

REGISTERED POST  
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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/577/13-RA / 6406  
F. No. 195/811/13-RA

Date of Issue: ~~10.2021~~  
03.11.2021

ORDER NO. <sup>412-413</sup> /2021-CX (SZ) /ASRA/MUMBAI DATED 27.10.2021  
OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN  
KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
CENTRAL EXCISE ACT, 1944.

Applicant : M/s. M. M. Forgings Ltd.,  
Erasanaickenpatti,  
Viralimalai - 621 316

Respondent : The Commissioner of CGST & Central Tax, Tiruchirapalli.

Subject : Revision Applications filed under Section 35EE of Central  
Excise Act, 1944 against Order-in-Appeal No. 02/2013  
dated 28.01.2013 & Order-in-Appeal No. 56/2013 dated  
09.05.2013 passed by the Commissioner (Appeals),  
Central Excise, Tiruchirapalli.

## **ORDER**

These Revision Applications have been filed by M/s M. M. Forgings Ltd., Erasanaickenpatti, Viralimalai – 621 316(hereinafter referred to as the 'applicants') against the Order-in-Appeal No. 02/2013 dated 28.01.2013 & Order-in-Appeal No. 56/2013 dated 09.05.2013 passed by the Commissioner (Appeals), Central Excise, Tiruchirapalli.

2. The applicants are manufacturers of Carbon Steel Forgings(rough) & Alloy Steel Forgings(rough) falling under Central Excise Tariff Heading No. 7326 1910 of Central Excise Tariff Act, 1985. The goods manufactured in their factory were removed for export by adopting self-sealing and self-certification procedure under various ARE-1's. The applicant had filed several rebate applications for the shipments effected under these ARE-1s. The rebate sanctioning authority had partly sanctioned the rebate claims vide OIO No. 109/2012(R) dated 17.10.2012 passed by the Assistant Commissioner, Division-II, Tiruchirapalli & OIO No. 02/2013(R) dated 15.01.2013 passed by Assistant Commissioner, Division-II, Tiruchirapalli.

3. Aggrieved by the partial rejection of the rebate claims filed by them, the applicant filed appeal against OIO No. 109/2012(R) dated 17.10.2012 before the Commissioner(Appeals). After following the principles of natural justice, the Commissioner(Appeals) took up the appeal for decision. The Commissioner(Appeals) vide OIA No. 02/2013 dated 28.01.2013 partly allowed the rebate claims and rejected the rebate claims pertaining to ARE-1 No. 1042/21.03.2012 and ARE-1 No. 1055/24.03.2012 as the date of sailing of vessel mentioned in the ARE-1 had been modified without authentication by the Customs Authority. In the appeal filed by the applicant against OIO No. 02/2013(R) dated 15.01.2013, the Commissioner(Appeals) partly allowed the appeal vide his OIA No. 56/2013 dated 09.05.2013. He rejected the appeal in respect of rebate claimed against ARE-1 No. 1065/27.03.2012 as the flight no. and date were found to be modified in the ARE-1 and shipping bill without authentication by the proper authority. Likewise the rebate claimed in respect of ARE-1 No.

86/30.04.2012 and ARE-1 No. 87/30.04.2012 were also found to be inadmissible as the vessel name and voyage no. in the ARE-1/shipping bills were different from those in the bills of lading.

4.1 The applicant has filed revision applications against the OIA No. 02/2013 dated 28.01.2013 on the ground that they had not by themselves corrected the date of sailing. They submitted that the date of sailing had been corrected by the Customs Officer who had not endorsed the overwriting at the time of signing the ARE-1. They pleaded that they should not be victimized for the omission on the part of the Customs Officer who had failed to attest such correction. They pointed out that the remaining particulars mentioned in the bill of lading perfectly tallied with the shipping bill no., part no., export invoice no.'s, case no.'s, weight etc. The applicant submitted that there was no dispute about the export of goods under the cover of invoices/shipping bills and hence rebate should not be denied.

4.2 In the revision application filed against OIA No. 56/2013 dated 09.05.2013, the applicant submitted that they had modified the details of AWB in shipping bill and part B of ARE-1 No. 1065 dated 27.03.2012 alongwith appropriate seal of customs. However, the customs authority had failed to authenticate such correction and this was a clear mistake on the part of the proper officer who has amended the particulars. With regard to the rebate claims filed in respect of ARE-1 No. 86 dated 30.04.2012 and ARE-1 No. 87 dated 30.04.2012, the applicant submitted that at the time of filing shipping bill the goods were to be loaded on Vessel Kota Pekarang. Due to unavoidable circumstances goods could not be sent on that vessel. Hence, the goods were loaded on Vessel Hanjin Ningbo and exported. However, the vessel name was not changed in the shipping bill and ARE-1. The applicant pointed out that all other particulars in shipping bill, part no., export invoice, case no., weight etc. tallied with the bill of lading. The applicant further contended that there was no dispute about export of goods and production of BRC evidencing receipt of payment by the applicant. The applicant averred that the negligence on the part of the Customs Officers should not be a ground to deny them the rebate claim.

