

REGISTERD POST
SPEED POST



**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, Cuffe Parade,
Mumbai- 400 005**

F.No. 195/05/16-RA/4564 Date of Issue: 27/08/2021

ORDER NO. 277/2021-CX (SZ) /ASRA/MUMBAI DATED 25.08.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Diamond Engineering (Chennai) Pvt. Ltd.

Respondent: Commissioner of Central Excise Chennai-III

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal Nos. 317/2015 (CXA-II) dated 30.09.2015 passed by the Commissioner of Central (Appeals-II), Chennai.



ORDER

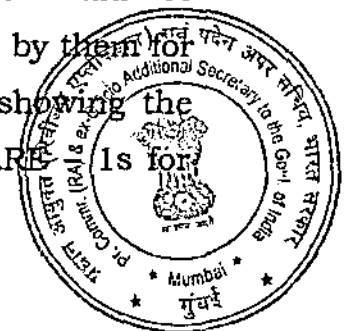
This Revision Application has been filed by M/s. Diamond Engineering (Chennai) Pvt. Ltd., 843, Mambakkar-Thiruporur Village Highway, Kayar Post, Kancheepuram – 603 110 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. 317/2015 (CXA-II) dated 30.09.2015 passed by the Commissioner of Central (Appeals-II), Chennai.

2. The case in brief is that the Applicant is engaged in the manufacture of Fabricated Steel Structures falling under Chapter 73 of the Central Excise Tariff Act, 1985. They had filed rebate claims pertaining to 13 ARE-1s totaling to Rs. 99,29,245/- (Rupees Ninety Nine Lakhs Twenty Nine Thousand Two Hundred and Forty Five Only). On scrutiny of the claims, it was noticed that in the Shipping Bills and Bills of Lading, the address of the company was mentioned as 179, Old Mahabalipuram Road, Sholinganallur, Chennai-600119 with ECC No. AAACD3939EXM001, whereas the Applicant was registered under Allathur Range of Tambaram-I Division with ECC No. AAACD3939EXM004 and registered address was 843, Mambakkar-Thiruporur Village Highway, Kayar Post, Kancheepuram – 603 110. Further, the invoice filed by the Applicant was not in conformity with the invoice to be issued in terms of Rule 11 of Central Excise Rules, 2002. Hence, the Applicant issued Show Cause Notice dated 06.06.2014. The Assistant Commissioner, Central Excise, Tambaram -I Division, Chennai vide Order-in-Original C.No. V/18/305/2014-Rb : 381-R/2014 dated 20.10.2014 rejected the refund claims under Section 11B of Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals-II), Chennai. The Commissioner (Appeals) vide Order-in-Appeal No. 317/2015 (CXA-II) dated 30.09.2015 rejected their appeal.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

