

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**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/368/14, 195/369/14, 195/370/14,
195/371/14, 195/374/14, 195/375/14,
195/382/14, 195/460/14

Date of Issue:- 28.01.2021

ORDER NO. 35-42/2021-CEX (SZ) /ASRA/MUMBAI DATED 15.01.2021 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
THE CENTRAL EXCISE ACT, 1944.

Subject:- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944
against the Orders-in-Appeal passed by the Commissioner Customs & Central
Excise (Appeals) Trichirappalli .

Sl. No.	Revision Application /Order in Appeal No.	Applicant	Respondent
1.	195/368/14-RA against OIA No.56/2014 dtd. 20.08.2014	M/s. Sanmar Foundries Ltd., Viralimalai, Pudukottai Dist.	Commissioner of Customs & Central Excise, Trichy.
2.	195/369/14-RA against OIA No. 51/2014 dtd.20.08.2014	___Do___	___Do___
3.	195/370/14-RA against OIA No. 53/2014 dtd.20.08.2014	___Do___	___Do___
4.	195/371/14-RA against OIA No. 55/2014 dtd.20.08.2014	___Do___	___Do___
5.	195/374/14-RA against OIA No. 88/2014 dtd.03.09.2014	___Do___	___Do___
6.	195/375/14-RA against OIA No. 92-93/2014 dtd. 04.09.2014	___Do___	___Do___
7.	195/382/14-RA against OIA No.167/2014 dtd.14.10.2014	___Do___	___Do___
8.	195/460/14-RA against OIA No. 49/2014 dtd.20.08.2014	___Do___	___Do___

ORDER

These Revision Applications have been filed by M/s. Sanmar Foundries Ltd., Viralimalai, Pudukottai District. (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the Commissioner Customs & Central Excise (Appeals) Trichirapalli shown at column 5 of Table shown below:

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide OIO No.	OIO upheld vide OIA No.
1	2	3	4	5
1.	195/368/2014	61,581/-	28/2014-R dated 30.04.2014	56/2014 dtd. 20.08.2014
2.	195/369/2014	2,35,949/-	113/2013-R dated 30.10.2013	51/2014 dtd.20.08.2014
3.	195/370/2014	48,364/-	106/2013-R dated 08.10.2013	53/2014 dtd.20.08.2014
4.	195/371/2014	25,15,555/-	18/2014-R dated 27.03.2014	55/2014 dtd.20.08.2014
5.	195/374/2014	4,10,570/-	109/2013-R dated 10.10.2013	88/2014 dtd.03.09.2014
6.	195/375/2014	2,57,607/-	117/2013-R dated 20.11.2013	92-93/2014 dtd. 04.09.2014
7.	195/382/2014	7,92,177/-	30/2014-R dated 06.05.2014	167/2014 dtd.14.10.2014
8.	195/460/2014	10,20,482/-	17/2014-R dated 27.03.2014	49/2014 dtd.20.08.2014
	Total	53,42,285/		

2. The brief facts of the case are that the applicant, manufacturers of Stainless Steel Castings & Non-Alloy Steel Castings falling under Central Excise Tariff Heading 73259999 & 73259930 of Central Excise Tariff Act, 1985, had filed rebate claims on various dates being the duty paid on goods cleared for export from the factory of manufacture.

3. Out of the total rebate claims filed, the rebate sanctioning authority rejected the rebates claims on the following grounds:

3.1 Reasons for rejection of Rebate to the extent of Rs.61,581/- vide Order in Original No. 28/2014-R dated 30.04.2014 (Sr. No. 1 of the Table above):-

- The description of goods in 2 ARE-1s was Non-Alloy Steel Castings-Rough with CETH No.73259999 but the same was shown in S/B as Non-Alloy Steel Castings-Rough/machined with CETH No. 73079990.

- The description of goods in 2 ARE-1s was Valves Steel Castings-Rough with CETH No.84818030 but the same was shown in S/B as Non-Alloy Steel Castings-Rough/machined with CETH No. 73079990.
- The description of goods in ARE-1 was Pipes and Tube Fittings (Swivel) with CETH No.73072200 but the same was shown in S/B as Industrial valves (cast /forged body) with CETH No. 84818090.

