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F.No. 198/02/14-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 12.11.2014

ORDER NO. 377/2014-Cx DATED 11/12/2014 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. ARCHANA PANDEY TIWARI, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject	:	Revision application filed, under Section 35 EE of the Central Excise Act, 1944 against the orders-in-appeal No. 25-26/Kol-III/2013 dated 13.9.13 passed by the Commissioner of Central Excise (Appeals-I), Kolkata
Applicant	:	Commissioner of Central Excise, Kolkata-III
Respondent	:	M/s Electro Steel Casting Ltd., Kolkata

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ORDER

This revision application is filed by the Commissioner of Central Excise, Kolkata-III against the orders-in-appeal No. 25-26/Kol-III/2013 dated 13.9.13 passed by the Commissioner of Central Excise (Appeals), Kolkata-I with respect to order-in-original passed by the Deputy Commissioner of Central Excise, Khardah-I Division, Kolkata-III Commissionerate. M/s Electro Steel Casting Ltd., Kolkata is the respondent.

2. Briefly stated, the respondent exported the goods on payment of duty and filed two rebate claims. While scrutinizing their two above stated rebate claims, the Assistant Commissioner found some discrepancies in both the rebate claims. Therefore, he issued two different SCNs both dated 04.01.2013 for clarification and rejection of rebate claims, if no satisfactory clarification submitted. In the first claim of rebate of Rs.65,66,993/-, the adjudicating authority found that the invoice value declared in shipping bill No.1157499/03/08/2012 dated 31.08.2012 was Rs.6,46,71,000.35 or US $ 1175836.37 and FOB value of goods was Rs.5,35,83,937.00 or US $ 9,74,253.3818. The amount of freight was US$ 2,01,582.97 and the commission given was US $ 34,267.18 in respect of goods exported and he found that the conversion rate from US$ to Rupees was declared as Rs.55.00/ US$. The adjudicating authority discussed that FOB value at that time of export should come out after deduction of Freight/Insurance/Commission etc. from invoice value. The adjudicating authority found that FOB value should be US$ 11,75,836.37- (US$ 2,01,582.97 + US$ 34,267.18) = US$ 9,39,986.22 and in INR after conversion it comes to Rs.5,16,99,242.10 which he found not matching with the FOB value that should have been derived from declared invoice value that is the actual transaction value. Further, the invoice No.75020550 dated 02.05.2012 as mentioned in the shipping Bill was not appended with the rebate claim. He further found that there were discrepancies in the declared gross weight and net weight in there ARE-1s. He further found that the appellant did not file Bank realization certificate along with rebate claim.

2.1 For the second claim of rebate of Rs.38,48,035/- the adjudicating authority found that the invoice value declared in shipping bill No.1142621/02/08/2012 dated 31.08.2012 was Rs.3,81,10,861.80 or US $ 6,92,924.76 and FOB value of goods was Rs.3,15,93,735.00 or US $ 5,74,431.5636. The amount of freight was US$ 1,18,493.20 and the commission given was US $ 20,195.25 in respect of goods exported and he found that the conversion rate from US$ to Rupees was declared as Rs.55.00/US$. The adjudicating authority discussed that the FOB value at that time of export should come out after deduction of Freight/Insurance/Commission etc. from invoice value. The adjudicating authority found that FOB value should be US$6,92,924.76-(US$ 1,18,493.20 + US$ 20,195.25) = US$ 5,54,236.31 and in INR after conversion it comes to Rs.3,15,93,735.50 which he found not matching with the FOB value that should have been derived from declared invoice value, that is the actual transaction value. He discussed that rebate are claimed for the duty paid by the assessee at the time of export of excisable goods and the duty amount is calculated on the basis of the value of the goods cleared for export in the form of FOB value/Assessable value of declared goods.

2.2 In both the rebate claims the adjudicating authority found that duty on the declared goods exported has been paid from CENVAT credit account. In both the adjudication orders he discussed that there is ambiguity in fact of claiming of drawback as well as rebate at the same time. Thus he found that claim for rebate was not beyond doubt and the rebate claims were rejected vide impugned orders-in-originals.

3. Being aggrieved by the impugned orders-in-original, the respondents filed appeals before Commissioner (Appeals), who decided the cases in favour of respondents.