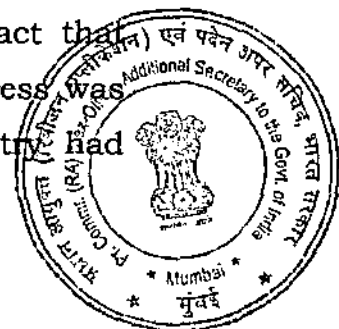


- (i) The Applicant were engaged in the manufacture of "Fabricated Steel Structures" falling under Chapter 73 of the Central Excise Tariff Act, 1985 from the registered unit located at 179, Old Mahabalipuram Road, Sholinganallur, Chennai-600119 till October 2013. Due to paucity of space, they were constrained to shift the manufacturing unit to 843, Mambakkar-Thiruporur Village Highway, Kayar Post, Kancheepuram - 603 110 which is registered as AAACD3949EXM004. This could be evidenced from their letter dated 28.10.2013 that was submitted to the Assistant Commissioner of Central Excise, Perungudi Division intimating the closure of their manufacturing location at 179, Old Mahabalipuram Road, Shollinganallur, Chennai - 600 119 with Excise Registration No. AAACD3949EXM001 and also regarding the shifting of the capital goods and semi-finished/inputs and the availment of Cenvat Credit in terms of Rule 10 of the Cenvat Credit Rules, 2004 to their unit located at No. 843, Mambakkam - Thiruporur Village Highway, Kayaar P.O., Kancheepuram Dt. - 3603 110 falling within the jurisdiction of Tambaram I Division. Subsequently, vide their letter dated 04.11.2013 they had surrendered their registration certificate having ECC No. AAACD3949EXM001.
- (ii) The Applicant vide their letter dated 06.11.2013 addressed to the Director General of Foreign Trade, Chennai had also requested for change of address in their IEC No. 0497019973 and the amended Certificate of Importer - Exporter Code was issued to them by the Director General of Foreign Trade only on 21.11.2013.
- (iii) In view of the delayed issuance of Certificate of IEC with the new address, the old address was captured in the Shipping Bills. However, the goods exported were manufactured only from their manufacturing unit located at No. 843, Mambakkam - Thiruporur Village Highway, Kayaar P.O., Kancheepuram District-603 110 having Excise Registration No. AAACD3949EXM004. The above fact could be evidenced from the Production Record, ER - 1 Return filed by them for the Month of November 2013, RG 23 - Part-II register showing the details of duty debited, the Export Invoices raised, the ARB



the said clearances showing the clearance of the manufactured goods from the new unit.

- (iv) Further, the impugned notice also alleged that the Bill of Lading also contained the main unit address. In this regard, the Applicant submitted that out of the 13 rebate applications comprising of 16 ARE-1's in question as tabled in Para 2 of the show cause notice, three ARE1's bearing the numbers, 278, 288 & 289 related to exports made to M/s. Dangote Cement PLC., Nigeria and consigned to M/s. Green View International Company Limited, Tema. The Bill of Lading in respect of the above exports to Tema contained the shipper reference as the address of the main unit of the Applicant by mistake for the aforesaid reasons. However, all the balance 13 ARE-1's related to exports made to FLSMIDTH Inc and all the consignments were together shipped under one Bill of Lading No. BPR0010683 dated 26.11.2013 issued by M/s DSV Ocean Transport wherein the shipper was mentioned as M/s. FLSMIDTH Inc and not as alleged in the impugned notice.
- (v) Further, the Applicant also wish to draw kind attention to their letter dated 05.12.2013 addressed to the Superintendent of the Central Excise, Tambaram-I Division, through which the Triplicate and Quadruplicate of the ARE-1s along with the Export Invoices and Packing List cleared for export from their new unit under Self Sealing was forwarded.
- (vi) From the above submissions, it would be apparently clear that the goods exported under ARE-1s in respect of which the present rebate claims have been filed, were only manufactured and cleared from their new unit located at No. 843, Mambakkam Thiruporur Village Highway, Kayaar P.O., Kancheepuram District-3603 110 and not from their old unit, as alleged in the impugned notice, since the entire operations/transactions were closed in the said unit since November 2013. The entire confusion created was only due to the fact that the amended Certificate of IEC incorporating the change of address was received late and that the Shipping bills and Bills of Entry had



retrieved the old address from the IEC details available on the server. Had the Director General of Foreign Trade accorded the necessary permission on time, this confusion would not have arisen.

(vii) With respect of the allegation that the invoices submitted by the Applicant are not in conformity with the invoice to be issued in terms of Rule 11 of Central Excise Rules, 2002, the Applicant submitted that for such procedural infractions, substantial benefit should not be denied. In this connection, the Applicant wish to place reliance on the following decisions, wherein it has been held that the procedural infraction of Notifications/circulars etc. are to be condoned if exports have really taken place, and the law is now settled that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be and have to be condoned. They place reliance on the following judgements:

(a) In Re: Barrot Exports [2006 (203) ELT 321 (GOI)];

(b) In Re: Modern Process Printers [2006 (204) ELT 632 (GOI)];

(c) In Re: Cotfab Exports - 2006 (205) ELT 1027 (GOI)];

(d) In Re:Kamud Drugs Pvt. Ltd [2010 (262) ELT 1177 (Commr. Appl.)].