3.2 Reasons for rejection of Rebate to the extent of Rs. 2,35,949/-vide Order in Original No. 113/2013-R dated 30.10.2013 (Sr. No. 2 of the Table above):-

- The description of goods in ARE-1 mentioned as Meter Parts but in S/B & B/L mentioned as Identifiable ready to use machined parts made wholly or predominantly of stainless steel.
- The description of goods in ARE-1 mentioned as High Alloy Castings but in S/B and B/L mentioned as Stainless steel Castings-Rough/ Machined.
- The description of goods in 2 ARE-1s mentioned as Meter Parts but in S/B & B/L mentioned as Industrial valve(cast/forged body)

3.3 Reasons for rejection of Rebate to the extent of Rs. 48,364/-vide Order in Original No. 106/2013-R dated 08.10.2013 (Sr. No. 3 of the Table above):-

- In ARE-1, the description of goods mentioned is not specific, but as per invoice No.7100035916 dated 26.11.2011. But in S/ and B/L the same is mentioned as Non alloy steel castings-Rough. In invoice the description of goods is given as machined castings.

3.4 Reasons for rejection of Rebate to the extent of Rs. 25,15,555/-vide Order in Original No. 18/2014-R dated 27.03.2014 (Sr. No. 4 of the Table above):-

- The description of goods in all 17 ARE-1s was Non-Alloy Steel Castings-Rough but the same was shown in S/B as Non-Alloy Steel Castings-Rough/machined.

3.5 Reasons for rejection of Rebate to the extent of Rs. 4,10,570/-vide Order in Original No. 109/2013-R dated 10.10.2013 (Sr. No. 5 of the Table above):-

- The description of goods in all 17 ARE-1s was Non-Alloy Steel Castings-Rough but the same was shown in S/B & B/L as Non-Alloy Steel Castings-Rough/machined. In invoice various descriptions of goods other than non alloy steel castings-rough are mentioned. On verification of BRC submitted for proof of export, it was found that there was difference in total money realized for the goods exported under the 4 ARE-1s and money value shown in S/B No. 09272775 dtd. 07.06.2012.

3.6 Reasons for rejection of Rebate to the extent of Rs. 2,57,607/-vide Order in Original No. 117/2013-R dated 20.11. 2013 (Sr. No. 6 of the Table above):-

- The description of goods in ARE-1 was Pipes and Tube Fittings (Swivel) but the same was shown in S/B as Industrial valves (cast /forged body).In invoice, various description of goods other than those mentioned in ARE-1, S/B and B/L is mentioned. There is a huge variance in the description of goods between the goods manufactured / removed from the factory and the goods exported.

3.7 Reasons for rejection of Rebate to the extent of Rs. 7,92,177/-vide Order in Original No. 30/2014-R dated 06.05.2014 (Sr. No. 7 of the Table above):-

- The description of goods in 4 ARE-1s & S/B was Non-Alloy Steel Castings-Rough but the same was shown in B/L as Non-Alloy Steel Castings-Rough/machined.
- The description of goods in 2 ARE-1 is Stainless Steel casting-rough with CETH 73259930 but the same is given in S/B as Non-Alloy Steel Castings-Rough/machined with CETH 73259999
- The description of goods in ARE-1 is Meter Parts in CETH No. 90269000 but in S/B M/P components of stainless steel with CETH No. 84879000.

3.8 Reasons for rejection of Rebate to the extent of Rs. 10,20,482/-vide Order in Original No. 17/2014-R dated 27.03.2014 (Sr. No. 8 of the Table above):-

- The description of goods in 9 ARE-1s & S/B was Non-Alloy Steel Castings-Rough but the same was shown in S/B as Non-Alloy Steel Castings-Rough/machined.
- The description of goods in 2 ARE-1 is Stainless Steel casting-rough but the same is given in S/B as Non-Alloy Steel Castings-Rough/machined.
- The description of goods in 11 ARE-1 is Stainless Steel casting-rough but the same is given in S/B as Stainless Steel casting-rough /machined;
- The description of goods in 1 ARE-1 was Meter Parts CETH 90269000 but same was shown in S/B as Industrial valves CETH No.84818030.
- The description of goods in ARE-1 was Valves (CETH 84818030) but the same was shown in S/B as Industrial valves (cast /forged body, CETH 84818090)
- The description of goods in ARE-1 was Pipes and Tube Fittings (Swivel) CETH 73072200 but the same was shown in S/B as Industrial valves (cast /forged body, CETH 84818090)

Aggrieved with the said orders, rejecting rebate claims for the reasons mentioned above, the applicant filed the appeals before Commissioner (Appeals). However, Commissioner (Appeals) vide Orders in Appeal mentioned at column No. 5 of Table at para 1 supra, upheld these Orders in Original and rejected all the appeals filed by the applicant.