4. Being aggrieved by the impugned orders-in-appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Appellate Authority failed to appreciate Rule-5 of Central Excise Valuation Rules, 2000 where any excisable goods are sold in circumstances specified in clause (a) of sub-section (1) of Section 4 of the Central Excise Act and Rule 18 of the Central Excise Rules 2002:

In respect of Order-in-Original No.CE/KDH-I/DC-09(R)/12-13, the invoice value as declared by the claimant in the Shipping Bill bearing No.1157499/03/08/2012 dated 31.08.12 was Rs.64671000.35 or $117836.37 and FOB value was Rs.53583937/- or $974253.38. The amount paid for Freight was $201582.97 and Commission given was $34267.18 in respect of the material export according the above mentioned Shipping Bill and conversion rate from $ to Rupees was declared at Rs.55/- per $. FOB value at the time of export, should come out after deduction of Freight/Insurance/Commission etc. from the Invoice value. Accordingly to arrive at the FOB value, Freight/Insurance/Commission etc. are required to be excluded from the Invoice value as declared in the Shipping Bill. In this respect FOB value should be $1175836.37 – ($201582.97 + $34267.18) = $939986.22. In INR it comes to Rs.51699242.10. But on scrutiny it was seen that the declared FOB value was in $974253.38 or in INR Rs.53583937/- which does not match with FOB that should have been derived from the declared Invoice value that was the actual Transaction value. Moreover, the Invoice No.75020550 dated 02.05.12 as mentioned in the Shipping Bill was not appended with the rebate claim.

In respect of Order-in-Original No.CE/KDH-I/DC-10(R)/12-13, the Invoice value as declared by the claimant in the Shipping Bill bearing No.1142621/02/08/2012 dated 31.08.12 was Rs.38110861.80 or $ 692924.76 and FOB value was Rs.31593735 or $ 5744315636. The amount paid for Freight was $118493.20 and Commission given was $20195.25 in respect of the material export according to the above mentioned Shipping Bill and conversion rate from $ to was declared as Rs.55/- per $. FOB value, at the time of export, should come out after deduction of Freight/Insurance/Commission etc. from the Invoice value. Accordingly, to arrive at the FOB, value, eight/Insurance/Commission etc. are required to be excluded from the Invoice value as declared in the Shipping Bill.

In respect of FOB value should be $692924.76 – ($118493.20 + $20195.25) = $554236.31. In INR, it comes to Rs.30482997.05. But on scrutiny it was seen that the declared FOB value was in $574431.5636 of Rs.31593735.50 which does not match with FOB that should have been derived from the declared Invoice value that was the actual Transaction value. Moreover, the Invoice No.75020867 dated 01.08.12 as mentioned in the Shipping Bill was not appended with the rebate claim.

4.2 The Appellate Authority ignored the point in respect of non-submission of legible copy of accompanying documents like Invoice cum Challan and the matter regarding inscription of serial number by hand. The claimant submitted copies of Invoice issued under Rule 11 of the Central Excise Rules 2002 alongwith the rebate claim some of which were totally illegible, that was known to the claimant at the time of submission of the claim and evidenced by their inscription in handwriting over the Invoices Sl. No. 5278 to 5282, appears to be an intention to mislead the Department.

4.3 The Appellate Authority remains silent on the matter regarding the ambiguities in quantities, net and gross weight etc. In the ARE-1s the claimant had mentioned Net weight and gross weight against their commodities meant for export whereas it was seen that the commodities i.e. pipes are cleared in loose condition. So no question of gross weight arises and hence, remains a mis-statement.

4.4 The Appellate Authority overlooked the matter in respect of non-submission of Bank Realisation Certificate alongwith the rebate claim from which the actual transaction value could have been ascertained and thereby the actual rebate they are entitled to, could be determined.