(viii) In the instant case, the Applicant had submitted all the evidences available to substantiate their stand that the goods have been manufactured and exported on payment of appropriate duties and that for certain procedural lapses, the substantial benefit was proposed to be denied.

(ix) Notwithstanding the above submissions, the Applicant wish to submit that even assuming without admitting, the rebate claim is liable to be rejected, then the duty paid by them on such exports shall be treated as erroneous payments and as such they are entitled to take re-credit of the same.

(x) The Learned Appellate Commissioner had rejected the appeal of the Applicant on one of the grounds that the adjudicating authority in the



impugned Order-in-Original stated that on verification of certain packing list it was noticed that the Applicant had signed with dates prior to the date of registration certificate issued to the Kayar unit. The Applicant submitted that the lower appellate authority had grossly erred in coming to such a conclusion without understanding the true facts of the case.

- (a) The unit situated at 'Kayar' is named as "Ruby Engineering" and the said unit had been issued registration certificate way back in 2009 itself and the said unit was working as a job work unit for the Applicant's main unit situated at No.179, Old Mahabalipuram Road, Sholinganallur, Chennai-119 with the Excise registration number AAACDEXM001. The copy of the registration certificate issued to the Applicant in respect of their unit at Kayar as well as the letters filed by their main unit/Applicant to the Central Excise department during 2010 to 2013 mentioning the above fact that the Kayar unit is working as a job working unit and requesting for permission to clear the materials from Kayar Unit under Rule 4(6) of Cenvat Credit Rules i.e. the goods were being processed by their Kayar unit on job work basis for their main unit and the required raw materials were transferred from the main unit to their Kayar unit, then the goods were manufactured at Kayar unit on job work basis even before shifting of the main unit to the kayar unit.
- (b) Further, Applicant's main unit vide letter dated 28.10.2013 had informed their jurisdictional authority about the shifting of their unit to Kayar unit for want of space and has listed the stock of semi-finished goods/inputs lying in stock in the books of the main unit including the materials lying with other job working units. On a scrutiny of the said list, it be seen that the list includes materials meant for both the foreign customer namely M/s. FLSMIDTH as well as M/s Dangote Cement. As such it is very clear that the various items/parts of export goods meant



for the above customers were already manufactured and kept with the job working unit/ main unit. Since the export order involved numerous and voluminous items and export is subject to physical inspection by the buyer, the goods were arranged for physical inspection then and there when they were manufactured and upon inspection and approval the same were packed and kept as per the packing list prepared separately for such items.

- (c) The lower appellate authority had merely placed reliance on such packing list and photos to record a finding to the effect that from the packing list it is seen that the goods were manufactured and packed much before the date of shifting and hence it is not manufactured in Kayar unit after shifting. The Applicant submitted that though the goods were manufactured partially and kept even before the date of shifting of the main unit to Kayar unit, the same were shifted to the Kayar unit as clearly declared to the Department at the time of requesting for permission to transfer the credit balance lying in the Cenvat Credit Account on the date of shifting, Such stock of goods transferred were duly accounted for in the RG1 registered maintained in Kayar unit during November 2013. Further such manufacture and clearances had been duly accounted for in the ER1 Return filed for November 2013 in respect of Kayar unit.
- (d) It is relevant to note that the entire export shipment pertaining to M/s FLSMIDTH had been shipped under one Bill of Lading as already mentioned even though the clearances have been made from the unit on various dates and separate shipping bills were filed and assessed. As such, though the goods were inspected and approved as and when the goods were manufactured on piecemeal basis and thereafter were packed and packing list also prepared, the same were accumulated within the unit and cleared for export only when the entire exports were manufactured and clearance obtained from the foreign buyer. As such even though



the goods were manufactured and kept in piecemeal basis even before the shifting date, consequent to shifting of the main unit to Kayar, the same were also shifted to Kayar unit as already mentioned and were cleared on payment of appropriate duty under claim of rebate for export from Kayar unit during November 2013. Therefore, the finding of the lower adjudicating authority is not sustainable on this ground.