4. Being aggrieved, the applicant filed present revision applications against the impugned Orders mainly on the following common grounds:

4.1 They are engaged in the manufacture of Non-alloy steel castings, stainless steel castings, Machined castings and meter/assembly components falling under Chapters 73,84 & 90 of CETA, 1965, respectively. They are also engaged in the

manufacture of meter parts falling under Chapter 90 or ready to use machine parts falling under Chapter 84.

4.2 The description was adopted by them was with reference to the Customs Tariff Drawback Serial No. 430 which is non-alloy steel castings-rough / machined.

4.3 The observation in the Orders in Original that the goods cleared and exported are different is without any material evidence.

4.4 They satisfied all the requirements of para No.8.3 of CBEC's Central Excise Manual and has satisfied all the conditions set out in Notification No.24/2011 dated 05.02.2011 issued under Rule 18 of Central Excise Rules, 2002 which deals with rebate of duty on export of goods to all countries other than Nepal and Bhutan.

4.5 There is no dispute with reference to the value of goods referred to ARE-1 and there is no dispute on the fact that they have realized the value shown in ARE-1.

4.6 There is no dispute on the fact that they produced all relevant documents such as ARE-1, Invoice, Bill of Lading, Description of goods, the details of duty debited, realization in foreign exchange, packing list etc. These facts makes it abundantly clear that goods have been exported.

4.7 Bill of lading has the reference of invoice number and itself is sufficient to establish that the goods specified in that invoice has been exported.

4.8 The only dispute is mismatch in the description which does not affect the factum of exports and that the mismatch in the description was mainly due to the chapter reference of the Customs tariff Act.

4.9 The above mentioned errors are in the nature of procedural lapses and rebate claim cannot be simply on the ground of procedural lapses.

5. In response to show cause noticed issued in respect of each of the aforesaid 8 Revision Applications, the respondent department filed its cross objection mainly contending therein as follows:

5.1 The contention of the applicant that no opportunity of hearing was offered is wrong. They were given 3 PHs to explain their views on the discrepancies noticed. The Principle of natural justice was followed and reasonable no. of PHs were offered by the Adjudicating Authority.

5.2 They mainly contended that the description was adopted by them with reference to the Customs Tariff Drawback, serial no.430 which is 'Non Alloy Steel Castings- rough/machined". In other words, when the description of goods given in the ARE-1 is "Non-Alloy Steel Castings - rough", they adopted the description of goods in shipping bill as "Non-Alloy Steel Castings - rough/machined" only to avail drawback serial no. 430.

5.3 The above contention of M/s. Sanmar Foundries Ltd., Viralimalai does not hold good for the reason that in the rebate claim submitted by them for the month of January, 2013, the description of goods adopted in the ARE-1 and the relevant shipping bills tallied as 'Non-Alloy Steel Castings-rough". Similarly, the description of goods adopted in another ARE-1s and the relevant shipping bills tallies as 'Stainless Steel Castings-rough". In these cases also, they availed Customs tariff drawback serial no.430.

5.4 The variance in the description of goods in the Excise and Export documents did not confirm that the very goods manufactured, removed and suffered duty were not exported. The correlation of description of goods between the excise and export documents did not get established and the factum of export of duty paid goods raised was doubtful. Moreover, the adoption of different CETH no. in ARE-is and Shipping bills did not confirm the nature of goods removed from factory and exported.

5.5 M/s. Sanmar foundries Ltd., Viralimalai have been submitting numerous rebate claims till date with a lot of discrepancies in description of goods and CETH nos. In spite of repeated reminders, they were indifferent in submission of documents for rebate claims. They did not take any fruitful efforts to rectify the recurring mistakes. Repeated mistakes of similar nature can not considered as procedural lapse.

