

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. 195/630-631/13-RA/570 Date of Issue: 20/11/18

ORDER NO. 367-368/2018-
CX (WZ) /ASRA/Mumbai DATED 30.10.2018
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.

Applicant : Inglobe Exports, Mumbai

Respondent : Commissioner of Central Excise, Mumbai-III.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
BC/603/M-III/2012-13 dated 01.03.2013 and BC/576
M-III/2012-13 dated 11.02.2013 passed by the
Commissioner of Central Excise, (Appeals) Mumbai -III.



ORDER

These Revision Applications have been filed by M/s Inglobe Exports (hereinafter referred to as the "applicant") against Order in Appeal No. BC/603/M-III/2012-13 dated 01.03.2013 and BC/576/M-III/2012-13 dated 11.02.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai -III.

2. The brief facts of the case are that the applicant, M/s Inglobe Exports, situated at Unit No 59/60, Udyog Bhavan, Sonawala Road, Goregaon (E), Mumbai, Merchant exporter, had filed the following rebate claims under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on goods exported. The rebate sanctioning authority vide order dated 23.10.2012 and 14.12.2012 rejected the entire rebate claims for due to variance in Classification/chapter heading in the Central Excise Invoice - ARE-1 and relevant shipping bill.

3. Being aggrieved by the above mentioned Order in Original, the applicant filed appeal before Commissioner (Appeals) and the Appellate Authority vide Order in Appeal No. BC/603/M-III/2012-13 dated 01.03.2013 and BC/576/M-III/2012-13 dated 11.02.2013 rejected the appeals filed by the applicant. The details of the rejected claims are as under:-

Sl. No.	R.C. No. & Date	Amount (Rs.)	Order in Original No.	Order in Appeal No.
1.	219/02.07.2012	1,03,746/-	164/VKJ/DC (RC)/M-III /12-13 dated 23. 10. 2012	BC/576/M-III/2012-13 dated 11.02.2013
2.	222/02.07.2012	1,79,215/-		
3.	271/16.07.2012	60,761/-		
	Total	3,43,722/-		
1.	492/21.09.2012	79,664/-	226/VKJ/DC (RC)/M-III /12-13 dated 14.12. 2012	BC/603/M-III/2012-13 dated 26.02.2013
	464/21.09.2012	89,794/-		
	Total	1,69,458/-		



4. Being aggrieved by the Orders-in-Appeal No. BC/603/M-III/2012-13 dated 01.03.2013 and BC/576/M-III/2012-13 dated 11.02.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai -III the applicant has filed the present Revision Applications on the following common grounds:-

4.1 Respondent erred in rejecting the rebate claim without considering the fact that the goods have been examined by the Preventive officers of Customs who has counter signed the export invoice and the ARE-1 as a proof of export 86 also signed the shipping bill. Though the description was different the part No. mentioned in the ARE-1 i.e. EDF 253, Box 909, Box 910, Box 916 are reflected in both in ARE-1 as well a shipping bill correctly evidencing that the same parts as covered in the ARE-1's has been exported. It is also evident from the duty paid central excise invoice that the very same part Nos. are indicated. There is no dispute to the facts as covered in the ARE-1's under the captioned shipping bills though the description have been wrongly shown as Gang Metal Box instead of switch 85 socket GI box. This fact has been specifically urged and shown to Commissioner (Appeals) during the personal hearing. However Commissioner (Appeals) chose to reject the appeal merely on the ground of description of goods not been tallied with shipping bill. Therefore the order of Respondent rejecting the appeal without considering the supporting documents evidencing the dispatch of goods cover in the ARE-1, is liable to be quashed & set aside.

4.2 The manufacturer has correctly quoted the tariff sub-heading 85359040 where-as since the description is wrongly fed to the EDI system in Custom house that picks up a corresponding Tariff heading automatically in the system. This is how the chapter No. 73269099 is appearing in the shipping bill which



refers to 'Other articles of Iron or Steel'. Therefore the wrong description in the shipping bill is not intentional but an inadvertent error crept up at the time of documentation. Since there is no dispute to the fact of duty paying nature of goods, its export and realisation of exports proceeds in convertible foreign exchange, the legitimate rebate claim eligible to the exporter is required to be paid after waiving the procedural laps of documentation. Therefore the order of Commissioner (Appeals) which has not considered this vital submission is required to be quashed and set aside.