(xi) With regard to the observation of the lower appellate authority that gate registers, consignment notes for transport of goods in subject from Kayar unit, transporter bills and day wise production log sheet were not furnished by the Applicant, to establish their case, has submitted/attached copies of the Production Register maintained by them and copies of the Gate Register maintained by their Kayar unit along with the revision application. From these copies, it can be seen that the export clearances in question was duly recorded therein. With regard to transportation document, the Applicant submitted that they owned about 18 trailers and they mostly use their own trailers to move the manufactured goods for export/customers premises. As such they could not furnish to any consignment note/transport bills as required by the Department.

(a) Though impugned proceedings, the rebate claims filed were denied due to discrepancy in the mention of unit address in the shipping bill, it is relevant to note the operations in the main unit has been closed by the end of October 2013 and the entire unit shifted Kayar unit, and the registration surrendered immediately thereafter. The main unit also has filed the monthly ER1 return for October 2013 and there was no balance of goods indicated in the said ER1. Further, such shifting was verified by the Department for the purpose of allowing transfer of Cenvat credit balance amounting to around 4 crores and the same had been permitted and there was no dispute in this regard.

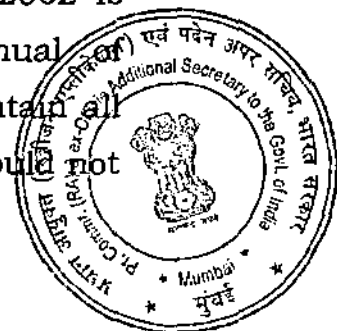
(xiii) The Appellate Commissioner had rejected the appeal of the Applicant on one of the grounds that since there was change in address in the



Shipping Bill/Bill of Lading with the export invoice/registration number, it was for the Applicant to prove that the goods were produced and exported from the Kayar unit beyond doubt. The Applicant submitted that

(a) On a perusal of the ER1 return filed by the Applicant for their Kayar unit for November 2013, it can be seen that apart from export clearance in question under claim of rebate, there were other export clearances without payment of duty either under LUT or under CT-1 and even in those clearances made during this intermittent period, the address of the unit had been mentioned as the main unit with its Excise registration number since IE Code was pending amendment. For example, the Applicant places the export documents in respect of export clearances made vide Invoice No. 279 dated 08.11.2013 and Invoice No.281 dated 09.11.2013. On a perusal of the same it can be seen that such clearances were also for export to the same buyer namely M/s. FLSMIDTH, USA and the goods were finally exported under the same bill of documents in respect of the above clearances vide their Annexure 19 filed for the month of February 2014, which has been duly received, acknowledged and admitted by the Department. That being the case, when similar shipping bills with the address of main unit has been accepted by the Department for the clearances made without payment of duty during the relevant period, it is not know as to who and why such shipping bills should be question only when the Applicant seeks rebate of duty paid on certain export consignments. The proceedings initiated in this regard itself is illogical and not tenable at all.

(xiv) With regard to the observation of the lower Appellate Authority that the invoice issued under Rule 11 of Central Excise Rules, 2002 is mandatory for claiming rebate in terms of CBEC manual supplementary instructions and the export invoice do not contain all the information to be furnished under Rule 11 and hence it could not



be taken that those invoice issued by the Applicant are in conformity and contravention of Rule 11 is not condonable, the Applicant submitted that:

- (a) In terms of Rule 11 there is no invoice format prescribed and only certain details are required to be mentioned as per sub rule (2) of the above rule. All the details required such as registration number, name of the consignee, description of goods, classification, quantity and value of the goods are mentioned in the Export invoice itself. Further, the name of the concerned Excise Division and the duty payable is duly reflected in the ARE-1 prepared for such clearances. Further the Annexure C-1 prepared for self sealing purpose and annexed to ARE-1 would contain the package no and the vehicle registration number. In effect, though certain details are not mentioned in the export invoice, the corresponding ARE-1 and Annexure C-1 contains the missing details and there was no dispute that the missing details are available in the above documents. In fact, there was no dispute that the goods exported are not correlatable between the various export documents prepared for one export clearance such as packing list prepared at the time of inspection, master packing list, export invoice, ARE1, Annexure C-1, Form B - Port trust copy relating to the shipping bill, Shipping bill, Bill of Lading, etc. On a perusal of the said documents prepared for each export in question, it can be seen that the export clearance is correlatable to each such document and in all the documents the name of unit and address of the unit has been correctly provided except in Shipping bill, which was due to the fact of delay in getting, the amendment of IE code.
- (b) In view of the above, rejection of rebate on the ground that certain details required in terms of Rule 11 is not available in the export invoice is not legally sustainable and it is settled in law that procedural infirmities should not be made a ground to deny substantial benefit to the assessee's. The Applicant had

