

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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/314/14-RA / 5950 Date of Issue: 12/12/19

ORDER NO. 39/2019-CEX (SZ) /ASRA/MUMBAI DATED 11.12.2019
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.

Applicant : M/s. New India Electricals Ltd.
No. 18, J.C. Road, Bangalore - 560 002.

Respondent : Commissioner of CGST, East, Bangaluru 560 071.

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
48/2014 dated 14.07.2014 passed by the Commissioner
(Appeals), LTU, Banaglore.

: **ORDER** :

This Revision Application is filed by M/s. New India Electricals Ltd., No. 18, J.C. Road, Bangalore – 560 002 (hereinafter referred to as the “applicant”) against Order-in-Appeal No. 48/2014 dated 14.07.2014 passed by the Commissioner (Appeals), LTU, Banaglore.

2. The brief facts of the case are that the applicant, a Merchant exporter, have exported 18 sets of Circuit Breakers procured on payment of duty from M/s ABB, Nasik held in stock in their premises at Bangalore involving duty of Rs. 5,69,178/- (Rupees Five Lakh Sixty Nine Thousand One Hundred Seventy Eight Only) and filed the rebate claim for the same on 09.10.2013. The details are as under :-

Sr. No.	ARE-1 No. / Date	Amount
1	003 dt. 11.08.2012	482040/-
2	006 dt. 05.02.2013	32136/-
3	007 dt. 27.12.2012	55002/-
	Total	569178/-

3. The said rebate claims were rejected by the Rebate Sanctioning Authority vide Order-in-Original No. 02/2014 dated 30.12.2013 on following grounds :-

3.1 In respect of the export under ARE -1 No. 003 dated 11.08.2012, it is observed that the Let Export Date endorsed on Shipping Bill is 17.08.2012 whereas the rebate claim was filed on 09.10.2013 i.e. after a period of one year from Let Export Date thereby contravening the provisions of Section 11B of Central Excise Act, 1944. It is also observed that the ARE-1 No. is not reflected on the Shipping Bill. Further, Commercial Invoice and Excise invoices were not co-relatable.

3.2 In respect of the export under ARE-1 No. 006 dated 05.02.2013, the applicant did not submit relevant Excise Invoices. Also, the Bill of lading submitted was not co-relatable.

3.3 As regards the export under ARE-1 No. 007 dated 27.12.2012, it is observed that the shipping bill no. mentioned on the ARE-1 is 3215526 whereas in the shipping bill number is 3249621. Also, the Excise Invoice was not submitted.

4. Being aggrieved with the Order in Original, the applicant filed appeal before Commissioner (Appeals), LTU, Bangalore. The Appellate Authority vide Order in Appeal No. 48/2014 dated 14.07.2014 concurred the findings of the adjudicating authority and held that the applicant is not eligible for the rebate in respect of ARE-1 Nos. 003 dated 11.08.2012 and 007 dated 27.12.2012. However, as regards the rebate amounting to Rs. 32,136./- filed under ARE-1 No. 006 dated 05.02.2013, it was ordered that the rebate claim can be sanctioned subject to verification of original documents such as Excise Invoice and Bill of Lading

5. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

5.1 The delay in filing the rebate claim in respect of ARE-1 No. 003 dated 11.08.2012 is condonable considering the period of delay and due exportation, realization of foreign exchange.

5.2 ARE-1 No. 007 dated 27.12.2013 :- There is a clerical mistake on the part of CHA. Shipping bill number alone is not the deciding factor for exports. Several comparable information is mentioned on ARE-1 and rejection of rebate only on the ground of non-matching of shipping bill number is not sustainable.

6. The personal hearing in the matter was fixed on 16.10.2019. Shri J. Gopalkrishnan, Manager- Commercial (Exports) appeared for the same on behalf of the applicant.