5.6 It is also brought to the light that while reviewing the revision applications filed by M/s.Sanmar Foundries Ltd., Viraliamali, the Revisionary Authority, GOI, Ministry of finance vide OrderNo.103-141/14-Cx. DT. 31.03.2014 in para 7.10 has observed,

"In respect of revision applicants mentioned at Sl.No.31, 32, 35, 36, 38 and 29, part of rebate claims were rejected for the reasons amongst other reasons that there is mismatch in description of goods between ARE-1, shipping Bill and Bill of Lading. Govt. finds that the applicant is a manufacture-exporter. While preparing AR-1, the applicant was fully aware that goods required to be exported and export documents like shipping bill and bill of lading, etc. are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise documents and export documents. Applicant as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation, which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible."

The aforesaid observations would well apply to the facts of the present cases also. Though there were many instances of denial of rebate claims filed by them, the said discrepancy continued to persist.

In view of the above the respondent prayed that Revision Applications filed by M/s Sanmar Foundries Ltd., Viralimalai has no merit and the same may be rejected.

6. Personal hearing in this case was held on 23.12.2020 through video conferencing and Shri K Vaitheeswaran, Advocate appeared online for hearing on behalf of the applicant. He informed that written submission dated 21.12.2020 have been submitted in case of M/s Sanmar Foundeies Ltd. He submitted that in these set of Revision Applications clerical and insignificant errors in documents having no bearing on value, duty, rebate amount, fact of exports etc.

7. In their written submissions dated 21.12.2020 the applicant reiterated the grounds of the Revision Application and additionally submitted as under:-

7.1 The reasons given for denial of rebate are minor and technical in nature. The fact that goods have been exported is never in dispute in respect of these matters. The discrepancies pointed out are on account of errors in the description of the goods etc. in the ARE-1 as compared to the shipping documents. For example in ARE-1 if it is stated as 'valves' with CETH 8481, in the shipping bill it is 'industrial valves' with 8 digit CETH of 84818090. All the errors are clerical errors and do not affect the rate of duty or valuation and all the goods have been exported. (The applicant also submitted detailed 'Annexure-6' in a Tabular form setting out therein ARE-1 wise reasons for denial of rebate claim by the rebate sanctioning authority and explained the clerical errors made by them. The replies of the applicant to various mismatches observed by the original authority (para 3.1 to para 3.8 supra refers) were broadly as under:

- The description of goods in Customs Tariff against Chapter heading 7325.9999 is Non Alloy Steel Castings Rough / Machined. Hence there are no changes in Rate of duty and Chapter heading for both Description, Non Alloy Steel Castings- Rough' and Non Alloy Steel Castings Rough / Machined which was mentioned in ARE-1 and Shipping Bill. In invoice they have mentioned item description instead of Chapter heading description.
- In ARE-1 description of goods not specified as "Industrial Valve" otherwise matched the description of goods with ARE-1, Shipping Bill, Bill of Lading;
- Even though the description of goods mismatched in ARE-1 and Shipping Bill the rate of duty is same for both descriptions i.e. 12.36% which is discharged by them through CENVAT Credit.
- In ARE-1 description of goods inadvertently mentioned as "Meter Parts" instead of "Identifiable ready to use M/P components made wholly /Predominantly of Stainless Steel (NTL90 & By Wt.) Manufactured through Cast Process NES Stainer Assy" but the same was correctly mentioned in Shipping Bill and Bill of Lading;
- High Alloy castings are made of Stainless steel, primarily SS 304/316 L; while both are same, it is inadvertently mentioned as High Alloys;
- In ARE-1 description of goods inadvertently mentioned as "Meter Parts" instead of "Industrial Valves (Cast / Forged body)" but the same was correctly mentioned in Shipping Bill and Bill of Lading.

- The variation in the value of money realization as shown in e-brc and the shipping bill is due to deduction of Bank Charges (They enclosed copies of e-brc, Swift Note and Credit Note as corroborative evidence.
- In all these cases of mismatch, Net weight, Billing Value, Shipping Bill No. Bill of Lading No. Vessel, Voyage No. and Invoice No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had clarified the proof of exports, verifying the various documents like commercial invoice, ARE-1 declaration, shipping bill.

