Court has, in the case of ITC Ltd. vs CCE, Kolkata {2019 (368) ELT 216 (SC)}, held that "the claim for refund cannot be entertained under the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would be within the ken of Section 27 to set aside the order of self-assessment and re-assess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act". Thus, in case, the respondent were of the opinion that self-assessment made by them was not in order, they should have got the same modified in accordance with law, which does not appear to have been done."* There is no reason to differ from the view already taken by the Government. Further, it is not the contention of the Applicant that the goods classified under the CETH 8201/8436 are not unconditionally exempted in terms of Notification No. 12/2012-CE. Therefore, the Commissioner (Appeals) has correctly held that in terms of Section 5A of the Central Excise Act, 1944, no duty was payable and thus, the

question of rebate does not arise. As such, the Government does not find any infirmity in the impugned Order-in-Appeal.

7. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s AGTEC Industries Pvt. Ltd.,  
38-B, Ecotech-II, Udyog Vihar,  
Greater Noida, Uttar Pradesh – 201308.

G.O.I. Order No. 231-247/21-CX dated/5-11-2021

Copy to: -

1. The Commissioner of CGST, Gautam Buddh Nagar Commissionerate, 3<sup>rd</sup> Floor, Wegmans Business Park, Greater Noida – 201306.
2. The Commissioner (Appeals), CGST & Central Excise, 4<sup>th</sup> Floor, C-56/42, Renu Tower, Noida – 201 301.
3. Sh. Ram Awatar Singh, Advocate, SE-149, Shastri Nagar, Ghaziabad – 201002.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (अ. व. म. / Finance Deptt.)  
Ministry of Finance (A. V. M.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi