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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-400005

F NO. 195/175/13-RA

Date of Issue: 31.08.2020

ORDER NO. 527/2020 C.EX (SZ) / ASRA / Mumbai DATED 02/07/2020 OF  
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s Cancam Engineers Pvt. Ltd.  
B-86, 1<sup>st</sup> Stage, 2<sup>nd</sup> Cross,  
Peenya Industrial Estate,  
Bangalore - 560 058.

Respondent : The Commissioner of CGST, Bengaluru.

Subject : Revision Application filed, under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
No. 245/2012-CE dated 30.08.2012 passed by the  
Commissioner of Central Excise (Appeals-I), Bangalore.



ORDER

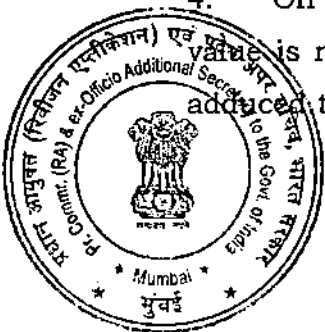
This revision application has been filed by M/s Cancam Engineers Pvt. Ltd, Bengaluru (hereinafter referred to as "the applicant") against the Order-in-Appeal No. No. 245/2012-CE dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Brief facts of the case are that the applicant holding Central Excise Registration No. AAACC7957RXM001 for manufacture of excisable goods, viz., M.S. Ground Bars powder coated with metallic gold colour falling under Chapter heading No. 72155010 of the Central Excise Tariff Act, 1985, have filed a claim for Rs..61,1091- being rebate of duty on excisable goods used in the manufacture / processing of export goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No.2 /2004-CE (NT) dated 06.9.2004 The details of the claim of rebate of duty are as under:-

ARE-2 No. & Date	Amount of rebate claimed (Rs.)	Shipping Bill No. / Date	Date of shipment
002/13.11.2009	61,109	2257492/16.11.2009	17.11.2009

3. The applicant had submitted the application for rebate in Form — R alongwith Original & Duplicate copies of ARE-2, Purchase Order, Export invoice and Packing List, self-attested copy of Shipping Bill, self-attested copies of Bills of Lading, a declaration to the effect that they have not claimed any benefits against the export, Certificate from the jurisdiction Range Officer towards payment of duty on the inputs, self-attested copies of invoices of inputs on which duty has been paid, copy of Declaration dated 02.9.2009 made in terms of Notification No.21/2004-CE(NT) dated 06.9.2004, Input & Output Ratio, Bank Realisation Certificate.

4. On examination of the claim, it has been observed that the export is not in conformity with the Purchase Order and no reasons were advanced to this effect. Further, the applicant had not produced the copy of



permission granted by the jurisdictional Assistant / Deputy Commissioner of Central Excise in terms of condition (2) of Notification No.21/2004-CE (NT) dated 06.9.2004. Hence, it appears that the impugned claim for rebate of Rs:61,109/- is liable for rejection under the provisions of Section 11 B of the Central Excise Act, 1944. The Adjudicating Authority vide his Order-in-original No.83/2011 (R) dated 30.03.2011, rejected the claim for rebate of Rs, 61,109/- made by the appellant as inadmissible under provisions of section 11 (B) of the Central Excise Act, 1944.

5. Aggrieved by the above decision, the applicant filed an appeal before the Appellate Authority on the following grounds :-

5.1 The applicant had followed the procedure as prescribed in Notification No. 21/2004. CE (NT) ~~dated 06.9.2004~~ by submitting a proper declaration as prescribed in condition No. 1 of the said notification, to the Asst. Commissioner on 2.9.2009 under acknowledgement ;

5.2 The declaration contained all required information along with input - output ratio;

5.3 That permission was sought from the Asst. Commissioner for manufacture and export of goods;

5.4 That the export of goods took place on 13.11 .2009 i.e. after a period of two and a half months from the date of filing the declaration. However, there was no response or any correspondence from the department;

5.5 That the goods exported were manufactured only after filing the declaration;

5.6 That the export under was time bound where any delay would have resulted in cancellation of order and consequence loss in business. It was also submitted that the input in question was in fact procured for processing only after filing of the declaration.

6. The Appellate Authority vide impugned Order-in-Appeal rejected the appeal. The Appellate Authority observed that :-

6.1 As could be seen from the provisions of the notification, it is mandatory for the manufacturer to declare the input-output ratio with the



jurisdictional Asst. Commissioner and the said Asst. Commissioner after satisfying himself may grant permission to the applicant for manufacture or processing and export of goods and hence filing of declaration permission by the Asst. Commissioner is a pre-requisite condition for claim of rebate of duty on excisable goods used in the manufacture of processing of export goods;

6.2 That as the appellant had filed the declaration on 2.9.2009. There was certainly delay and inaction on the part of the department which is improper;

6.3 That however in such a situation the applicant could have sought redressal by taking up with reminder and/or with higher authorities and that would have ensured the grant of requisite permission after due verification.

7. Aggrieved by the said order in appeal, the applicant filed the instant Revision Application on the following grounds :-

7.1 They are aware of the provisions of the Notification No.21/2004-CE (NT) dated 6.9.2004 enabling an exporter in claiming rebate of duty paid on inputs used in manufacturing/processing of export goods. They have accordingly complied with all the requirements in terms of the notification and filed the declaration with all required / prescribed information, including input- output ratio, on 2.9.2009, i.e. well before the export of goods which was only 13.11.2009.

7.2 A request for permission to process the inputs was submitted on 2.9.2011, even before procuring the inputs to be processed. In fact, on several occasions they approached the Range Superintendent and appraised about the pending application. However, there was no response. Under the circumstances they presumed that there was no objection from the department either about the documents filed or for proceeding with processing of material and exporting the same.

7.3 At the time of sealing of the goods for export, the Range Superintendent verified the goods and the ARE.2 form presented and sealed the goods certifying the export document without any objection. ARE.2 is an



export document prescribed for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture of export goods. In Table-2 of the ARE-2 form details of duty paid excisable material used in the manufacture of export goods for which rebate under Notification No. 21/2004 dated 6.9.2004, are specifically mentioned. Thus the Range Superintendent was aware of the fact that the applicant had applied for permission to process and export in terms of Notification No. 21/2004 dated 6.9.2004.

7.4 The request for permission was made on 2.9.2009 and the export clearance was made on 13.11.2009 i.e. after a period of 2½ months. An export order, if not complied within the time specified, would have got cancelled and in such a situation they would have sustained heavy loss. The goods had to be exported and supplied to the customer within the period agreed upon.

7.5 The learned Commissioner (Appeal) records that there was certainly delay and inaction on the part of the department. But the remedy by way of reference with higher authorities in the Commissionerate is not practical, for the reason that such action is always frowned upon by the concerned officials. Even reminders are not entertained by the concerned officials. The appellant did not attempt the above remedy in order not to incur displeasure. However, as stated above, the appellant did approach the jurisdictional office, but it did not result in any action.

8. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

9. On perusal of records, it is an admitted fact that the goods have been cleared for export following the conditions / procedure prescribed under Notification No. 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. Further, the Rule 18 of Central Excise Rule, 2002 provides that where any goods are exported, the Central Government may by Notification, grant rebate of duty paid on such excisable goods or duty paid on material used in manufacture / processing of such goods and



the rebate shall be subject to such condition or limitation, if any, and fulfilment of such procedure, as may be specified in the Notification. The said procedure is spelt out in Notification No. 21/2004-CE (NT) dated 06.09.2004 as amended and provides for rebate from the whole of the duty paid on excisable goods used in the manufacturer or processing of export goods under the said notification. Fulfilment of the conditions laid down in the Notification is mandatory.

10. In the instant case, the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export and had filed a declaration describing the finished goods proposed to be manufactured along with their rate of duty and other requisite particulars with Assistant Commissioner on 02.09.2009 and have obtained the acknowledgement thereof. These facts are noted by the Appellate Authority in the impugned Order in Appeal. The export of goods took place on 13.11.2009 i.e. almost 2 ½ months after filing a requisite declaration as mandatorily required under No. 21/2004 - CE(NT) dated 06.09.2004.

11. The Government finds that the applicant had filed the declaration with adequate time for the department to process / scrutinise the same and grant the permission if it was found to be in order or reject otherwise. The department had not challenged the dates of filing of declaration and date of exports as mentioned by applicant. The Government further observes that the departmental officers had failed to process / scrutinise the said declaration within reasonable time in spite of repeated requests made by the applicant during their personal visits. Under the circumstances, the applicant, under rational belief that the declaration has deemed to be accepted, cleared the goods for export. Further, the export of goods was effected under supervision of the jurisdictional Superintendent who also did not raise any objection and cleared the consignment for export as evident from the certificate issued by him in Part 'A' of the relevant ARE-2 copy on




12. From the discussion in the forgoing paras, the Government finds that the applicant had fulfilled the statutory conditions laid down under the impugned Notification without any lapse on their part and thereby followed the basic procedure of export. The Government, therefore, holds that the applicant had fulfilled the obligatory conditions and thereby followed the procedure as required under impugned notification. Hence, the ground of rejection of their appeal by the appellate authority that the applicant should have referred the matter to the higher authorities in the Commissionerate appears to be illogical and not justifiable.

13. From discussion in the forgoing paras, Government holds that the applicant had fulfilled the statutory condition of the impugned Notification regulating the rebate under Rule 18 of the Central Excise Rules, 2002. As such, the impugned order in appeal is liable to be set aside.

14. In view of above, the Government sets aside the Order of the Commissioner (Appeals) and allows the rebate claim of Rs. 61,109/- (Rupees Sixty One Thousand One Hundred and Nine Only) to the applicant.

15. Revision application is disposed of in terms of above.

16. So, ordered.

  
( SEEMA AORORA )  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 527/2020-CX (SZ) /ASRA/Mumbai DATED 02.07.2020

To,

M/s. Cancam Engineers Pvt. Ltd.,  
B-86, 1<sup>st</sup> Stage, 23<sup>rd</sup> Cross,  
Peenya Industrial Estate,  
Bangalore- 560 058.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)



Copy to:

1. The Commissioner of GST & CX, North-West, 2<sup>nd</sup> floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru- 560 051.
2. The Commissioner of GST & CX, (Appeals-I), Traffic & Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Dommaluru, Bengaluru- 560 071.
3. The Assistant Commissioner, North-West, Division-I, 2<sup>nd</sup> floor, North Wing, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru- 560 051.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

195/175/13-RA

