



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. 195/226/13-RA | 1966

Date of Issue:- 20/11/18

ORDER NO. 361/2018-CX(BZ)/ASRA/MUMBAI DATED 31-10-2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, 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	195/226/13-RA	M/s Oriental Export Corporation, Mumbai	Commissioner, Central Excise, Mumbai-III.

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. BC/399/M-III/2012-13 dated 21.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.



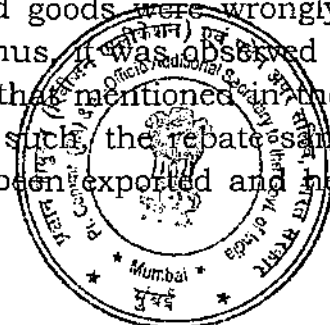
ORDER

This Revision application is filed by M/s Oriental Export Corporation, Mumbai (hereinafter referred to as the 'applicant') against the Orders-In-Appeal BC/399/M-III/2012-13 dated 21.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai - III.

2. The Brief facts of the case are that the applicant M/s Oriental Export Corporation, merchant exporters, have filed the below mentioned rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004, being the duty paid goods were exported by them which were manufactured and cleared by M/s Oriental Electrical Components Pvt. Ltd., Jamnagar. The details of claim are as under :-

Sr. No.	R.C. No. & Date	ARE-1 No. & Date	Invoice No. & Date	Shipping Bill No. & Date	B/L No. & Date	Amount (Rs.)
1.	033 / 25.04.12	170 / 20.02.12	313/ 20.02.12	7689364 /22.02.12	MUM1212671/ 27.02. 12	101551/-

3. On scrutiny of the said rebate claim, the rebate sanctioning officer observed that the applicant have exported 34 packs containing 4670 pieces of 'Electrical Wiring Accessories' falling under Ch.S.H. 85389000 (as per Invoice No. 313 dated 20.02.2012 of manufacturer) totally valued at Rs. 10,15,060/- (Rupees Ten Lakh Fifteen Thousand Sixty Only) involving Central Excise Duty of Rs. 1,01,506/- (@10%) + 2% Education Cess of Rs. 2,030/- 1% S&H Cess of Rs. 1015/-. Thus total central Excise duty payable was Rs. 1,04,551/- (Rupees One Lakh Four Thousand Five Hundred Fifty One Only). Further, it is noticed that out of total 4670 pieces exported as detailed above were including 200 Pcs. Of Lattich Mat as 'Electrical Wiring Accessories" under Ch.S.H. 85389000. However, the shipping bill did not show the said goods had been exported. The applicant submitted that the said goods were wrongly shown under Ch.S.H. 74091900 in the shipping bill. Thus, it was observed that the Ch.S.H. in the shipping bill is in variance with that mentioned in the ARE-1 and the Invoice covered in the shipping bill. As such the rebate sanctioning authority inferred that the said goods had not been exported and hence the



rebate on the said goods amounting to Rs. 59,650/- (Rupees Fifty Nine Thousand Six Hundred Fifty Only) was not admissible and the rebate claim was liable to be restricted by that amount.

4. The Assistant Commissioner (Rebate), Central Excise, Mumbai-III vide Order in Original No. 60 R/RM/AC(RC)/M-III/12-13 dated 24.07.2012 sanctioned an amount of Rs. 44,901/- (Rupees Forty Four Thousand Nine Hundred One only) and rejected an amount of Rs.59,650/- (Rupees Fifty Nine Thousand Six Hundred Fifty Only).

5. Being aggrieved by the said Orders-in-Original applicant filed appeal before Commissioner (Appeals) who after consideration of all the submissions, rejected their appeals and upheld impugned Orders-in-Original vide Order in Appeal No. BC/399/M-III/2012-13 dated 21.11.2012.

6. Being aggrieved with these Orders, applicant has filed the instant revision application before Central Government under Section 35EE of Central Excise Act, 1944 on the grounds that the classification of a product is same in Central Excise & Customs Tariff but there is some difference as far as rates of Drawback are concerned. In terms of Circular No. 9/2003-Cus dated 17.02.2003, if a composite article is exported for which any specific rate has not been provided in the duty drawback table can be extended to the composite article according to the net content of various constituent materials at the rate of duty drawback applicable to such materials in the Drawback Table. Hence the order deserves to be quashed.