4.5 The Appellate Authority remains silent regarding the point mentioned in the Order-in-Original No.CE/KDH-I/DC-10(R)/12-13 that the claimant had declared the goods were manufactured after availing the CENVAT credit facility and exported under claim of rebate whereas in the ARE-1 No.805 dated 04.08.12, 8 Boxes of lubricant and rubber gasket were exported without declaring the assessable value.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act 1944 to file their counter reply. The respondents vide their written submission dated 26.2.2014 mainly stated as under:

5.1 At the outset, we would like to submit that export contracts under which the goods were supplied vide the two shipping bills were on CFR basis i.e.inclusive of freight. Since the place of removal in case of export is considered as the port of export, we had reduced the freight component from the CFR prices to arrive at the FOB value/assessable value on which excise duty was discharged and duly reflected the same in the respective shipping bills. Whereas the contention of the department is that the commission paid to overseas agents as reflected in the respective shipping bills should have also been deducted in arriving at the FOB value notwithstanding that the said commission was paid under a separate contract. That the moot point involved in this allegation hinges on deduction of commission or otherwise in arriving at the FOB value will also be evident from the table herein below;

Shipping Bill No.	Invoice value (in US$)	Freight (in US$)	Commission as per shipping bill (in US$)	Declared FOB value (in US$)	FOB as per department (in US$)
(1)	(2)	(3)	(4)	5 (2-3)	6 (2-3-4)
1157499	1175836.37	201582.97	34267.18	974253.38	939986.22
1142621	692924.76	118493.20	20195.25	574431.56	554236.31

That the difference in the FOB value as declared by the Company vis-a-vis the FOB value determined by the department in rupee terms is also given herein below:

Shipping Bill No.	Declared FOB value (in INR)	Commission (in INR)	FOB as per department (in INR)

1157499	53583937	1884695	51699242.10
1142621	31593735.50	1110738.75	30482997.05

It is submitted that DGFT policy Circular No.51(RE-2008)/2004-09 dated 6 January 2009 conspicuously provides that commission is not required to be excluded in arriving at the FOB value of exports and the appellate authority after taking cognizance of the said circular has held that commission was not required to be deducted in arriving at the FOB value for payment of excise duty. The revisional authority will appreciate that FOB value cannot be given a different connotation for the purposes of the Foreign Trade Policy vis-a-vis the excise law as otherwise an exporter would be required to declared multiple FOB values in the self-same shipping bills. It is submitted that the department has not cited any plausible reason what so ever as to how an inconsistent approach should be adopted for arriving at the FOB value for the purposes of payment of excise duty vis-a-vis the foreign trade policy.

5.2 The departmental authorities have alleged that the appellate authority failed to appreciate Rule 5 of the Valuation Rules to bolster their contention that commission should have been excluded in arriving at the FOB value for the purposes of payment of excise duty. In this regard, we would like to submit that the said Rule 5 only seeks to exclude the cost of transportation in case of goods sold for delivery at a place other than the place of removal. In the instant case, it is an undisputed position that the FOB value for the purposes of payment of excise duty was arrived at after deducting freight from the invoice price. There is nothing what so ever in the said Rule 5 to suggest exclusion of commission in arriving at the transaction value for the purposes of payment of excise duty. On the contrary, the definition of 'transaction value' as contained in Section 4(3)(d) of the Central Excise Act specifically includes "commission" paid or payable by reason of or in connection with sale. Therefore, the company is at a complete loss to appreciate as to how there is any violation of Rule 5 of the Central Excise Valuation Rules as alleged or at all by reason of the appellate authority sanctioning the rebate claims of the company.

5.3 Without prejudice to the submissions made herein above and in the alternative, we would like to submit that even if the revisional authority holds that commission should have been excluded in arriving at the FOB value of exported goods for the purposes of payment of excise duty, the Company should be allowed re-credit of the excise duty paid on the component of commission in as much as it stands settled by a plethora of decisions of various Courts including the revisional authority that any amount which is paid in excess as duty liability on one's own volition is required to be considered as a voluntary deposit and has to be returned to the assessee in the manner in which it was paid.

