

**REGISTERED
SPEED POST**



**F.No. 198/110/11-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... 31/5/17

Order No. 448 /13-cx dated 30-5-2013 of the Government of India, passed by Shri D. P. Singh, 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,
1944 against the Order-in-Appeal No.
448/2010/COMMR(A)/CMC/RAJ dated 11-10-2010
passed by Commissioner of Customs and Central
Excise, (Appeals), Rajkot

Applicant : Commissioner of Customs & Central Excise,
Rajkot.

Respondent : M/s. Rollwell Forge Ltd.,
Survey No. 239/1,
Behind GEB Sub-Station,
Shapar Distt. Rajkot-360024.

ORDER

This revision application is filed by the Commissioner of Customs & Central Excise, Rajkot against the Order-in-Appeal No. 448/2010/COMMR(A)/CMC/RAJ dated 11-10-2010 passed by Commissioner of Customs & Central Excise, (Appeals), Rajkot with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Rajkot. M/s. Rollwell Forge Pvt. Ltd., Rajkot is the respondent in this case.

2. Brief facts of the case are that M/s. Rollwell Forge Pvt. Ltd., filed rebate claim for rebate of Central Excise duty of Rs. 64,488/- paid by them on excisable goods cleared by them for export under ARE-I. During scrutiny of the documents, it was noticed that the exported goods were shown as such clearance of inputs' for export under ARE-I No. 103 dated 13.09.2008.

The description of the goods shown under the said ARE-I is as under;

Sr. No.	Description of the goods	Qty. (in Kg.)
1	ALLOY STEEL INGOTS F-9 23"X27"	2955
2	F-5 INGOTS 21 "X23" ALLOY STEEL I GOT	4655

The respondent has declared that the exported goods are cleared as such and the same were purchased by them under invoice No. 940 dated 19.08.2008. In terms of provision contained under Rule 3(4) (b) of Cenvat Credit Rules, 2004 they have paid the amount of Rs. 62,610/- equal to Cenvat Credit taken on inputs which were removed as such, from their Cenvat Credit account. It was observed that the respondent has claimed to have received those items as inputs from M/s. Laxcon Steel Ltd., Sari, Sanand, Ahmedabad, under invoice no. 0940 dated 19.08.2008. The description and quantity of the goods as mentioned in the invoice are as under;

Sr. No.	Description and specification of the goods	Qty. (in Kg.)	Rate Rs. Per Kg.	Total Assessable value (Rs.)
1	(i) A.S. Ingots	8375	51.00	4,27,125.00
		6685	71.00	4,74,635.00
2	(ii)A.S. Round bars	3250	42.00	1,36,500.00
	Total	18310 Kgs.		

Thus the description of the inputs received by the respondent under the said invoice appeared to be different from the description shown in the export documents. On scrutiny of the documents viz. the Cenvat Input Account A-part-I, maintained by the assessee for receipt, disposal and consumption of excisable goods used as inputs, it was found that on page 43 of the said register, at entry no. 51 dated 20.08.2008 they have shown receipt of 18.310 Mts. of Alloy Steel and there was no debit entry of clearance of input as such on 13.09.2008, the date of ARE-1 and invoice under which the inputs were claimed to have been shown as cleared for export. Therefore the assessee were issued a Show Cause Notice dated 12.10.2009 to deny and reject the claim of rebate of Rs. 64,488/-. The said Show Cause Notice was adjudicated by the Adjudicating Authority vide Order No. 509/Ref/2010 dated 12.10.2009 wherein the Adjudicating Authority rejected the rebate claim for Rs. 64,488/- under Section 11B of the Act.

3. Being aggrieved by the said Order-in-Original, respondent filed appeal before Commissioner (Appeals), who decided the case in favor of respondents.

4. Being aggrieved by the impugned Order-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 It appears that the Appellate Authority while passing the Appellate Order has not considered the finding of the Adjudicating Authority. The Appellate Authority has contended that there was no dispute by the department that the goods which have been cleared, have not been exported but the rebate has been denied just on the ground that the description of the goods does not match with the description of the goods mentioned in the invoice under which it is said to have been purchased. He further observed that the assessee has received two types of A.S. Ingots under invoice No. 940 dated 19.08.2010 of M/s. Laxcon Steels Ltd., i.e. 8375 Kgs @ Rs.51 per Kg and 6685 Kg. @ Rs. 71 per Kg and the abbreviation "A.S." is nothing but Alloy Steel. He observed that the assessee have received two types of ingots and have exported two types of ingots and the quantity is less than what has been received.

The contention of the appellate authority is not tenable. It appears that the Appellate authority has not appreciated the findings of the adjudicating authority that the description of the goods received by the respondent from M/s. Laxcon Steels Ltd, appears to be different from the description shown in the export document and ARE-I. On scrutiny of the Cenvat Input Account, A- Part-I, maintained by the respondent for receipt, disposal and consumption of excisable goods used as inputs, on page 43 it was found that they have shown receipt of 18.310 Mts. of Alloy Steel but there was no debit entry of clearance of inputs as such on 13.09.2008. It was also found that during the period from 20.08.2008 to 13.09.2008 there was no entry matching the quantity of goods shown as cleared for export under ARE-1 No. 103 dated 13.09.2008. The respondent has not cleared inputs received by them under invoice No. 940 dated 19.08.2008 from M/s. Laxcon Steels Ltd.