- 4.3 The description given in the shipping Bill is as per the Order placed by their Overseas Customer and the description given in the Central Excise Invoice and ARE-1 is as per the manufacturer's Central Excise Tariff. Though there is difference in the description, the Box number is the same as shown in the Shipping Bill and the suppliers Central Excise invoice. It is purely an error through Oversight at their end although the item is same as supplied by M/s. Navkar International and exported by them. Therefore, the rebate may be granted to them by waiving the discrepancy in description of the material.

5. A personal hearing held in the matter was attended by Shri P.K. Shetty, Advocate, duly appointed by the respondent company and Shri Nilesh Sawant, Export Manager appeared on behalf of the applicant. They reiterated the submissions filed through Revision Applications it was pleaded that the Order in Appeal be set aside and Revision Applications be allowed.

6. Government has carefully gone through the relevant case records available in case files, written submissions/additional submissions of the applicant and also perused the impugned Order-in-Original and Order in-



Appeal. Since the issue involved in both the Revision Applications is identical, these Applications are decided vide common order.

7. On perusal of records, Government observes that the rebate claims of the applicant were rejected by the Deputy Commissioner (Rebate), Central Excise, Mumbai-III on the grounds that "the description of goods as appearing in the ARE-1s is "Switch and Sockets G.I. Box" Chapter Sub-Heading 85359040 whereas that appearing in the relevant shipping Bill is Gang Metal Box with RITC No 73269099 and in view of the said variance in the Tariff heading, the correlation between the goods said to have been manufactured and cleared from the factory for export and shown in the Shipping Bill as exported cannot be established".

8. Government further notes that, while rejecting the appeal filed by the applicants, the Commissioner (Appeals) in both the impugned Orders observed as under :

6. *"Rule 18 of the Central Excise Rules, 2002 provide that rebate is to be paid for the goods exported. Hence it is paramount factor that the goods should be exported. I have perused the records and found that the description of goods appearing in the ARE-1 was Switch and Sockets G.I under CSH 85359040 and in the relevant shipping bill the same were shown as Gang metal box under CSH 73269099. It has been admitted by the appellants themselves that it has been wrongly shown by them as Gang Metal Box falling under Chapter 73. However, the appellants have not submitted any corresponding correlating to documents in support of their contention that the goods mentioned in the said ARE-1 were same as those shown in Shipping Bills and were in fact exported. Even the other details like weight and value shown in ARE1 do not tally with the corresponding Shipping Bills. Hence the rebate on the said documents is not admissible.*

7. *The said discrepancy under the garb of procedural mistake, do not permit the officer to grant rebate. These are all mandatory requirements that should have been followed by all the exporters if they wish to claim rebate. Government of India vide Revision Order No.871/11-CX dated 4.7.2011 which has rejected M/s. Oriental Export Corporation's appeal observing at Para 9 that Government is of the opinion that nature of above requirement is vital as statutory condition compulsory requirement of submitting correct and proper ARE-1*



copies is a must because such leniencies led to possible fraud of claiming and alternatively available benefit which may lead to additional / double benefits. This had never been the policy of the Government and it is the spirit of these backgrounds that Hon'ble Supreme Court in case of Sharif-un-Din. Abdul Gani AIR 1980 (SC(3403) & 203 (156) ELT 178 (Bom) has observed that distinction between required norms and other declarations of compulsory nature and / or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences then it would be difficult to hold that requirement as non-mandatory". Submission of proper documents is mandatory requirement for rebate claim. Since, the appellants are Merchant Exporters and are well aware of the provisions of the Central Excise Act, non- following these conditions is not procedural lapses but is violation of mandatory requirements. It amounts to not following the conditions itself.

