F. NO. 195/45-57/14-RA
REGISTERED SPEED POST

सत्यमेव जयते

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- 400 005

F. NO. 195/45-57/14-RA/3913 Date of Issue: 10.9.2020

ORDER NO. 550-562 /2020-CX (WZ) /ASRA/MUMBAI DATED 13/09/ 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 Star Extrusion, Umbergaon.

Respondent : Commissioner of Central Excise, Customs & Service Tax, Vapi.

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. VAP-EXCUS-000-APP-387 to 399 -13-14 DT 02.12.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

ORDER

These Revision Applications have been filed by M/s. Star Extrusion, Plot No. 226/A, GIDC, Umbergaon, Dist.-Valsad (hereinafter referred as 'the applicant) against common Orders-in-Appeal No. VAP-EXCUS-000-APP-387 to 399 -13-14 DT 02.12.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. Brief facts of the case are that the applicant had filed following thirteen Rebate claims for refund totally amounting to Rs. 29,82,525/- in respect of the duty paid by them on their goods viz. 'Tinned Copper Terminal Ends' exported under Drawback scheme, during the period from April-2012 to September-2012.

S.No.	ARE-1 Number & Date	Amount of rebate (Rs.)
1	UBR-1/35/R/12-13 dated 16.04.2012	338849/-
2	UBR-1/98/1/12-13 dated 11.05.2012	266877/-
3	UBR-1/37/R/12.13 dated 25.05.2012	85174/-
4	UBR-1/81/R/12-13 dated 07.06.2012	316897/-
5	UBR-1/246/R/12.13 dated 25.06.2012	338928/-
6	UBR-1/334/R/12.13 dated 12.07.2012	302999/-
7	UBR-1/325/R/12-13 dated 09.07.2012	26230/-
8	UBR-1/406/R/12-13 dated 30.07.2012	294106/-
9	UBR-1/572/R/12-13 dated 03.09.2012	147759/-
10	UBR-1/574/R/12.13 dated 03.09.2012	449600/-
11	UBR-1/573/R/12-13 dated 03.09.2012	82143/-
12	UBR-1/51/R/12-13 dated 26.04.2012	148604/-
13	UBR-1/370/1/12-13 dated 23.07.2012	184359/-
	TOTAL	29,82,525/-

2.1 The rebate sanctioning authority observed from the Central Excise Invoices for export goods, that the applicant had classified the said exported goods under CSH No. 74199990 of Central Excise Tariff Act, 1985, however, in the shipping bill & other export documents, the applicant had mentioned CSH No.85351090 of Central Excise Tariff Act, 1985 for claim of drawback. Thus, there was variance in Chapter Head of the same product in the Central Excise Invoice and other export documents. It was also noticed that the applicant had filed a clarification letter in each file stating that their product falling under chapter No. 7419 were classified under chapter No. 853502, 853503 & 853504 in the Notification No. 68/2011 Customs (N.T) dated 22.09.2011 which came in force w.e.f 01.10.2011. The rebate sanctioning authority also observed that from the respective shipping bills, it is not forthcoming whether the applicant are claiming full drawback claims or otherwise. It was also noticed by the rebate sanctioning authority that the drawback rates in respect of the exported products falling under chapter No. 7419 as well as products falling under chapter No. 8535 shown in the relevant shipping bills on which drawback availed were higher and differ from the drawback rates fixed for the year

2012-13 as specified in the schedule of Drawback Rules 1995. Further, in the rebate claim file, relating to the ARE-1 No. UBR/1/098/R/ 12-13 dated 11.05.2012 (mentioned at Sr. No. 2 of the table) the date of Excise invoice was 10.05.2012 & date of ARE-1 was 11.05.2012 whereas the date of mate receipt was 06.06.2012 i.e. before clearance of goods mate receipt was issued. SCNs dated 22.07.2012 were issued to the appellant proposing rejection of above mentioned rebate claims under Rule 18 CER, 2002 read with Section 11B of CER, 1944.

2.2. Personal hearing in the matter were fixed on 29/30 & 31.07.2013, the appellant vide letter dated 25.07.2013 requested the rebate sanctioning authority for 30 days time for filing defence reply and adjournment of P.H. The rebate sanctioning had held that identical issue was decided by him and his predecessor for earlier periods and ample opportunities for defence were given to the appellant in the past. The rebate sanctioning authority was of the view that the appellant could not claim dual benefit of drawback on Customs as well as Excise. Accordingly, all the rebate claims were rejected vide Orders-in-Original bearing numbers 496 to 508/AC/REB/DIV-VAP1/2013-14 dated 31.07.2013 passed by the Assistant Commissioner, Central Excise & Customs, Division-Vapi.

