

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.195/749/13-RA

1989

Date of Issue:-

22/11/2018

ORDER NO. 378 /2018-CX (WZ) /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.

- Applicant : M/s Axis Electrical Components (I) Pvt. Ltd.
Axis House, Plot No. 104-C, Govt. Indl. Estate,
Kandivali (W), Mumbai - 400 067
- Respondent : Commissioner, CGST & Central Excise, Mumbai West.
- Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/36 to 39/MV/2013 dated 31.05.2013 passed by the Commissioner (Appeals)-I, Mumbai Zone-I.



ORDER

This revision application is filed by M/s Axis Electrical Components (I) Pvt. Ltd. Axis House, Plot No. 104-C, Govt. Indl. Estate, Kandivali (W), Mumbai - 400 067 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/36 to39/MV/2013 dated 31.05.2013 passed by the Commissioner of Central Excise (Appeals)-I, Mumbai Zone-I.

2. The applicant holding Central Excise Registration No. AAACA9691CXM001 have filed four rebate claims under Rule 18 of Central Excise Rules 2002 in respect of duty paid by them on excisable goods viz. Copper Multiple Points and Copper Taper Spike, Tinned Copper Cable Lugs, SCCS Clamp, Diving Spike, PVC Earth Pit with MS Lid, Pipe earth clip etc. falling under Chapter 85 & 73 of CET 1985. The said rebate claims were sanctioned by the Deputy Commissioner, Central Excise, Borivali Division, Mumbai V. The details are as under :-

SR. No.	OIO No. /Date	Amount Sanctioned (Rs.)
1.	91-R/133/DC/BVL/2012 dt. 14.12.2012	3,21,504/-
2.	73-R/128/DC/BVL/2012 dt. 03.12.2012	4,94,311/-
3.	71-R/121/DC/BVL/2012 dt. 27.11.2012	4,89,457/-
4.	69-R/117/DC/BVL/2012 dt. 19.11.2012	4,43,233/-

3. The Commissioner of Central Excise, Mumbai V while reviewing the above referred claims observed that the FOB value of the goods exported as per the FOB value of the goods exported as per Shipping Bill is less than the value shown in ARE-1; the classification mentioned on the corresponding Central Excise Invoice and Shipping Bill were not tallying, The appellate authority allowed the appeal filed by the department in all four cases and ordered the recovery of wrongly sanctioned rebate with interest vide order in appeal no. BR/36 to39/MV/2013 dated 31.05.2013. The details of amount of recovery effected due to the order in appeal are as under :



SR. No.	OIO No. /Date	Amount Sanctioned (Rs.)	Amount of Recovery effected (Rs.)
1.	91-R/133/DC/BVL/2012 dt. 14.12.2012	3,21,504/-	14,086/-
2.	73-R/128/DC/BVL/2012 dt. 03.12.2012	4,94,311/-	46,252/-
3.	71-R/121/DC/BVL/2012 dt. 27.11.2012	4,89,457/-	89,447/-
4.	69-R/117/DC/BVL/2012 dt. 19.11.2012	4,43,233/-	1,48,526/-

Thus total amount of rebate sanctioned incorrectly and recoverable is Rs. 2,98,311/- as per the orders of the appellate authority.

4. The instant revision application has been filed by the applicant against the said Order in Appeal No. BR/36 to39/MV/2013 dated 31.05.2013 passed by the Commissioner (Appeals), Mumbai Zone-I on the following grounds that :-

- 4.1 the difference in tariff classification on ARE-1 as compared to shipping bills is on account of the fact that the overseas customer normally declare the products under general chapter headings whereas in India the same is based on Central Excise Tariff headings.
- 4.2 the importers insist general chapter headings of the product with widely accepted code in their country.
- 4.3 there is no specific or defined category of chapter heading allotted to their products and hence the same is interpreted to be classified under two or more headings.
- 4.4 whether the goods are classified under chapter 85 (as classified by the applicant) or under 72,73 & 74 (as claimed by the department), the rate of duty is same and hence there is no intention to claim higher / excess rebate claim.
- 4.5 para 4.1 of Chapter 8 of CBEC manual of supplementary instructions, 2005 pertaining to export under claim of rebate states that "the classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any



exemption notification and /or Central Excise Rules, 2002. The value shall be the "transaction value" and should conform to section 4 or section 4A as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the FOB value indicated by the exporter on the shipping bill".