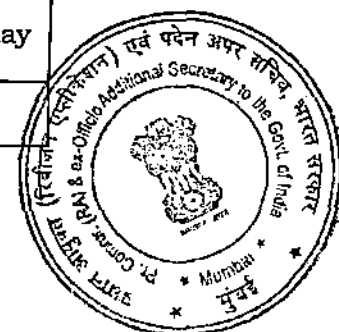


manufactured and exported around 1250 Mts of fabricated structural valued at Rs. 11,83,09,539/- to M/s FLSMIDTH vide the Bill of Lading in question and the Applicant was denied the benefit of rebate because the unit name and address of the Applicant had been wrongly mentioned in view of the shifting of unit and delay in amending the IE Code, which was not justifiable at all and the impugned proceedings merits to be quashed.

- (xv) Notwithstanding the above, even presuming without admitting that the lower authorities are correct in rejecting the rebate claims, the Applicant wish to submit that there was no dispute that appropriate duties had been paid on the export clearances at the time of their exports in their Kayar unit and if the export goods are not held to be manufactured in Kayar unit then, there is no requirement on Kayar unit to pay duty and the duty already paid was erroneous and as such, they are entitled for re-credit of such duty paid out of Cenvat credit. The request for re-credit can be denied on the rebate claims rejected only when either the goods are not exported or the duties have not been paid. In the instant case since both these aspects are not in dispute, the question of rejecting the request for re-credit was not sustainable. The lower appellate authority had not dealt this issue raised by them in their appeal and accordingly, the impugned order in appeal is not sustainable on this ground also.
- (xvi) The Applicant prayed that the impugned Order-in-Appeal be set aside with consequential relief.

4. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date RA/COD filed	No. of days delay
1	195/05/16-RA	30.09.2015	06.10.2015	11.01.2016	90+05



The Applicant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD') on the grounds that due to torrential rains in Chennai in the month of November and December 2015, during which the Applicant's unit remained closed and the required documents for filing the present revision application were not able to be retrieved within the due date for filing. Therefore, the Applicant prayed that the delay of 5 days in filing the appeal may please be condoned.

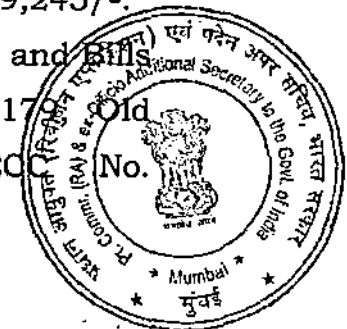
4. Personal hearing was fixed on 16.07.2021 and 23.07.2021. On 16.07.2021 on behalf of the Applicant, Shri M Marthikeyan, Advocate and Shri Danarja representative attended the online hearing. They reiterated their submissions and submitted that their claim has been rejected only on the ground that Shipping Bill has name of sister concern. They explained that name of exporting firm was pending for inclusion in IEC Code and everything being in order, their claim deserves to be allowed.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government first proceeds to discuss the issue of delay in filing the revision application. It is clear that Applicant had filed the revision application after 3 months + 05 days. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. Hence, Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the delay and takes up revision application for decision on merit.

7. On perusal of the records, Government observes that the Applicant had filed rebate claims pertaining to 13 ARE-1s totaling to Rs. 99,29,245/-.

On scrutiny of the claims, it was noticed that in the Shipping Bills and Bills of Lading, the address of the company was mentioned as 170 Old Mahabalipuram Road, Sholinganallur, Chennai-600119 with ECC



Commissioner, Tambaram I Division, Chennai informed that they have surrendered their ECC -No. AAACD3939EXM001 through ACES online on 31.10.2013 and also surrendered their original RC to the department.