7.2 The objective of excise rebate under Rule 18 is to ensure that only the goods are exported and the taxes are not exported. Even though there is no requirement for receipt of convertible foreign exchange in Rule 18 this receipt has also been demonstrated and denial of the rebate has affected the financial position of the applicant and significant money paid on exports remains locked up.

7.3 A number of decisions of the Government of India in revision proceedings and the decisions of the Supreme Court on export benefits are relevant to the issue and given in the following table:-

1. In Re. Electro Steel Castings (2015) 321 ELT 150 (GOI),
2. In Re. Socomed Pharma Pvt. Ltd. (2014) 314 ELT 949 (GOI),
3. In Re. Aventis Pharma Ltd (2012) 285 ELT 151 (GOI)
4. In Re AG Enterprises (2012) 276 ELT 127,
5. Suksha International Vs. UOI (1989) 39 ELT 503 (SC),
6. Formica India Vs. Collector of Central Excise (1995) 77 ELT 511 (SC),
7. Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner — (1991) 55 ELT 437 (SC),
8. Ford India Pvt. Ltd. Vs. ACCE (2011) 272 ELT 353;
9. Shasun Pharmaceuticals Vs. IV (2013) 291 ELT 189;
10. Union of India Vs. Farheen Texturisers (2015) 323 ELT 104 — Bom SLP Dismissed by Supreme Court in (2015) 323 ELT A23;
11. Zandu Chemicals Ltd. Vs. UoI (2015) 315 ELT 520 (Bom.)
12. Shree Ambika Sugars Ltd. V/s JS (2019) 368 ELT 334-Mad.

The period of dispute is 2010, 2011, 2012 and 2013 and even though the excise duty has been paid on exports, they have not received the excise rebate under Rule 18 and given the fact that even the excise regime is no longer in existence, it is prayed that Revision Applications may be allowed.

8. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and orders-in-appeal cross objections filed by the department as well as written submissions dated 21.12.2020 filed by the applicant. As the issue involved in these 8 Revision Applications are similar, they are taken up together and are disposed off vide this common order.

9. Government notes that in all the above cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the ground that there was difference in Tariff Heading (CETH)/description of the exported goods appearing on Excise Invoices / ARE-1s and on Shipping Bill / Bill of Lading and hence it could not be established that the same goods which were manufactured and cleared by the applicant were ultimately exported. The reasons for difference in the description of goods as stated by the applicant that '*the description adopted by them with reference to Customs Tariff Drawback serial no.430*' as well as another contention that '*the mismatch in the description was mainly due to the chapter reference of the Customs tariff Act*' has been negated by the original authority as that reason did not hold good for the other ARE-1s of the claims. Commissioner (Appeals) while upholding these Orders in Original, observed that there were many instances of denial of rebate claims filed by the appellants in the past for the very reason that there is mismatch in the description of goods between various export documents, the said discrepancy continue to persist and the appellants were well aware of this fact. The Commissioner (Appeals) also relying on GOI Order No.103-141/14-Cx. Dtd. 31.03.2014 (referred at para 5.6 supra) observed the discrepancy cannot be treated as mere procedural lapse and contention of the applicant in their submission that the errors are clerical/inadvertent errors is liable to be rejected.

10. However, the applicant has contended that in all these cases Net weight, Billing Value, Shipping Bill No., Bill of Lading No., Vessel, Voyage No. and Invoice No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had clarified the proof of exports, verifying the various documents like commercial invoice, ARE-1 declaration, shipping bill.

11. It is pertinent to note here that the department never investigated/ tried to find out the reason/motive of the applicant behind showing different CETH in Excise and Customs documents, whether the same was with an intent to avail other export benefits simultaneously.