- 4.6 the product names, quantity, net weight, gross weight and marks and other details are common and appears in the ARE-1 & Invoice as well as in the shipping bill and Bill of Ladings and hence there is no difference in the exports of excisable goods.
- 4.7 if there would have been any such difference in the description of goods exported then the Customs authority would not have cleared the said goods for export nor would have they certified on the reverse of ARE-1.

The applicant prayed to confirm the admissibility of rebate claims of Rs. 2,98,311/- sanctioned by the rebate sanctioning authority vide said order in original or grant such other relief as deemed fit.

5. A Personal hearing was held in the case and Shri Mohan Dayal, Sr. Export Executive appeared for hearing on behalf of the applicant and reiterated the submission filed through Revision Application. He also requested that the impugned Order-in-Appeal be set aside.

6. 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.

7. Government observes that in these cases the rebate claims filed by the applicant were rejected by the appellate authority on the ground that :

- 7.1 the FOB value of the goods exported as per the FOB value of the goods exported as per Shipping Bill is less than the value shown in ARE-1;
- 7.2 the classification mentioned on the corresponding Certificate of Origin Excise Invoice and Shipping Bill were not tallying.



8. On perusal of records, Government observes that initially the rebate claims were sanctioned in this case. Subsequently, it was noticed that excess rebate has been sanctioned of the duty paid on portion of value which was in excess of section 4 value i.e. transaction value. The appellate authority accordingly ordered recovery of wrongly sanctioned rebate with interest.

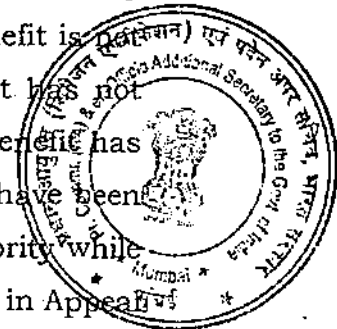
9. The Government notes that the applicant has not contested the view that FOB value in the impugned rebate claims was the transaction value in terms of Section 4 of Central Excise Act, 1944 and simply stated that FOB value and ARE-1 value can be different. The applicant did not provide any reason for the difference in the FOB value and value shown in the ARE-1. The applicant did not provide any cost elements that have caused the ARE-1 value greater than the FOB value. Government, therefore, observes that duty paid on portion of value which does not form part of transaction value was rightly held as not rebatable under Section 18 of Central Excise Rule, 2002 as the rebate is inadmissible in respect of duty paid on value of exported goods determined under Section 4 of Central Excise Act, 1944. As such, the appellate authority has rightly ordered the recovery of excess rebate sanctioned to the applicant due to higher ARE-1 value than that of FOB value mentioned in the shipping bill alongwith interest.

10. As regards the classification mentioned on the corresponding Central Excise Invoice and Shipping Bill were not tallying, the Government 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.

11. The Government also finds that the classification mentioned on the corresponding Central Excise Invoice and Shipping Bill were not tallying in respect of some of the export goods. 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 no double benefit has been availed by them in respect of drawback. This aspect should have been verified by the rebate sanctioning 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 BR/36 to39/MV/2013 dated 31.05.2013 is liable to be set aside.



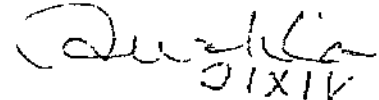
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12. In view of discussions and finding elaborated above, the Government holds that detail verification of the rebate claims by the original adjudicating authority as to whether the applicant has claimed any double benefit of drawback or otherwise due to different classification of export goods is essential. The applicant is also directed to submit relevant records / documents to the original authority in this regard for verification.

13. In view of the above, Government sets aside the impugned Order in Appeal No. No BR/36 to39/MV/2013 dated 31.05.2013 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 paras and in accordance with law after giving proper opportunity within eight weeks from the receipt of this order.

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

15. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner (RA) & Ex-Officio
Additional Secretary to the Government of India

M/s Axis Electrical Components (I) Pvt. Ltd.
Axis House, Plot No. 104-C,
Govt. Indl. Estate, Kandivali (W),
Mumbai - 400 067

ORDER NO. 378/2018-CX (WZ)/ASRA/MUMBAI **DATED 31.10.2018**

Copy to:

1. The Commissioner of CGST & Central Excise, Mumbai West, Mahavir Jain School, C.D. Barfiwala Road, Juhu, Andheri (W), Mumbai - 400 058.
2. The Commissioner of Central Excise, (Appeals-I), 9th floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel- 400 012.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

ATTESTED



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