5. Personal hearing was scheduled in this case on 04.02.2021. Shri Murugappan, Advocate appeared on behalf of the applicant. He reiterated his earlier submissions. He submitted that in two cases rebate was rejected merely because of change of date of flight although there is no doubt on time limit. In another case there was change in the name of the vessel in shipping bill and bill of lading as compared to ARE-1. The Advocate explained that the difference in vessel name had occurred because the earlier vessel had sailed without loading their cargo. He also placed reliance upon the Revision Order No. 195/272/13-RA dated 26.09.2018.

6. The Assistant Commissioner, GST & Central Excise-I Division, Tiruchirapalli submitted comments on the revision applications vide his letter C. No. IV/16/05/2021-Reb dated 17.02.2021. It was submitted that there were three issues involved in the matter arising out of OIO No. 109/2012(R) dated 17.10.2012 passed by the Assistant Commissioner, Division-II, Tiruchirapalli. The issues are that the export done through Tuticorin Port but the place of issue of bill of lading is mentioned as Chennai, the seal no. mentioned in the shipping bill is not matching with that mentioned in the bill of lading although container no. is matching and the date of sailing of vessel has been mentioned without any authentication by Customs.

7.1 In respect of the issues arising out of OIO No. 02/2013(R) dated 15.01.2013, the Assistant Commissioner submitted that the customs authority had certified that the vessel had left the Indian port on 15.05.2012 whereas the bill of lading mentions that the goods have been shipped on board only on 21.05.2012. It was stated that the EP copy of the shipping bill was widely accepted by various authorities as one of the proof of export and that there is a laid down procedure for reconstructing the EP copy of shipping bill which the applicant should have followed. The exporter was required to apply with the customs authorities for permission to issue a duplicate copy of shipping bill. The necessary permission is then granted by the concerned officials if convinced and satisfied that such request is genuine and not fraudulent. After obtaining permission to reconstruct the

shipping bill, the necessary reconstruction charges are to be paid to customs as per applicable tariff. If the export has been effected in a customs location where electronic filing was available, the copy of export shipping bill is taken out by referring shipping bill number and date of shipment. The customs official signs and puts his seal on the reconstructed copy of shipping bill taken out electronically. This reconstructed EP copy of shipping bill is acceptable in lieu of lost copy of EP copy of shipping bill at all government departments for any claim of export benefits. The Department averred that this process should have been followed by the exporter as they are a manufacturer exporter and working in this field for many years and hence should be aware of all customs formalities.

7.2 The rebate claims had also been rejected for the reason that there is a mismatch in description of goods between ARE-1, shipping bill and bill of lading. The required details in statutory forms/documents used for claiming rebate are to be filed with true and factual declaration. Any tampering and defacement by blackening the particulars imparts a character of invalidity. The flight number and date is missing in the shipping bill and AWB and this was a fatal error as the flight number and date cannot be ascertained from these two main documents. The exporter had the option to amend the shipping bill as laid down under Section 149 of the CA, 1962 but failed to do so. It was observed by the Assistant Commissioner that most of the defects were curable and the exporter could have approached the customs authority/steamer agent for amendment on payment of the prescribed fees but have not done so. These defects could have been cured if the exporter had taken some effort. It was stated that since there is a defect in all the ARE-1's and there is no correlation to shipping bills in some cases, non-availability of EP copy of shipping bill and non-authentication of corrections in statutory documents which cannot be overlooked, the revision application filed by the applicant may be rejected and the impugned OIA's upheld.

7.3 The Department averred that the defects mentioned are all curable but no effort was made by the exporter to get the defects cured. It was

further stated that repeatedly urging the Department to correlate details with supporting documents was not the proper solution as such defects were occurring frequently. Allowing the exporter the benefit of corroborative evidence using other documents would defeat the amendment procedure laid down by Customs. Such a practice would mean that the exporter would not have to obtain any amendments from Customs/Steamer Agents. It was submitted that the applicant is a manufacturer exporter and was fully aware while preparing the ARE-1 itself that the goods are to be exported and that the export documents like shipping bill and bill of lading are to be properly filed at the time of export and the same would be relied upon for sanction of rebate. In these circumstances, the mismatch of description between excise documents and export documents cannot be justified. The Department averred that the applicant as a beneficiary of export scheme was expected to exercise due diligence while preparing the documentation which they failed to do and under the circumstances the rebate claim filed by them should rightly be held to be inadmissible and the revision application filed by them should be rejected.

8. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal. The Department has raised several issues while filing the parawise comments against the revision applications filed by the applicant. These grounds were raised at the level of the original authority and discussed by the original authority in his orders-in-original. However, the Government observes that the Commissioner(Appeals) has rejected the appeals filed by the applicant before him on certain specific grounds. The Department has not challenged the orders of the Commissioner(Appeals) and therefore cannot revive grounds which have not been relied upon by the Commissioner(Appeals) while rejecting the appeals before him. Government therefore takes up the revision applications for decision on merits in terms of the grounds for revision vis-à-vis the grounds for rejection of their appeals by the Commissioner(Appeals).

9. In OIA No. 02/2013 dated 28.01.2013, the Commissioner(Appeals) has rejected the rebate claims in respect of ARE-1 No. 1042/21.03.2012 and ARE-1 No. 1055/24.03.2012 for the reason that the date of the sailing of vessel has been modified without authentication by the customs authorities. Government has gone through these ARE-1's and observed that the date of sailing of vessel has indeed been overwritten. The month and year remain unchanged without any hint of overwriting. It is further observed that in both these cases the goods have been exported within six months of clearance from the factory in terms of the stipulation under Notification No. 19/2004-CE(NT) dated 06.09.2004. As such, the applicant had nothing to gain by manipulating the date of sailing of vessel. It is therefore inferable that the applicant had no valid reason to change the date of the sailing of vessel to the detriment of their rebate claim. The Commissioner(Appeals) has rejected the appeal for grant of these rebate claims on the single ground that the date of sailing has been modified and therefore it is reckoned that the claim is otherwise in order. The export of the goods is also not in dispute. In the circumstances, Government holds that the rebate claims in respect of ARE-1 No. 1042/21.03.2012 and ARE-1 No. 1055/24.03.2012 under OIA No. 02/2013 dated 28.01.2013 are admissible to the applicant.

10. In so far as the OIA No. 56/2013 dated 09.05.2013 is concerned, there are two issues. The flight details(flight no. & date) in respect of ARE-1 No. 1065/27.03.2012 have been modified without authentication by the Customs Officer. Moreover, in ARE-1 No. 86/30.04.2012 and ARE-1 No. 87/30.04.2012 and the corresponding shipping bills the vessel name mentioned is "Kota Pekarang" whereas the vessel name mentioned in the respective bill of lading is "Hanjin Ningbo". Furthermore, the "vessel left date" as per ARE-1 is 15.05.2012 whereas the "shipped on board date" as per bill of lading is 21.05.2012.

11.1 The reasons given by the applicant for the modification of flight no. and date in the ARE-1 No. 1065/27.03.2012 is that it was the mistake of the Customs Officer who has stamped such modification but not signed to authenticate the correction. The applicant has further averred that on

verification of documents like shipping bills, customs invoices, bill of lading, the quantity of goods can be tallied. In the case of ARE-1 No. 86/30.04.2012 and ARE-1 No. 87/30.04.2012, the applicant has submitted that at the time of filing shipping bill the goods were to be loaded on vessel "Kota Pekarang". However, due to unavoidable circumstances the goods could not be sent on "Kota Pekarang". Hence, it was loaded on vessel "Hanjin Ningbo" and exported. However, the vessel name was not changed in the shipping bill and ARE-1. The applicant has averred that rebate is admissible as all other particulars such as shipping bill no., part no., export invoice, case no., weight etc. tally with the bill of lading. They claimed that there was no dispute about export of goods and receipt of export proceeds, that it was the negligence on the part of customs authorities which had caused this discrepancy and that there was no dispute about the duty paid nature of the goods.