7.2 The Applicant vide letter F.No. DECPL/JDGFT/IEC/2013-14 dated 06.11.2013 addressed to the Joint Director General of Foreign Trade, Chennai

"IEC NO. 0497019973

STAR EXPORT HOUSE No.:04/2/0606/20090902

Dear Sir,

Sub: Submission of Application Form for Change of Address in IEC No.-reg

Ref: IEC NO. 0497019973

We are please to inform that our M/s Diamond Engineering (Chennai) Pvt Ltd, situate at No. 179, Old Mahabalipuram Road, Sholinganallur, Chennai-600119. Shifted from above address to the followed mentioned address.

NO-501, KELEBAKKAM VANDALUR MAIN ROAD,
MAMBAKKAM, CHENNAI - 00 127.

We have vacated as there were lot of hindrances for moving the materials from one unit to another unit.

Hence, therefore the above change have been made and we are requesting you to do the needful in this regards at the earliest. In this connection we are enclosing the following documents for your reference.

1. Original IEC Certificate
2. Demand Draft No-723062 DT 05.11.2013 Rs. 1000.00
3. ANF - 2A duly filled and signed.
4. Appendix 18A Dully attested by Bank.

Kindly acknowledge the receipt and do the needful."

The request for change of address had been accepted and the amended Certificate of Importer-Exporter Code was issued on 21.11.2013.

7.3 The Deputy Commissioner of Central Excise, Tambaram-I Division, Chennai-III on 07.11.2013 vide LUT Register Sl. No. 74/2013-14 valid from 07.11.2013 to 06.11.2014 accepted the Letter of Undertaking in Form UT-1 for removal of excisable goods for export without payment of duty executed by M/s Diamond Engineering Pvt Ltd (Unit of Ruby



claims, Government finds that the Applicant had not issued the Central Excise Invoices in respect of exported goods in terms of Rule 11 of Central Excise Rules. However, the below mentioned export documents i.e. ARE-1 duly certified by the Custom, Export Invoice, Shipping Bills and Bill of Lading are correlatable with each other:

Sr.No	ARE-1 No & date	Amount	Export Invoice	S/B No & dt	B/L No. & dt
1	278 dt 07.11.13	4,79,550	EXP/F&S/278 dt 07.11.13	8342790 dt 07.11.13	866196143 dt 12.11.13
2	288 dt 13.11.13	11,40,479	EXP/F&S/288 dt 13.11.13	8438424 dt 14.11.13	867853973 dt 19.11.13
3	289 dt 13.11.13	4,19,899	EXP/F&S/289 dt 13.11.13	8442816 dt 14.11.13	867853973 dt 19.11.13
	291 dt 16.11.13	71,823	EXP/F&S/291 dt 16.11.13	8480984 dt 17.11.13	BPR0010683 dt 26.11.13 wherein the shipper is mentioned as M/s FLSMIDTH Inc
4	295 dt 16.11.13	17,18,959	EXP/F&S/295 dt 16.11.13	8480986 dt 17.11.13	
5	292 dt 17.11.13	2,57,260	EXP/F&S/292 dt 17.11.13	8480983 dt 17.11.13	
	294 dt 17.11.13	9,510	EXP/F&S/294 dt 17.11.13	8483087 dt 18.11.13	
6	282 dt 12.11.13	12,43,792	EXP/F&S/282 dt 12.11.13	8438273 dt 14.11.13	
7	283 dt 17.11.13	4,96,731	EXP/F&S/283 dt 17.11.13	8442819 dt 14.11.13	
8	284 dt 12.11.13	4,24,955	EXP/F&S/284 dt 12.11.13	8438297 dt 14.11.13	
9	285 dt 12.11.13	4,35,401	EXP/F&S/285 dt 12.11.13	8438303 dt 14.11.13	
10	287 dt 17.11.13	4,44,277	EXP/F&S/287 dt 17.11.13	8438300 dt 14.11.13	
	286 dt 12.11.13	1,18,509	EXP/F&S/286 dt 12.11.13	8438293 dt 14.11.13	
11	290 dt 16.11.13	62,762	EXP/F&S/290 dt 16.11.13	8480985 dt 17.11.13	
	293 dt 16.11.13	11,32,711	EXP/F&S/293 dt 16.11.13	8480937 dt 17.11.13	
12	296 dt 16.11.13	11,72,527	EXP/F&S/296 dt 16.11.13	8480988 dt 17.11.13	
	Total	99,29,245			