4. Being aggrieved by the said Orders in Original, the applicant filed the appeals before Commissioner (Appeals), Vapi, who vide Orders-in-Appeal No. VAP-EXCUS-000-APP-387 to 399-13-14 dated 02.12.2013 upheld the Orders in Original and rejected the appeal of the applicant.

5. Being aggrieved with the aforementioned Orders-in-Appeal, the applicant filed the instant 13 Revision Applications mainly on the following common grounds:

5.1 The Adjudicating Authority without issue of any show cause notice and without offering a fair opportunity to represent their cases in the matter. The Commissioner (Appeals) at para 7 of his order appreciated that there is force in applicants plea that natural justice was not followed by the lower authority. However, after the said observation the Commissioner (Appeals) proceeded to decide the issue on merits on the ground that he had given an opportunity to them (applicant) to represent their case before him;

5.2 The Commissioner(Appeals) failed to appreciate the legal position that failure of natural justice at the first adjudicating stage cannot be substituted by granting hearing at the first appellate forum and in fact the same should be conducted by going through all the documentary evidences as required by the Adjudicating Authority;

5.3 In the present case, the Commissioner (Appeals) has upheld the rejection of the rebate claim on ground which was neither before the Adjudicating Authority nor in impugned Orders in Original.

Accordingly, the impugned Orders in Appeal had been passed not only against the principles of natural justice but also on ground which was not in dispute at adjudicating level;

5.4 The goods manufactured and exported by the applicants are Tinned Copper Terminal Ends. The goods are cleared from the factory on payment of duty and under cover of appropriate excise invoice and ARE-1 and the duty amount so shown in the excise invoice stands fully paid. There is no dispute as regards to the duty paid nature of the goods. The goods are duly exported and the applicants have filed the proof of exports including the excise invoices, ARE-1 s, Shipping Bills, Bill of Ladings, Bank Realization Certificate for the foreign remittance and all the other proof of exports. There is no dispute as regards to the export being completed.

5.5 The goods ordered by the foreign party was Tinned Copper Terminal Ends as per their drawings and specification and the goods supplied are as per their specifications and the same has been duly accepted and foreign remittance duly received for the said exports of Tinned Copper Terminal Ends.

5.6 The goods are cleared for the period April, 2012 to September, 2012 during which the applicants were eligible for Duty Drawback as per Notification No. 68/2011-CUS (NT) dated 22/09/2011. The said duty draw back Notification was superseded by Notfn. No. 92/ 2012-Cus(NT) dated 04/ 10/2012 applicable w.e.f 10/10/2012. Accordingly the applicants have rightly claimed the benefit of duty drawback under Notfn. No. 68/2011-CUS (NT) dated 22/09/2011 as amended. The applicants have claimed duty drawback under the said Notification No. 68/2011-CUS (NT) dated 22/09/2011 for Tinned Copper Terminal Ends as per the Schedule attached to the Notification at Tariff Item No. 853504. The duty drawback for Tinned Copper Terminal Ends was 4% whether Cenvat facility has been availed or not by the manufacturer. In other words the duty drawback rate for for Tinned Copper Terminal End for Tariff Item No. 853504 was only Customs Rate @ 4% as per Note 6 to Notfn. No. 68/2011-Cus(NT). The duty drawback has been granted without any dispute.

5.7 They have filed rebate claims as per provisions of Rule 18 read with Notification No. 19/2004-CE(NT) and all the rebate claims are in time and all the procedural requirement of the said Rule and Notification have been complied. Also, there is no dispute in the show cause notice regarding the shortcomings either in the rebate claims nor with the requirement of the duty being paid on the goods exported nor there is any dispute on the factum of the same goods being exported out of country.

5.8 The Adjudicating Authority rejected the 13 rebate claims on the ground that they cannot claim rebate under Rule 18 and duty drawback simultaneously on the same goods as double benefit was not permitted under the law and that the applicant had declared

different Chapter headings in Central excise invoice and export documents with intend to avail said double benefit;

5.9 The Commissioner (Appeals) set aside the aforesaid findings of the Adjudicating Authority and had allowed the aforesaid claims of applicant by giving detailed findings at para 8 to para 11 of the Order in Appeal No. VAP-EXCUS-000-APP-387 to 399-13-14 dated 02.12. 2013. He granted the simultaneous benefit of duty drawback as well as rebate claim duly following the decision of Revision Authority in case of M/s Mars International [2012(286)ELT 146(GOI)]. The commissioner (Appeals) has rightly allowed that part of claims maintaining the judicial discipline and granting benefit on GOI decision referred above. There is no dispute on this issue and they are accepting the said part of the order the said issue has attained finality.