11.2 On going through the ARE-1 No. 1065/27.03.2012 it is observed that the AWB No. and EM No. have been handwritten in the Part B Certification by Customs Officer. The space meant for flight no. has been scribbled and overwritten with some letters and the numbers "6275". As per the AWB, the goods were being exported through Qatar Airways. The corresponding shipping bill mentions that the goods were received on board "QR/6275". Incidentally "QR 6275" is a flight between London and New Jersey whereas the export goods had been consigned to Canada from Meenambakkam Airport, Chennai. Therefore, it is very unlikely that the goods have been loaded on flight no. QR 6275. There are two seals of the Office of the Commissioner of Customs, Meenambakkam, Chennai. One of the seals is dated "28 JUL" where the stamp year is not legible. The other seal is dated "02 APR 2012". Although, the name of the officer in the stamp allowing for shipment in the shipping bill and the name of the officer signing the Part B certification in the ARE-1 are the same, his initials appear to be significantly different on both these documents. Likewise, the vessel name in the ARE-1 and the bills of lading in ARE-1 No. 86/30.04.2012 and ARE-1 No. 87/30.04.2012 are entirely different. The vessel name as per the ARE-1's is



“Kota Pekarang” whereas the bill of lading mentions the name of vessel as “Hanjin Ningbo”. Moreover, the date when the vessel has sailed has been recorded as 15.05.2012 in both ARE-1’s whereas the bill of lading indicates that the goods have been shipped on board the vessel on 21.05.2012. The shipping bill corresponding to ARE-1 No. 86/30.04.2012 mentions the vessels name as Kota Pekarang whereas the shipping bill corresponding to ARE-1 No. 87/30.04.2012 does not even mention the vessel name.

11.3 Government observes that there are too many discrepancies in these ARE-1’s. The inconsistencies noticed by the lower authorities put a question mark on the fact of export of duty paid goods. The flight no. mentioned in the ARE-1 does not originate from India. Besides, the difference in vessels name, the date when the vessel carrying the goods have purportedly left Indian shores as per the ARE-1 and bill of lading are also at variance. Even if it is assumed for a while that all these inconsistencies are genuine mistakes, it is apparent from the orders of the original authority and the appellate authority that there were several technical/procedural infirmities in the rebate claims which have been condoned by the lower authorities. These facts clearly reflect that the applicant has been negligent in its approach towards central excise and customs procedures. The applicant is a manufacturer exporter who would be conversant with Central Excise law and procedures. Since they are also exporting regularly, they would be conversant with the Customs procedures as well. They would be aware of the importance of proper documentation. Be that as it may, the applicant also had the option to seek amendment of their export documents in terms of Section 149 of the Customs Act, 1962. However, the applicant has failed to take any corrective steps.

12. The applicant has made out arguments to contend that substantial benefit cannot be denied for procedural mistakes. They have also relied upon certain case laws to lend strength to these submissions. The applicant cannot seek parity with exporters who have substantially complied with the requirements. The applicant in this case has not been diligent. In spite of repeated errors the applicant has failed to take corrective measures. As held

by the Hon'ble Gujarat High Court in its judgment in *Nice Construction vs. UOI*[2017(5) GSTL 361(Guj.)], *the law does not come to the aid of the indolent, tardy, lethargic litigant*. Although several errors have been condoned by the lower authorities, the glaring errors noticed in these ARE-1's are such that they cannot be overlooked as they go to the very root of the matter and cast doubts upon the factum of export itself. Moreover, even if these were genuine mistakes, the remedy available to the applicant was to approach the Customs authorities for amendment of the export documents in terms of the provisions of Section 149 of the Customs Act, 1962 which they have failed to avail of. In the result, the revision applications filed by the applicant exporter in respect of the rebate claims pertaining to ARE-1 No. 1065/27.03.2012, ARE-1 No. 86/30.04.2012 and ARE-1 No. 87/30.04.2012 must fail.

13. Government therefore modifies the OIA No. 02/2013 dated 28.01.2013 passed by the Commissioner(Appeals), Tiruchirapalli by holding that the rebate claims in respect of ARE-1 No. 1042/21.03.2012 and ARE-1 No. 1055/24.03.2012 are admissible and should be sanctioned forthwith. Government refrains from exercising its revisionary powers in RA No. 195/811/13-RA filed against OIA No. 56/2013 dated 09.05.2013 passed by the Commissioner(Appeals), Tiruchirapalli being devoid of merits.

  
27/10/21  
(SHRAWAN KUMAR)

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

To

M/s. M. M. Forgings Ltd.,  
Erasanaickenpatti,  
Viralmalai - 621 316

ORDER NO. <sup>H12-H13</sup> /2021-CX (SZ) /ASRA/MUMBAI DATED 27.10.2021

Copy to :

1. The Commissioner of CGST & Central Excise, Headquarters Office, 'A' Wing, No. 1, Williams Road, Cantonment, Tiruchirapalli - 620 001.
2. The Commissioner(Appeals), GST & CX, Coimbatore, 6/7, A.T.D. Street, Race Course Road, Coimbatore - 641 018.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.