9. Government observes that the ground on which the department has rejected the rebate claims of the applicant is discrepancy observed in the Chapter Sub Heading as mentioned on Central Excise Invoice No. 03/25.04.2012, 05/15.05.2012 and 8/03.06.2012 and Shipping Bills No. 8596258/23.04.2012, 8918856 dated 15.05.2012 and 9203065 dated 02.06.2012 respectively (in RA No 195/631/2013-RA) and also on Central Excise Invoice No. 16/23.07.2012 and 18/06.08.2012 Shipping Bills No. 9895709/17.07.2012, and 1175862/04.08.2012 respectively (in RA No 195/630/2013-RA).

10. Government also observes that the applicant in their grounds of appeal have contended as under :-

"the description given in the shipping Bill is as per the Order placed by their Overseas Customer and the description given in the Central Excise Invoice and ARE-1 is as per the manufacturer's Central Excise Tariff. Though there is difference in the description, the Box number is the same as shown in the Shipping Bill and the suppliers Central Excise invoice. It is purely an error through Oversight at their end although the item is same as supplied by M/s. Navkar International and exported by them.

11. Government further observes that every imported or exported item is assigned a classification code that corresponds to its product type. These

numerical codes are used by countries worldwide for statistic- gathering purposes. They also determine which tariffs, if any, will be applied to the product. Virtually all countries base their tariff schedules on this system, making it easier to conduct international trade. Additionally, foreign trade regulations require exporters to include the correct classification code on export documentation. Therefore, Government observes that for the same product there cannot be a different description / classification in a manufacturer's country and in overseas buyer's country. The description of the goods given in Invoice, ARE-1 and shipping bill has to tally with each other in order to establish the identity of goods with the accompanying documents of import/export.

12. Government observes that the description/weight/value of the goods given in ARE-1 and shipping bill has to tally with each other. The details such as description, classification of the product, quantity and value are the basic parameters of ARE-1, in the absence of which correlatable character of goods cannot be established. Such lapses cannot be treated as procedure lapses. Government further notes that the mismatch in description, classification of goods between ARE-1, Invoices, Shipping Bills is unacceptable and the exporter has to be fully aware at the time of export of goods that there should not be a variance in Excise Invoices and the export documents like ARE-1, shipping bills and Bill of lading etc.

13. Government further observes that the applicant have contended that the wrong description in the shipping bill is not intentional but an inadvertent error crept up at the time of documentation, however, there is nothing on record to suggest that the applicant had requested the Customs Authorities to rectify the error and the necessary rectification has been carried out by the Customs Authorities thereby removing any doubt that goods cleared for export vide respective ARE-1s/Invoices are the same goods exported under the relevant Shipping Bills.

14. In the instant case, Government observes that except for the figures 253, 909, 910 and 916 (denoting boxes) appearing in Excise Invoice and



corresponding shipping bill, there is nothing else to correlate the character of goods exported. Therefore, Government is in full conformity with the observation of the Commissioner (Appeals) in his impugned order that "*the appellants have not submitted any corresponding correlating to documents in support of their contention that the goods mentioned in the said ARE-1 were same as those shown in Shipping Bills and were in fact exported. Even the other details like weight and value shown in ARE1 do not tally with the corresponding Shipping Bills. Hence the rebate on the said documents is not admissible*".

15. In view of above, Government finds no infirmity with Orders in Appeal No. BC/576/M-III/2012-13 dated 11.02.2013 and BC/603/M-III/2012-13 dated 01.03.2013 passed by Commissioner (Appeals) and hence upholds the same.

16. Revision Applications are thus dismissed being devoid of merit.

17. So, Ordered.

Ashok Kumar Mehta
30.10.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 367-368/2018-CX (WZ) /ASRA/Mumbai DATED 30.10.2018,

To,
M/s. Inglobe Exports,
Unit No.15/16/59/60,
Udyog Bhavan, Sonawala Road,
Goregaon(E), Mumbai-400 063.

ATTESTED

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

Copy to:

1. The Commissioner of GST & CX, Mumbai South Commissionerate.
2. The Commissioner, Central Excise, (Appeals) -II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX, Mumbai South Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