7. A Personal Hearing was held in matter and Shri D.K. Singh, Advocate appeared on behalf of the applicant for hearing. No one appeared on behalf of the Revenue. The Advocate reiterated the submission filed through Revision applications and written brief alongwith the case laws filed. It was pleaded that in view of the submissions Revision Application be allowed and Order in Appeal be set aside. :-

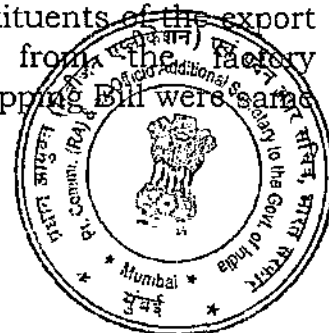
8. Revision Application No. F. No. 195/226/13-RA - Submissions :

8.1 that under ARE-1 No. 170/02/02/2012 and relevant Invoice No. 313 dated 20.02.2012, following items were cleared from factory of manufacturer for export :



Sr. No.	ITCHS Code	Description of product	Quantity (pcs)	Value (Rs.)	Duty Paid (Rs.)
1.	85389000	Electric Wiring Accessories - BBA B Bond Clamp	4000	1,16,000/-	11,948.00
2.	85389000	Electric Wiring Accessories -OTC Oblong Test Clamp	320	62,560/-	6,443.68
3.	85389000	Electric Wiring Accessories -EB6L Earth Bar	100	1,46,000/-	15,038.00
4.	85389000	Electric Wiring Accessories -EB12L-1 Earth Bar	50	1,12,500/-	11,587.50
5.	85389000	Electric Wiring Accessories -EPL663 Lattice Mat	200	5,78,000/-	59,534.00
				10,15,060/-	1,04,551/-

- 8.2 there is a difference of ITCHS code mentioned in relevant Shipping Bill in respect of 5th export product i.e. "Electric Wiring Accessories - EPL663 Lattice Mat" and under the shipping bill No. 7689364 dated 22.02.2012 under which the ITCHS code is mentioned as 74091900.
- 8.3 the variance of the ITCHS Code is due to DBK classification of the goods exported.
- 8.4 the said product is commonly known as 'Copper Lattice Ground / Earth Mat' which is manufactured using high quality of copper which is of excellent tensile strength. The said product is composite items made by assembling copper strips with copper rivets. Hence, in trade parlance, it is classified as Electric Wiring Accessories as used for lighting Earthing wiring
- 8.5 the corresponding DBK Sr. No. for the ITCHS Code 85389000 is 853899 (other items not made wholly of copper & brass) under which only 1% of DBK was allowed. However, the product is predominantly manufactured from High quality Copper under which duty involvement is very high. Hence, applicant has chosen DBK Sr. No. 7409 under which the DBK Rte is 3% allowed for products of Copper Plates, Sheets and Strips.
- 8.6 the difference in ITCHS Code of the product is only a result of reclassification of the same goods as per constituents of the export product. However, the goods cleared from the factory manufacturer and exported under relevant Shipping Bill were same product.



9. 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.

10. Government notes that in the instant case the adjudicating authority had rejected the Rebate Claim filed by the applicant on the grounds that there was difference in Tariff Heading (CETH) of the exported goods appearing on Excise Invoices / ARE-1s and on Shipping Bill and hence it could not be established that the same goods which were manufactured and cleared by the applicants were ultimately exported. Commissioner (appeals) while upholding the Order in Original observed that Central Excise Tariff Act, 1985 and Customs Tariff are synchronised and drawn, based on the Harmonised System of Nomenclature. Hence there cannot be variance about classification of any product among Central Excise Tariff Act, Customs Tariff Act and Drawback Schedule.

11. Government observes that in this case the rebate claim filed by the applicant was rejected by the original authority on the ground of mismatching of CETH mentioned on Central Excise invoice with the CETH shown on shipping bill. There is no other ground registered by adjudicating authority while rejecting rebate claim. Moreover, neither the original authority in the order rejecting rebate claim the Commissioner (Appeals) while upholding the Order in Original have been able to show, how the wrong description appearing on the shipping bills has assisted the applicant in deriving some other export benefits simultaneously.