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

8. On perusal of records, Government observes that the applicant had filed three rebate claims in respect of the goods exported by them under different ARE-1s. The Appellate Authority has given relief to the applicant in respect of rebate claim filed for Rs. 32,136/- for goods exported under ARE-1 No.006/2012 dated 05.02.2013. The Revision Application in respect of remaining two rebate claims is discussed ARE-1 wise as below :-

9. ARE-1 No. 003/2012 dated 11.08.2012 : The Government observes that the Let Order Date endorsed on the ARE-1 No. 003/12-13 dated 11.08.2012 is 17.08.2012 whereas the rebate claim for the said consignment was filed on 09.10.2013 i.e. after lapse statutory period of 1 year period.

9.1 In this regard, the Government finds that the Hon'ble High Court Madras while dismissing writ petition filed by Hyundai Motors India Ltd. [reported in 2017 (355) E.L.T. 342 (Mad.)] and upholding the rejection of rebate claim filed beyond one year of export in its order dated 18.04.2017 cited the judgment of same Hon'ble High Court Madras in Delphi-TVS Diesel Systems Ltd. v. CESTAT, Chennai, reported in 2015 (324) E.L.T. 270 (Mad.), which held that Rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. The relevant Paragraph of the order is extracted hereunder :-

"8. For examining the question, it has to be taken note of that if a substantial provision of the statutory enactment contains both the period of limitation as well as the date of commencement of the period of limitation, the rules cannot prescribe over a different period of limitation or a different date for commencement of the period of limitation. In this case, sub-section (1) of Section 11B stipulates a period of limitation of six months only from the relevant date. The expression "relevant date" is also defined in

Explanation (B)(b) to mean the date of entry into the factory for the purpose of remake, refinement or reconditioning. Therefore, it is clear that Section 11B prescribes not only a period of limitation, but also prescribes the date of commencement of the period of limitation. Once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act. In other words, the rules can occupy a field that is left unoccupied by the statute. The rules cannot occupy a field that is already occupied by the statute."

9.2 Applying the ratio of the aforesaid judgments, Government holds that once the statutory enactment prescribes something of this nature, the rules being a subordinate legislation cannot prescribe anything different from what is prescribed in the Act.

9.3 In view of above discussion, Government finds no infirmity in impugned Order in Appeal in rejecting the subject rebate claim amount for Rs. Rs. 4,82,040/- in respect of the goods cleared under ARE-1 No.003/12-13 dated 11.08.2012 and hence upholds the decision for the same.


10. ARE-1 No. 007/2012 dated 27.12.2012 : Government observes that the Appellate Authority has rejected the rebate claim of Rs. 55,002/- filed in respect of goods exported under ARE-1 No. 007 dt. 27.12.2012 on the grounds that the shipping bill number mentioned on ARE-1 does not match. Also, the Excise Invoice in respect of said claim was not submitted by the applicant

10.1 In the instant case, Government observes that the shipping bill No. mentioned on the ARE-1 is 3215526 whereas the shipping bill bears number 3249621. As the rebate sanctioning authority could not co-relate the export documents to Excise Invoice / ARE-1 under which goods were cleared from factory premises, the claim was rejected. Thus, the contention of the department was inclined towards procedural infractions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 on the part of applicant. Government however finds that exported goods can still be co-related with goods cleared from factory of

manufacture or warehouse if corroborative evidence is available with exporter. Government opines that Export oriented schemes like rebate/drawback are not deniable merely on technical interpretation of procedures, etc. and as such correlation needs to be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. In case, the correlation is established between export documents and Excise documents, the export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and failure to comply the relevant provisions under Notification No.19/2004-CE (NT) dated 06.09.2004 can be condoned.

10.2 In view of above discussion, Government modifies impugned Order-in-Appeal in respect of ARE-1 No. 007/2012 dated 27.12.2012 to the extent discussed above and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to the said ARE-1, BRC, duty paying documents etc. for verification / correlation. The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the principles of natural justice.

11. Revision application is disposed off in above terms.


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

ORDER No.350/2019-CEX (SZ) /ASRA/Mumbai Dated 11.12.2019.

To,

M/s. New India Electricals Ltd.
No. 18, J.C. Road, Bangalore – 560 002.

Copy to:

1. The Commissioner of CGST & CX, Bangaluru (East), TMC, Bust Stand Complex, HAL Airport Road, Domluru, Bangaluru- 560 071.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.