

REGISTERED 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  
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Mumbai- 400 005

F. No. 195/986/13-RA  
195/987/13-RA  
195/319/14-RA

14580

Date of Issue:- 18/10/19

ORDER NO. 30-32/2019-CX(SZ)/ASRA/MUMBAI DATED 16.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/986/13-RA 195/987/13-RA 195/319/14-RA	M/s Radiant International, Bangalore	Commissioner, CGST, Bengaluru.

**Subject:** Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. 463-464/2013 dated 10.09.2013 & 384/2014 dated 02.07.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

## ORDER

These Revision applications are filed by M/s Radiant International, Bangalore (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. 463-464/2013 dated 10.09.2013 & 384/2014 dated 02.07.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. The Brief facts of the case are that the applicants are engaged in the manufacture of 'Valves' falling under Chapter heading no. 84 of the first schedule to the Central Excise Tariff Act, 1985. The applicant had filed three rebate claims for Rs. 1,44,023/- , Rs. 1,94,952/- and Rs. 535,426/- on 07.09.2011, 17.10.2011 and 20.01.2012 respectively being the Central Excise Duty paid on their final products exported under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944.

3. The Rebate sanctioning Authority rejected all three rebate claims for the reason that there is no consistency with regard to the identity of the exported goods as reflected in their various export documents, which are fraught with major discrepancies.

4. Aggrieved by the said Order in Originals, the applicant filed an appeal with the Commissioner of Central Excise (Appeals-I), Bangalore on the following grounds :-

4.1 the original authority has erred in law and on the facts in rejecting the rebate claim on the basis of alleged differences and discrepancies, even though the notification no. 19/2004 does not permit of rejection of rebate claim on the basis of clerical and technical errors.

4.2 the original authority erred in holding that the goods exported are not valves but valve assemblies and the finding that there is difference between valve and valve assembly is a perverse finding.

4.3 the original authority erred in law and on facts on holding that the goods are not in accordance with the purchases order ignoring the vital fact that the customer has accepted the goods and also paid for the same.

5. The Commissioner (Appeals) vide reference Order-in-Appeals rejected the appeals and upheld orders passed by the original adjudicating authority.

6. Aggrieved by the Order in Appeals, the applicant has filed the instant revision applications on the following grounds :-

6.1 The Notification No. 19/2004 does not state that if the description given in various documents does not tally with each other, rebate claim should not be sanctioned. As long as the goods cleared from the factory have actually been exported, the rebate should be sanctioned.

6.2 The customer has accepted the consignments and paid for the same.

6.3 It was only clerical error in mentioning Valve assembly in the shipping bill and mate receipt and substantial benefit under law cannot be denied for clerical error.

6.4 the adjudicating authority has erred in rejecting the rebate claims for freight amount appearing in the different export documents do not match

6.5 the adjudicating authority has erred in rejecting the claims because there was difference in the amount of freight mentioned in BRC and other export documents.

6.6 the exported goods have been accepted by the customer and also paid for it.

7. A Personal Hearing was held in matter on 26.08.2019 Shri Raju Joseph Pulikkunnel, Managing Partner appeared on behalf of the applicant for hearing. No one appeared on behalf of the Revenue. Shri Raju Joseph reiterated the submission filed through Revision applications and written brief along with the case laws filed. It was pleaded that in view of the submissions, Revision Application be allowed and Order in Appeal be set aside.

8. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. The applicants have cleared the impugned goods under claim of rebate vide ARE-1 No.

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- (i) ARE-1 No. 009 dated 15.06.2011 & Invoice No. 009 dated 15.06.2011.
- (ii) ARE-1 No. 027 dated 08.03.2011 & Invoice No. 030 dated 08.03.2011.
- (iii) ARE- 1 No. 012 dated 26.07.2011 & Invoice No. 012 dated 26.07.2011.

That it is only clerical error in mentioning 'Valve Assembly' in the shipping bill. In order to examine the correctness of the applicant's contention Govt. has gone through ARE-1 No. 009 dated 15.06.2011 and relevant export documents. The Government finds that several entries describing impugned goods which are common in Purchase Order No. P764774 dated 13.05.2011, Excise Invoice No. 009 dated 15.06.2011, ARE-1 No. 009 dated 15.06.2011 and Shipping Bill No. 4127450 dated 16.05.2011 as per detail below :-

- 1) Description of goods exported as 'Valves' in all the above documents except the Shipping Bill wherein the description is 'Valve Assembly'.
- 2) No. of Wooden pallets - 8 Nos.
- 3) Net Total Weight - 4822 Kgs.
- 4) Specification Nos. of Goods as 705512520-STB-1-125 (5184 Nos.), 70551250-STB-1-125 (4320 Nos.), 705522521-STB-2-125 (720 Nos.) and 705510021-STB-1-100 (864 Nos.)
- 5) Signature of the Customs Officer on ARE-1 and Shipping Bills.

The Government finds that in respect of ARE-1s and relevant shipping bills and other export documents also Qty. of goods, Specification Nos., Wooden Pallets, Net Weight of the goods is common in all the documents.

9. The Government further notes that Part-B of each ARE-1 bears endorsement of Customs to the effect that the impugned consignment was shipped under Customs Supervision under Shipping Bill Nos. mentioned in the endorsements. Government further finds that it is not case of the Deptt. that the Customs endorsement on Part B of the ARE-1s are false or bogus.

10. In view of above facts and circumstances Govt., finds force in the contention of the applicants that they have cleared vide the above ARE-1s 'Valves' falling under Chapter S.H. 84818090 but inadvertently noted the description of the goods as 'Valve Assembly' in the Shipping Bills due to clerical error. In case of - 1989(39)E.L.T. 503(S.C.) UOIVs. Suksha International & Nutan Gems & Anr. , the Hon'ble Supreme

Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI Vs. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formika India Vs. Collector of Central Excise 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner, 1991 (55) E.L.T. 437 (S.C.). In fact, it is now a trite law that the procedural infraction of Notifications / Circulars etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect of fundamental requirement for rebate is its manufacture, subsequent export, the payment of appropriate duty and Export realisation. As long as these requirements are met, other procedural deviations can be condoned.

11. In the instant case, the broad description / Specification Nos. of goods exported mainly tallies with the vital documents viz. invoices / ARE1 and shipping bills and substantially tallying with the Purchase order etc. There is no doubt about the fact of manufacture and export of goods. Goods have been exported under Customs Supervision certifying that the goods exported are covered by the respective ARE-1s.


12. Government therefore opines that in view of collateral evidences and facts of manufactured / and subsequent export having been proved by collateral evidences as discussed above, rebate cannot be denied merely on account of difference in description mentioned in ARE-1 and Shipping Bills.

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13. In view of above discussions, Government is of the opinion that the impugned Order-in-Appeal is not maintainable and Government accordingly sets aside the impugned Order-in-Appeal.

14. The Revision Application succeeds with and accordingly allowed.

15. So, ordered.

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

To

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Bangalore - 560 100.

Copy to :

1. The Commissioner of Central Goods & Service Tax, Bengaluru North, No. 59, HMT Bhavan, Bellary Road, Bengaluru-560 032.
2. The Commissioner of Central Excise (Appeals), No. 16/1, 5<sup>th</sup> floor, SP Complex, Lalbagh Road, Bangalore- 560 027.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.