4.2 In terms of provision contained under Rule 3(4)(b) of Cenvat Credit Rules, 2004 have paid the amount of Rs. 62,610/- equal to Cenvat Credit taken on inputs which were removed as such, from their Cenvat Credit account and as per the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004 the rebate can be granted in respect

of duties of excise only, and as the amount paid by the assessee in terms of rule 3(4) (b) of Cenvat Credit Rules, 2004 is not covered under the definitions of duty specified in the said Notification, the rebate is not admissible.

4.3 The decision of the Tribunal in case of Bharat Chemicals Vs. Commissioner of Central Excise, Thane, reported in 2004 (170) EL T 568 (Tri. Mumbai) and Nahar Industrial Enterprise Ltd. Vs. Union of India, reported in 2009(235) ELT (P&H) do not appear to be squarely applicable in the facts and circumstances of the present case. In case of Bharat Chemicals Vs. Commissioner of Central Excise, Thane the matter was related to payment of higher duty through Modvat account.

5. Personal hearing was scheduled in this case on 09-08-2012, 20-12-2012 and 05-03-2013. Nobody was present during the course of personal hearing. The applicant vide their letter dt. 01-12-2012 relied upon Hon'ble Bombay High Court's order in the case of Commissioner of Central Excise Vs. Micro India Ltd. Reported in 2011 (270) ELT 360.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicants, exported the goods and filed rebate claim which was rejected by the original authority on the ground that there were discrepancies in the description in the description found in manufacture invoices, under which the applicant procured goods from manufacture. The original authority also observed that the applicant paid amount of Rs. 62,610/- equal to cenvat credit taken on inputs which were removed as such in terms of provision contained under rule 3 (4) (b) of the cenvat Credit rules, 2004 and such payment is not covered under the definition of duty specified in the notification No. 19/2004-Ce (NT). Commissioner (Appeals) decided the case in favour of respondent. Now, the applicant department has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant has contended that there is difference in description in invoices issued by M/s. Laxcon Steels Ltd., from whom the respondent procured the goods and description given in ARE-I and export documents. The description of goods in the invoices issued by M/s. Laxcon Steels Ltd. is as follows:-

Sr. No.	Description and specification of the goods	Qty. (in Kg.)	Rate Rs. Per Kg.	Total Assessable value (Rs.)
1	(i) A.S. Ingots	8375	51.00	4,27,125.00
		6685	71.00	4,74,635.00
2	(ii)A.S. Round bars	3250	42.00	1,36,500.00
	Total	18310 Kgs.		

The description of goods as mentioned in ARE-I and export documents is as under:-

Sr. No.	Description of the goods	Qty. (in Kg.)
1	ALLOY STEEL INGOTS F-9 23"X27"	2955
2	F-5 INGOTS 21 "X23" ALLOY STEEL I GOT	4655

8.1 The Commissioner (Appeals) has observed that total receipt of 18.31 Mts. Of Alloy Steel is not disputed by the department. Further, the invoices of M/s. Laxcon Steels Ltd. Shows that they have procured two kinds of ingots. Total export quantity of ingots is also lesser than the quantity procured by the respondent. Commissioner (Appeals) has also observed that A.S mentioned in invoices is nothing but Alloy Steel, which is mentioned in ARE-I and export document. Further Commissioner (Appeals) has observed that as per ER-I statement the fact of clearance of goods was found correct. These factual observation of Commissioner (Appeals) has not been controverted by the department by way substantial documentary evidences. Further, no substantial evidences has been brought out by the department showing that the goods procured by respondent from M/s. Laxcon Steels Ltd. has not actually been exported and diverted

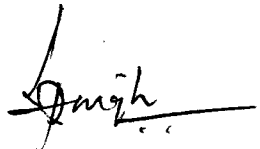
somewhere else. Under such circumstances, Government do not find any reason to interfere with finding of appellate authority regarding co-reliability.

9. Government observes that in the case of CCE, Raigad Vs. Micro Inks Ltd. in W.P.No.2195/2010 vide order dated 23.3.2011 reported as 2011 (270) ELT 360 (Bom) has held that export of inputs 'as such' on reversal of cenvat credit will be entitled for rebate claim. From the said judgement, it can be logically implied that export of imported goods as such on payment of duty is entitled for rebate benefit. As such, Government do not find force in contention of department that export of goods as such on payment of duty equal to Cenvat Credit taken on such goods in terms of provisions contained in Rule 3 (4) (b) of the Cenvat Credit Rules, 2004 is not eligible for rebate benefit.

10. In view of circumstances, Government do not find any infirmity in the orders of appellate authority and hence, upholds the same.

11. Revision Application is rejected being devoid of merit.

12. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Central Excise,
Commissionerate, Race Course Ring Road,
Rajkot.

ATTESTED



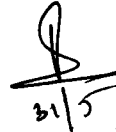
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 448 /13-Cx dated 30-05-2013

Copy to:

1. The Commissioner (Appeals), 2nd Floor, Central Excise, Race Course, Ring Road, Rajkot 360001.
2. The Assistant Commissioner of Central Excise, Div- I, Central Excise Bhawan, 2nd Floor, Race Course Ring Road, Rajkot- 360001.
3. M/s. Rollwell Forge Ltd., Survey No. 239/1, Behind GEB Sub-Station, Shapar Distt. Rajkot-360024.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)