5.4 We would like to submit that the allegation as regards non-submission of legible copy of the documents was raised only in one of the Notice dated 4 January 2013 with respect to the rebate claim for R.65,66,993/- and therefore, cannot be generalised. In any event, the appellate authority has held in certain terms in para 6 of serial No.5 of the OIA that original invoices under Rule 11 were available before the proper officers for verification. The serial number of excise invoices were inscribed by hand only in respect of ARE-1 No.663 dated 17 July 2012 involving a duty amount of Rs.525290/- but the said ARE-1 was duly countersigned by the excise as well as the customs official thus leaving no room what so ever to doubt the export of the goods covered thereunder. It is submitted that this allegation is with a clear ulterior motive of denying the rebate claim for technical and procedural infirmities contrary to the settled position of law that the core aspect in determination of the rebate claims is the fact of manufacture, payment of duty thereon and its subsequent export. If this fundamental requirement is met, other attendant procedural requirements can be condoned. Reference in this regard is invited to the following decisions of the revisional authority:

i. Shreyas Packaging - 2013(297)ELT476

ii. Barot Exports - 2006(203)ELT321

5.5 The allegation that the appellate authority remained silent on the matter regarding the ambiguity in quantity is not only superfluous but factually incorrect in as much as there was no dispute what so ever with respect to the quantity of pipes reflected in the ARE-1s vis-a-vis shipping bill and the excise invoice. It is an undisputed position that pipes in the instant case were exported in loose conditions and the total quantities of pipes so exported were 1575 pcs. duly reflected in the 20 ARE-1s comprised in the two shipping bills. That the quantity reflected in the ARE-1 is in agreement with the shipping bills can be verified from a bare look of the ARE-1 wise quantity duly set out at para 1.2 above vis-a-vis the two shipping bills enclosed with this reply. In addition to the number of pieces we had also mentioned the net weight/lined/gross weight of the loose pipes owing to the mandatory format of the ARE-1s. The allegation had been that since the pipes were cleared in loose conditions the question of any gross weight did not arise and to that extent there was a mis-statement. In this regard, we would like to submit that we had conspicuously stated before the appellate authority that the net weight wherever stated in the ARE-1 referred to the metal weight of the pipes exported, whereas the lined weight/gross weight was the aggregate of the metal weight and the cement motor lining weight of the pipes. Therefore, there was no mis-statement in the net weight and the gross weight as alleged or at all. It was also brought to the notice of the appellate authority that the 1575 pcs. of pipes reflected in the ARE-1s were duly exported under Shipping Bill No.1157499 & 1142621 and that when all clearance for export were under physical supervision of the officers of jurisdictional central excise and the customs authorities, the allegation regarding mis-statement of the weight is ulterior and does not have any bearing on the merits of the rebate claims.

5.6 The Appellate Commissioner has categorically recorded in serial No.(4) of the impugned order-in-appeal that we had submitted the bank realisation certificates for the two shipping bills from DGFT website and that these bank realisation statements were also verified by the departmental officer vis-a-vis the export invoice. Therefore, it is grossly incorrect to say that the appellate authority overlooked the matter of non-

submission of bank realisation certificates. The bank realisation certificates were for the same invoice value as was reflected in the two shipping bills. In any event, the two bank realisation certificates are enclosed herewith and marked as Exhibit-G, which will substantiate the averments made hereinbefore and the realisation value as reflected in the bank realisation certificates can be straightway matched with the shipping bills by the revisional authority.

5.7 The departmental authority have grossly erred in appreciating that the AIR of duty drawback @3% claimed by us in respect of the export consignment was neutralising only the customs duty incidence on inputs and was available irrespective of whether any cenvat facility was available or otherwise. The appellate authority accepted this contention, in view of para 6 of Notification No.68 while holding that there was no irregularity in the simultaneous availment of excise rebate claim on the finished goods and the drawback of the customs component. That simultaneous availment of rebate claim for neutralising the excise duty incidence and AIR of duty drawback for neutralising the customs duty incidence is permissible also stands duly acknowledged by the Central Board of Excise and Customs ('CBEC') vide para (d) of the Circular bearing No.35/2010.

5.8 Further, as regards non-declaration of assessable value of 8 Boxes Lubricant and Rubber Gasket in ARE-1 No.805 dated 4 August 2012, we wish to reiterate that as the said lubricant and rubber gasket are accessories and the value thereof stood included in the value of pipes under export, no more value was realisable for the same and hence no value was separately declared thereof. Therefore, we are at a complete loss to understand as to how the instant allegation can have any bearing on the merits of the rebate claim which was correctly allowed by the appellate authority.