Therefore the documents furnished by the Applicant indisputably prove that duty paid goods under claim for rebate have been exported and hence the rebate claim should not have been denied only on grounds of non-production of Central Excise Invoice. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as



resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

10. Government in this regard also rely on GOI order No. 158-159/2018-CX dated 02.04.2018 IN RE: Inani Marbles & Industries Ltd. [2018 (364) ELT 1151 (GOI)] which also involve an identical issue. While deciding the issue of non-issuing of the Central Excise invoice in respect of exported goods in the Revision Applicant filed by the Revenue, it is held that

“5. However, on merit the Government does not find the Revision Application maintainable merely because the respondent did not issue the Central Excise invoice in respect of exported goods. Non-issuing of invoice is primarily a breach of Rule 11 of the Central Excise Rules, 2002 and is not a sole evidence of payment of duty. But no penal action is apparently taken against the respondent for non-issuing of the invoice in contravention of Rule 11 and rather this lapse is being used by the Applicant for denial of rebate of duty. The Commissioner(Appeals) has rightly observed in his order that the first and foremost condition for getting rebate of duty under Rule 18, read with Notification No. 19/2004-CE (NT) dated 6-9-2004, is that the goods cleared for export under ARE-1 are actually exported on payment of duty and this condition has been undisputedly satisfied in this case as per payment of duty and export certificate of the Customs Authorities on the original & duplicate copies of the ARE-1. The export of the goods on payment of duty is not doubted by the applicant also anywhere in the Revision Application. Further no allegation is also made that other conditions stipulated in Notification No. 19/2004 have not been complied with this case. Submission of copy of the invoice along with rebate claim is not a condition in the above Notification and its requirement in the C.B.E. & C/s Manual of Supplementary Instructions is just for guiding the departmental officers for ensuring sanctioning rebate of duty against duty paid exported goods only. But it cannot be given precedence over Rule 18 and Notification No. 19/2004 for denial of rebate of duty to the respondent which is granted as a incentive by the Government of India to encourage maximum export from this country.

6. In view the above discussions, the Government does not find any error in the Order-in-Appeal and the Revision Application filed by the Revenue is rejected.”

11. With the above observations, Government remands the matter to the original authority for the limited purpose of verification of the claim with directions that he shall reconsider the claims for rebate on the basis of the aforesaid documents submitted by the Applicant. After satisfying the



authenticity of those documents, and the fact of export of duty paid goods, the original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

12. In view of above, Government sets aside the impugned Order-in-Appeal No. 317/2015 (CXA-II) dated 30.09.2015 passed by the Commissioner of Central (Appeals-II), Chennai and the matter is remanded to the Original Adjudicating Authority.

13. The revision application is allowed in terms of above.


25/8/21
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India


ORDER No 277/2021-CX (SZ) /ASRA/Mumbai Dated 25.08.2021

To,
M/s. Diamond Engineering (Chennai) Pvt. Ltd.,
843, Mambakkar-Thiruporur Village Highway,
Kayar Post,
Kancheepuram,
Tamil Nadu - 603 110.

Copy to:

1. The Commissioner of CGST, Chennai Outer, No. 2054-1, II Avenue, 12th Main Road, Newry Towers, Anna Nagar, Chennai - 600 040.
2. Shri M Karthikeyan, Advocate, C/o M/s Swamy Associates, Rams Flats, 21/8, Ashoka Avenue, Directors Colony, Kodambakkam, Chennai 600 024.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy

ATTESTED


C B NAIR
ASSISTANT COMMISSIONER
REVISION APPLICATION, MUMBAI

