

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. 26/2015-TRY(CEX) dated 15.04.2015 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 applicant filed a rebate claim on 26.11.2014 for Rs. 99,68,329/- on goods removed from their factory for export during the months of April 2014 and July 2014. After examining the rebate claims, the Assistant Commissioner, Central Excise, Division-II, Tiruchirapalli vide his OIO No. 23/2015-R dated 30.01.2015 sanctioned rebate claims amounting to Rs. 96,79,457/-, ordered for excess duty paid of Rs. 1,46,143/- to be availed as CENVAT credit and rejected an amount of Rs. 1,42,719/-.

3. Aggrieved by the rejection of the rebate, the applicant filed an appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide his OIA No. 026/2015-TRY(CEX) dated 15.04.2015 rejected the appeal filed by the applicant and upheld the OIO No. 23/2015-R dated 30.01.2015.

4. The applicant has now filed revision application on the following grounds :

(a) At the time of filing rebate claim in respect of the ARE-1 No. 461/31.07.2014, they were not in possession of e-BRC. It was submitted that the BRC was received by them only on 30.01.2015.

(b) The adjudicating authority had not followed the principles of natural justice. They had not been granted personal hearing nor had he called for e-BRC of the said shipping bill.

(c) The foreign exchange for the said consignment had been realized on 11.12.2014 as per the BRC. However, their bankers had uploaded the BRC only on 09.03.2015.



(d) They had obtained a manual copy of BRC on 30.01.2015. However, by then the adjudicating authority had already passed OIO rejecting the rebate claimed by them. The applicant had therefore enclosed the BRC alongwith with the appeal filed by them before the Commissioner(Appeals).

(e) The Commissioner(Appeals) had refused to accept the BRC by relying on Rule 5 of the Appeals Rules, 2001 holding that no new evidence can be produced unless it is shown that the appellant was prevented from producing it before the adjudicating authority.

(f) There was no dispute about the fact of export of the goods. It was also not in dispute that the inputs had suffered duty. BRC was required to be produced within six months from the date of export and in this case the applicant claimed to have obtained BRC within six months.

(g) It was submitted that it was settled law that procedural infractions are to be condoned if exports had actually taken place and that substantive benefit cannot be denied for procedural lapses. The applicant placed reliance upon the judgments in Shreyas Packaging[2013(297)ELT 476(GOI)], Modern Process Printers[2006(204)ELT 632], Birla VXL Ltd.[1998(99)ELT 387(Tri)], Alfa Garments[1996(86)ELT 600(Tri)], T.I. Cycles[1993(66)ELT 497(Tri)], Atma Tube Products[1998(103)ELT 270(Tri)], Creative Mobus[2003(58)RLT 111(GOI)], Ikea Trading India Ltd.[2003(157)ELT 359(GOI)], In Re : Omsons Cookware Pvt. Ltd.[2011(268)ELT 111(GOI)], UOI vs. Suksha International and Nutron Gems & Ors.[1989(39)ELT 503(SC)] and Mangalore Chemicals and Fertilizers Ltd. vs. DCCE[1991(55)ELT 437(SC)].

(h) The applicant drew attention to para 8.3 of the CBEC's Central Excise Manual to point out the documents required to be filed with claim of rebate under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002 and averred that since they had filed all these documents, the Department cannot harp on clerical mistakes/procedural lapses which were beyond the control of the applicant. They submitted that when there is substantive compliance and the fact of export is not in doubt, rebate should be sanctioned. They placed reliance upon the decision in Re : Modern Process Printers[2006(204)ELT 632] in support of these contentions.

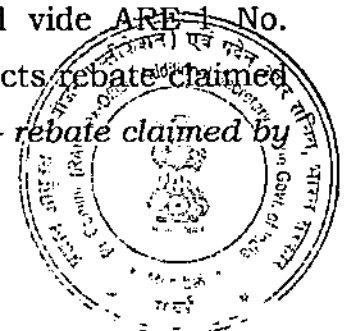


5. The applicant was granted an opportunity of personal hearing on 04.02.2021. Shri Murugappan, Advocate appeared on their behalf and reiterated their submissions. He submitted that in this case their rebate was rejected only because e-BRC was not produced. He stated that the e-BRC has been annexed at page 48 of the revision application.

6. The Assistant Commissioner, GST & Central Excise, Division-I, Tiruchirapalli Commissionerate filed comments vide letter C. No. IV/16/05/2021-Reb dated 17.02.2021 in respect of 4 revision applications filed by them including the subject revision application. However, no specific comments have been submitted in respect of the issue involved under R.A. No. 195/168/15-RA.

7. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal and the Order-in-Original. It is observed that the Commissioner(Appeals) has rejected the rebate claim filed by the applicant on the sole ground that the exporter had not produced the e-BRC within the prescribed time limit. While rejecting the appeal of the applicant, the Commissioner(Appeals) has held that no new evidence can be produced before him in terms of Rule 5 of the Appeal Rules, 2001 unless the applicant is able to demonstrate that he was prevented from producing it before the original authority.

8. On going through column 10. of the Form EA-8 titled "Reliefs claimed in application" of the revision application filed by the applicant, it is observed that the applicant has claimed relief for rejection of claim for Rs. 1,46,153/- with consequential relief. It is observed from the OIO No. 23/2015-R dated 30.01.2015 that the amount of Rs. 1,46,153/- is the excess duty paid on the amount above the FOB value of the goods which have been exported. This amount has therefore been refunded by allowing it as re-credit in their CENVAT account. As such, the applicant has not made out any grounds to counter the re-credit allowed or for sanctioning this amount in cash. The OIO dated 30.01.2015 has rejected the rebate claim in respect of the duty paid in respect of goods exported vide ARE-1 No. 461/31.07.2014 amounting to Rs. 1,42,099/-. It also rejects rebate claimed due to difference in duty actually payable/(Rs. 99,68,329/- ~~rebate claimed by~~



10. Government therefore modifies the OIA No. 26/2015-TRY(CEX) dated 15.04.2015 passed by the Commissioner(Appeals), Tiruchirapalli by allowing rebate amounting to Rs. 1,42,099/- in respect of goods exported vide ARE-1 No. 461/31.07.2014 and directs the original authority to refund the amount within a period of 8 weeks of receipt of this order.

Shrawan
11/11/21

(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. ५१४ /2021-CX (SZ) /ASRA/MUMBAI DATED 11.11.2021

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.