6. Personal hearing was scheduled in this case on 28.3.2014 & 25.11.2014. Hearing held on 28.3.14 was attended by Shri T.M.Hartlong, Assistant Commissioner and Shri R.K.Das, Superintendent on behalf of the applicant department who reiterated the grounds of revision application. Shri Arvind Baheti, Sr. Associates of Khaitan & Co.

and Shri Subir Kr. Chakraborty, Asstt. Manager of respondent company attended hearing on behalf of the respondents and reiterated submission made vide written reply dated 26.2.14. Nobody attended personal hearing on 25.11.2014.

7. Government has carefully gone through the relevant case records/available in case files, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

8. Government observes that the rebate claims were rejected on the ground that the FOB value should be arrived after deducting freight/insurance/commission; that the applicant failed to produce Bank realization certificates in the impugned cases and also that there were ambiguity in net/gross weight. Commissioner (Appeals) decided the cases in favour of respondent. Now, the applicant department has filed this revision application on grounds mentioned in para (4) above.

9. Government observes that the department contended that the transaction value should be reached by deducting freight/insurance/commission etc. from the invoice value. The respondent contended that their invoice value was on CFR basis i.e. inclusive of freight; since the place of removal is port of export they discharge duty on FOB value, which includes commission but does not include freight; that as per DGFT Policy Circular No.41(RE-2008)/2004-09 dated 6.1.2009 and in terms of provision of Section 4(3)(d) of the Central Excise Act 1944, the commission should be included at the FOB value of exports. Government now proceeds to examine various relevant statutory provisions in the impugned case.

9.1 Government notes that value of exported goods should confirm to 'transaction value' as envisaged in the Section (4) of the Central Excise Act 1944. In catena of its judgement, GOI while discussing provision of Section (4) of the said Act ibid, has held that where place of removal is port of export, the transaction value should be FOB value. In this case also, the applicant has stated that their value on which they discharged duty, is FOB value which is inclusive of commission. This fact has not been

controverted by department. Now, next question remains to be examined is that whether commission paid can be included in transaction value or not?

9.2 Government finds that para 4(3)(d) of the Central Excise Act 1944 reads as under:

> *"transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

From the above provision it can be inferred that commission paid is required to be included in transaction value. Hence, Government finds force in plea of the applicant that commission needs to be included in FOB value for discharging duty liability.

9.3 Government further notes that Commissioner (Appeals) has also discussed Circular No.51(RE-2008)2004-09 dated 6.1.2009 of DGDT and observed as under:

> *"For the FOB value of Shipping Bills I have carefully gone through the records. In the invoice No.75020880 dated 02.08.2012 the amount is written as US$11,75,836.37. I find that the lower authority has pointed out that FOB value at that time of export should come out after deduction of Freight/Insurance/Commission etc. from invoice value. In respect of this discussion I find that there is clarification issued from DGFT vide Policy Circular No.51 (RE-2008)/2004-09 dated 06.01.2009 on the subject of FOB value of export for scheme under Chapter 3 of FTP wherein it has been clarified after examination by Ministry of Commerce that "under the various incentive scheme under Chapter 3 of FTP 2004-09, the computation of entitlement is to be done on the FOB value of export inclusive of commission and discount, if any". In both the*

cases, if commission part is removed from the CIF value less of freight the appellant stated the FOB value US$9,74,253.40 (INR 5,35,83,937) for first claim and US$5,74431.56 (INR 3,15,93,735.50) for second claim are found correct. I find that in continuation with the reading of the clarification from above stated DGFT Policy circular in this regard gives correctness of appellant's point."

This finding of Commissioner (Appeals) has not been controverted by department by way of any substantial reasoning. Though, the provision of the above said circular is not squarely applicable in this case, as the rebate is not an incentive scheme under Chapter 3 of FTP, however, a logically drawn inference also supports applicant's contention.

9.4 Government notes that the department has placed reliance on rule (5) of Central Excise Valuations (Determination of Price of Excisable Goods) Rules, 2000 in favour of their contention. The said rule reads as under:

*"**RULE 5.** Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.*

***Explanation 1.** - "Cost of transportation" includes –*

(i) the actual cost of transportation; and

(ii) in case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

***Explanation 2.** - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purposes of determining the value of the excisable goods."*

On bare perusal of above rule, Government finds that said rule only provides for exclusion of cost of transportation in case of goods sold for delivery at a place other than the place of removal. Government notes that there is no mention whatsoever regarding exclusion of commission from FOB value to arrive at transaction value. As such, this contention of the applicant department is contrary to legal position and hence not tenable.