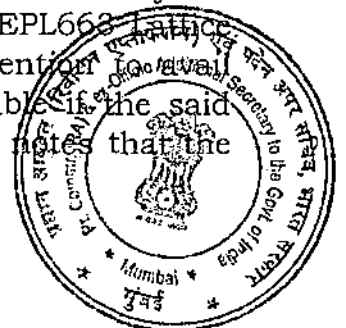
12. From the copies of export documents available on record and the submissions of the applicant on the date of personal hearing, Government observes that in the instant case description of the goods appearing on the invoice /ARE-1 tallies with the one shown on the respective shipping bill. Moreover, in the said shipping bills there is a cross reference of ARE-1 and vice-versa. Further, description, weight and quantities exactly tally with regard to description mentioned in ARE-1 and other export documents including shipping Bill and export invoices. Further, gross weight, net weight, total value of the goods shown on invoice/ARE-1 tally with the one shown on the shipping bill which proves that the goods in question have been correctly and actually exported out of India. The applicant has submitted the 'Bank Certificate of Export and Realisation' in respect of shipping bill No. 7689364 dated 22.02.2012. The Government, therefore, finds that realization of foreign exchange have taken place. Moreover the Customs have certified on the ARE-1 that goods have been exported vide relevant Shipping Bill. There is no reason for not accepting said Customs certification.



13. In this regard Government further observes 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 condoned.

14. From the copies of the export documents produced by the applicant showing the description, weight and quantities etc. of the goods exported as well as the copies of BRCs produced, Government observes that the bonafides of export of the impugned goods has been established and the goods in respect of which rebate claim has been sought have actually been exported and therefore, in the instant case rebate claim cannot be denied for mismatch in the Central Excise Tariff Heading as given in ARE-I/Invoice and Shipping Bill.

15. The Government also finds that the applicant has chosen to classify the product at Sr. No. 5 above i.e. "Electric Wiring Accessories - EPL663 Latex Mat" under ITCHS Code 74091900 in Shipping Bill with intention to avail benefit of higher drawback rate i.e. 3% as against 1% available if the said product is classified under ITCHS 85389000. The Government notes that the



C.B.E & C has clarified in its Circular No. 83/2000-Cus dated 16.10.2000 (F. No. 609/116/2000-DBK) that there is no double benefit available to manufacturer when only Customs portion of all Industry Rate of drawback is claimed. Further, the harmonious and combined reading of statutory provisions of drawback and rebate scheme reveal that double benefit is not permissible as a general rule. In the instant case, the applicant has not submitted any documents that will substantiate that they have availed only Customs portion of drawback. This aspect was not taken into consideration by the adjudicating authority as well as the appellate authority while deciding the case. Therefore, the Government holds that the Order in Appeal passed by the Commissioner (Appeals) vide order No. BC/399/M-III/2012-13 dated 21.11.2012 is liable to be set aside.

16. In view of discussions and finding elaborated above, the Government holds that detail verification of the rebate by the original adjudicating authority as to whether the applicant has claimed the Customs portion of All Industry Rate of drawback or otherwise is essential. The applicant is also directed to submit relevant records / documents to the original authority in this regard for verification.

17. In view of the above, Government sets aside the impugned Order in Appeal No. BC/399/M-III/2012-13 dated 21.11.2012 and remands back the instant case to the original authority which shall consider and pass appropriate orders on the claimed rebate as per the observations given in the preceding para^s and in accordance with law after giving proper opportunity within eight weeks from the receipt of this order.

18. The Revision Application is disposed off in terms of above.

19. So, ordered.

Ashok Kumar Mehta
29.11.2014

(ASHOK KUMAR MEHTA)

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

To

M/s Oriental Export Corporation,
5, Gurunanak Shopping Centre,
Shankar Lane, Kandivali (West),
Mumbai - 400 067.



ATTESTED

S.R. Hirulkar
21.11.14

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to :

1. The Commissioner of Central Excise (Navi Mumbai), 16th Floor, Satra Plaza, Palm Beach Road, Sector 19D, Vashi, Navi Mumbai.
2. The Commissioner of Central Excise, (Appeals), Raigarh, 5th floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai - 400 614.
3. The Deputy Commissioner, Navi Mumbai. Division IV, 16th Floor, Satra Plaza, Palm Beach Road, Sector 19D, Vashi, Navi Mumbai.
4. Sr. P.S. to AS (RA), Mumbai.
- ~~5. Guard File.~~
6. Spare copy.