12. Government observes that in Re: Aventis Pharma Ltd.[2012(285)ELT 151 (GOI)] while dealing with the similar issue in its Order No. 547/2012-CX dated 09.05.2012, while allowing the Revision Application filed by Aventis Pharma Ltd. GOI observed as under:-

7. From above Government observes that except from the stated difference in nomenclature and classification as per respective tariffs there is neither any charge nor any evidence to suggest that the goods exported were other than the goods actually cleared from the factory of manufacture. Government also takes note of the fact that there are a number of connected documents i.e. commercial invoice, Bill of Lading and BRC etc. which in fact contains both the above nomenclature which clearly establishes the item as one and the same i.e. one which gets cleared after payment of duty and the one which finally stands exported herein. Hon'ble Supreme Court has in a number of cases held that unduly restricting export benefit which otherwise is due as per policy should be avoided and alternatives should be devised to otherwise verify the prescribed substantive compliance of law which is actually available in this case. Government in its order in the case of M/s. Cotfab Exports reported as 2006 (205) E.L.T. 1027 (G.O.I.) has held that minor difference in description of goods, being a procedural lapse, was liable to be condoned, since the substantial benefit of rebate cannot be denied for minor procedural technical infractions.

In many of its previous Revision Orders, Government has observed that :-

"Rebate/drawback etc. are export-oriented schemes. A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), 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 the Union of India v. 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 Formica India v. 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. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In many cases of rebate specifically, GOI has viewed 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. 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 condoned².

13. Government observes that in the instant cases except for mismatch in CETH / Description, there is nothing on record to suggest that by his acts of omission and commission the applicant has availed some other inadmissible export benefits simultaneously, to outrightly negate claim of rebate. Rejection of rebate claims is thus not justifiable only on these grounds. Further the applicant has claimed that in all these cases *'Net weight, Billing Value, Shipping Bill No., Bill of Lading No., Vessel, Voyage No. and Invoice No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had clarified the proof of exports, verifying the various documents like commercial invoice, ARE-1 declaration, shipping bill'*.

14. In RE: Neptunus Power Plant Services Pvt. Ltd.(reported in 2015 (321) E.L.T. 160(G.O.I) in order to examine the issue of correlatability, Government made sample analysis of the exports covered vide some of the shipping bills and observed that

(iii) Government finds that in Shipping Bill No. 8083985, dated 19-3-2012, there is cross reference at ARE-1s No. 16 & 17 both dated 19-3-2012 and vice-versa. The above mentioned ARE-1s find mention of relevant duty paying invoice No. 815, dated 31-1-2012 and 955, dated 23-2-2012 issued by M/s. Shree Saibaba Ispat (I) Pvt. Ltd., Bhavnagar and M/s Arya Ship Breaking Corporation, Mumbai respectively. Further, description, weight and quantities exactly tally with regard to description mentioned in respective ARE-1s and other export documents including Shipping Bill and export invoices. Since, exported products i.e. the scraps of propeller are less in quantity and each quantity is very high in weight ranging from 500 kgs-5000 kgs, such tallying of marking cannot be brushed aside. As such there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation.

15. Therefore, Government is of the considered opinion that what is required here in the interest of justice is that the department should make positive efforts so as to confirm the basic ingredient of co-relatability discussed supra, which is required to be examined by the original authority in order to co-relate Exported goods with goods cleared from the factory and thereby to arrive at a conclusion that the substantive fact of export having been made is not in doubt.

16. In view of the above discussion and findings Government sets aside all the 8 Orders in Appeal passed by the Commissioner Customs & Central Excise (Appeals) Trichirapalli, mentioned at column 5 of the Table at para 1 supra and directs original authority to decide rebate claims after due verification of documents and keeping in mind the above observations. The applicant is also directed to provide all the documents evidencing export of the same goods to the concerned authorities. The original authority is directed to pass appropriate order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order.

17. Revision Applications are disposed off in the above terms.

Shrawan
15/01/21
(SHRAWAN KUMAR)

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

ORDER No. ^{35-A2} /2021-CEX (SZ) /ASRA/Mumbai Dated 15.01.2021

To,
M/s. Sanmar Foundaries Limited,
87/1, Vadugapatti Village,
Viralimalai,
Pudukottai District- 621316

Copy to:

1. The Commissioner of CGST & CX, Tiruchirapalli (Trichy), No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
2. The Commissioner of CGST & CX (Appeals) Tiruchirapalli [Trichy] No.1, Williams Road, Cantonment, Tiruchirapalli - 620001
3. The Deputy / Assistant Commissioner, of CGST & CX, Trichy I Division, No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.