9.5 In view of above, Government observes that there are specific provision in Section 4(3)(d) of the Central Excise Act 1944 and there is logical inference from DGFT's Policy Circular No.51(RE-2008)2004-09 dated 6.1.2009 regarding inclusion of commission in transaction value. As such, Government finds no infirmity in finding of Commissioner (Appeals) that rebate is admissible on FOB value (which is arrived at by including commission and excluding freight) in absence of any substantive counter argument of applicant department. Accordingly, the rebate is admissible on such transaction value.

10. Government finds that the aspect of submission of BRCs has been discussed in details by the appellate authority and Government finds no infirmity in that. As such, the department's contention is not tenable in this aspect also.

11. The original authority has also pointed out ambiguities in quantities, net and gross weight and stated that if the impugned commodity i.e. pipes are cleared in loose condition, no question of gross weight arises. In this regard, the applicant stated that net weight wherever stated in the ARE-1 referred to the metal weight of the pipes exported, whereas the lined weight /gross weight was the aggregate of the metal weight and cement rooter lining weight of the pipes.

11.1 On perusal of sample AREs-1 No.614 dated 11.7.12 and ARE-1 No.757 dated 29.7.12 and relevant shipping bill No.1157499 dated 1.8.12 and 1142621 dated 2.8.12, Government observes that goods covered vide said two sample AREs-1 have been

cleared under physical supervision of central excise authorities and ultimately exported along with goods covered vide 18 other AREs-1, vide above mentioned two shipping bills, as evident from endorsement of custom authorities on part B of said ARE-1. There is no finding of original authoprity regarding correlation between excise documents and export documents except ambiguity in weight, which has been explained by the respondent as mentioned in para (11) above. Under such circumstances, keeping in mind whole fact of the case, Government finds force in argument of the respondent regarding ambiguity in net weight/gross weight. As such export of duty paid goods stands established. Under such circumstances, Government finds that rebate is admissible for the reasons of substantial compliance of export of duty paid goods.

12. 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 Vs. UOI 1993 (39) ELT 503 (SC), 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 Vs. A V Narasimhalu 1983 ELT 1534 (SC), 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 Vs. Collector of Central Excise 1995 (77) ELT 51(SC) 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. Dy. Commissioner 1991 (51) ELT 437 (SC). In fact, as regards rebate specifically, it is now a title 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 requirement. 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. This view of condoning procedural infractions in favour of actual export having been established has been taken by tribunal / Govt. of India in a catena of orders, including Birla VXL Ltd. 1998(99) ELT 387 (Trib), Alfa Garments 1996(86) ELT 600(Tri), T.I. Cycles 1993(6)ELT 497(Trib), Atma Tube Products 1998(103) ELT 270(Trib), Creative Mobus 2003(58) RLT 111(GOI, Ikea Trading India Ltd. 2003 (157) ELT 359(GOI) and a host of other decisions on this issue.

13. In view of above, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

14. The revision application is thus rejected in terms of above.

15. So, ordered.

12/14

(Archana Pandey Tiwari)
Joint Secretary to the Government of India

Commissioner
Kolkata-III Commissionerate
Kendriya Utpad Shulk Bhavan
180, Shantipalli, Rajdanga Main Road,
Kolkata-700107

Attested

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

ORDER NO. 377/2014-6 dated 09/12/2014

Copy to:

1. M/s Electro Steel Casting Ltd., 30-B.T. Road, Khardah, P.O.Sukchar, Kolkata-700115
2. The Commissioner of Central Excise (Appeal-I), 169, AJC Bose Road, Bamboo Villa (4th Floor), Kolkata-700014
3. The Deputy Commissioner of Central Excise, Khardah-I Division, Kolkata-III Commissionerate, 4 Brabourne Road, 3rd Floor, Kolkata-700101
4. Shri Arvind Baheti, Advocate, C/o Khaitan & Co. LLP, Advocates, Emerald House, 1B Old Post Office Street, Kolkata-700001
5. PS to JS(RA)
6. Guard File
7. Spare Copy

ATTESTED

(B.P.Sharma)
OSD (Revision Application)