

REGISTERED  
SPEED POST



F.No. 195/384-387/15-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....12/11/18

~~ORDER NO. 46-48/18-CX dated 11-01-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.~~

SUBJECT : Revision Application filed, under section 35EE of the Central Excise Act 1944 against the Order-in-Appeal No. JAL-EXCUS-000-APP-187-190-15-16 dated 04.08.2015 passed by the Commissioner of Central Excise, Jalandhar, Chandigarh II.

APPLICANT : M/s JMP Manufacturing Co. Ltd.

RESPONDENT : Commissioner of Central Excise, Jalandhar

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## ORDER

Revision Applications No. 195/384-387/15-RA dated 04.08.2015 have been filed by M/s JMP Manufacturing Co., (hereinafter referred to as the applicant) against Order in Appeal No. JAL-EXCUS-000-APP-187-190-15-16 dated 04.08.2015, passed by Commissioner (Appeals) Chandigarh –II.

2. Brief facts of the case leading to filing of the Revision Applications are that the applicant had filed rebate claims for Rs. 51,912/-, Rs. 1,14,448/-, Rs. 90,599/- and Rs. 25,356/- which were rejected by the original adjudicating authority on the following grounds:

- (i) The applicant had cleared goods for export through a merchant exporter as motor vehicle parts falling under chapter heading 8708. Whereas the merchant exporter issued export invoices by declaring the goods under chapter heading 8432 which pertains to parts of agricultural machinery attracting nil rate of duty. Hence the goods exported were not the same as cleared by the applicant from the factory.
- (ii) Copies of export invoices and packing lists were not filed by the applicant for claiming rebate.

3. Being aggrieved by the order the applicant preferred an appeal with Commissioner (Appeals) who also rejected their claims. The applicant has now filed these Revision Applications mainly on the following grounds.

- (i) The ARE-1s have been endorsed by Customs and certified that goods in respect of ARE-1s concerned were exported vide the relevant Shipping Bills.
- (ii) The denial of rebate amounts to demand of duty on goods exported.

(iii) Following case laws support their contention.

a) Alpha Garments Vs. CCE 1996(86) ELT 600(T)

b) CCE Versus Hindustan Petroleum Corporation Ltd. 1985(21)  
ELT 904

c) Benara Bearings Pvt. Ltd. Vs. CCE 1999(105) ELT 398 (T)

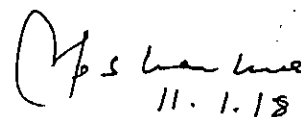
d) Associated Cement Co. Ltd. Vs. CCE 1999 (111) ELT 257 (T)

4. Personal hearing was held on 13.12.2017 which was attended by Sh. Sudhir Malhotra, advocate, who reiterated the above grounds of revision in detail.

5. The Government has observed that in the Orders of the Commissioner (Appeals) and in the Order-in-Original it is clearly stated that the applicant is engaged in manufacturing and export of excisable goods falling under chapter 87 of the Central Excise Tariff Act and that they are registered. It is also not denied that ARE-1s have been certified by customs officers and the container having the goods was sealed by the Central Excise officers at the time of clearance from the factory for export. The excise invoice numbers are also mentioned on ARE-1s and it is nowhere mentioned in the Order-in-Appeal that the description of goods in ARE-1s is different from the description of goods meant for export in the export invoices. Even the name of the merchant exporter is mentioned in ARE-1s which are certified by customs at the time of export. Further the Commissioner (Appeals) in para 6.2 of his order has clearly accepted that the merchant exporter has exported the goods cleared by the applicant. Considering these facts, the Commissioner (Appeals)'s order is found contradictory wherein, despite of above stated facts, it is held that the applicant has failed to produce any evidence that the goods exported are falling under heading 8708. Whereas the above discussed points

unambiguously demonstrate that the applicant is a manufacturer of motor vehicle parts, ~~have~~<sup>have</sup> the same only/ been exported and this fact cannot be negated merely because of mistake of the merchant exporter by classifying the goods under heading 8432. Above all, the duty payment on the exported goods is also not denied by the department and no corroborative evidence has been produced by the department to establish that agricultural products classified by merchant exporter under heading 8432 and attracting nil rate of duty were only exported in this case. The Government does not have any basis to believe in the above situation that the agricultural items, which are admittedly not manufactured by the applicant, have been exported. As regards non filing of export invoices and packing lists, no clue can be gathered from the orders of the lower authorities whether the Division office had issued any deficiency memo to the applicant and these were not furnished even thereafter. Moreover, finally it is a non-issue at this stage as the export of goods cleared from the factory of the applicant is reasonably established in this case.

6. In view of the above discussion, the order of the Commissioner (Appeals) is set aside and the Revision Applications are allowed.

  
11. 1. 18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s JMP Manufacturing Co.,  
983, Preet Nagar, Sodal Road, Jalandhar

ORDER NO. 46-49/18-CX dated 11-01-2018

Copy to:-

1. The Commissioner of Central Excise, Ludhiana Commissionerate, (Jalandhar Division), Central Excise House, "F" Block, Rishi Nagar, Ludhiana- 141 001 (Punjab).
2. The Commissioner (Appeals) Central Excise, Comm'rate Chandigarh-II Central Revenue Building, Sector 17-C, Chandigarh.
3. O-i-O No. Rebate/1374/AC/Jal/2014 issued under C. No. IV(16)30/Reb/2786/13/9685 dt. 21.05.2014 by Ld. Asstt. Commissioner, Central Excise Division, Jalandhar.\
4. Mr. Sudhir Malhotra, Advocate, 13-R Hukum Chand Colony, Near D.A.V. College, Jalandhar 098140-44175.
5. PS to AS(RA)
6. Guard File.

ATTESTED

(Debjit Banerjee)  
STO (REVISION APPLICATION)