5.10 However, Commissioner (Appeals) after deciding the issue before him in favour of the applicants, proceeded to deny the rebate claims on a different ground as enumerated at para 12 of the impugned Orders in Appeals which cannot be permitted at the appellate stage which is against the principles of natural justice, statutory provisions and factual position explained by them;

5.11 The Commissioner (Appeals) observed that they had classified the products "Tinned Copper Terminal Ends" under heading 7419 in the excise invoice and under heading 8535 in the export documents and same appeared to be consciously done by them to claim higher rate of drawback and further proceeded to observe at para 12 that on account of such variance in the description of the goods it is established that the goods of description "Tinned Copper Terminal ends" cleared under the excise invoice and ARE-1 was actually not exported out of country;

5.12 The above findings of the Commissioner (Appeals) is contrary to the factual position, contrary to the findings given by him in the previous paras of the Order and contrary to the established evidences which have not been controverted in the proceedings. Hence, the impugned order denying the rebate on the ground which was never suggested at any point of the proceedings deserves to be quashed;

5.13 From the Orders in original it is evident that there is no dispute or any objection regarding physical export of the goods which are cleared from the factory on payment of excise duty under cover of excise invoices and ARE- ls. There is no dispute that the very same goods which were cleared from the factory under cover of excise invoices and ARE-1s have been exported outside the country under relevant shipping bills which had been produced for verification. The... ARE 1 had been signed and by excise as well as customs authority and there is no discrepancy in the export so carried out. The export of the goods so cleared on payment of duty from the factory has also been

accepted by the Commissioner (Appeals) in his impugned Orders in Appeal;

5.14 At para 10 of the findings Commissioner (Appeals) has accepted the fact that the goods have been exported on payment of excise duty. Accordingly the objection so raised by the Commissioner (Appeals) at para 12 of the Order is factually incorrect and contrary to the evidences placed on record and evidences which have already been accepted by the Adjudicating Authority. The Commissioner (Appeals) cannot come up with whole new case at the said appellate stage without any evidences and on the grounds which are contrary to the evidences and facts which are duly accepted by both the sides during the course of proceedings;

5.15 There is no dispute on the fact that the goods so manufactured and exported are "Tinned Copper Terminal Ends". There is no dispute that full duty at 12.36% has been paid by them and the very same goods i.e. Tinned Copper Terminal Ends so removed from the factory under cover of excise invoices and ARE-1s have been exported out of the country. There is no dispute that all the documents as required under Rule 18 read with Notification No. 19/2004-CE (NT) in support of proof of export has been filed and accepted by the Division office. The goods exported by them is as per the foreign customer specification and the export consignments have been accepted and foreign remittance has been received and bank realization certificates produced by them; The rate of duty under both the headings i.e 7419 and 8535 is the same i.e. 12.36% and accordingly for grant of rebate under Rule 18 read with Notification No. 19/2004-CE (NT), the amount so paid should be refunded on the principal that no export goods can be taxed;

5.16 The Adjudicating Authority and Commissioner (Appeals) are functioning under the Central Excise Act and Rules made there under and at the time of considering the documents for grant of rebate as per Rule 18 read with Notification No. 19/2004-CE (NT) there is no reason to evaluate the applicability of duty drawback provisions which is looked by DGFT Authorities. Once the factum of the goods being manufactured at factory and its clearance on payment of duty stands established and there is no case of the department that the said goods stand diverted in the local market, the rebate claims cannot be denied to them;

5.17 They had been manufacturing and clearing the said Tinned Copper Terminal Ends under the heading 7419 and they have been paying full duty @ 12 % and were also covered under the then DEPB Scheme. In month of September, 2011, the DEPB Scheme was discontinued and the products which were covered under the said DEPB Scheme were brought under the said duty drawback scheme on introduction of Notfn, No 68/2011 CUS (NT). In the said Notification the products eligible for duty drawback were referred in the Schedule attached to the Notification which covered almost 4000 products and the

classification was carried out with reference to Heading Nos. and due precautions were taken that the goods covered under erstwhile DEPB Scheme were also covered in the duty drawback to the nearest Heading of the Customs. Accordingly the product Tinned Copper Terminal Ends were specifically referred under Heading 8535 and was shown in Schedule to said Notfn. No. 68/2011. For ready reference they are enclosing the said duty drawback Notification No. 68/2011-CUS (NT) along with relevant Page of the Schedule showing the Heading 853504;

5.18 The Government of India, CBEC also issued Circular No 42/2011-CUS dtd. 22/09/2011 wherein at Para-3 it duly clarified that the duty drawback schedule incorporated the items which were under erstwhile DEPB Scheme. It also stated that while incorporating the same care was taken to classify them at the appropriate four digit level. However there may be some doubts about the classification of this DEPB items in the drawback schedule Notified. Accordingly it was clarified that the rate of duty drawback as specified for this items in the drawback schedule is not to be denied in all such cases. Further for ready reference list of DEPB items with particular product code and Sr. No. was also listed on the CBEC Web Site.

5.19 On perusal of the above it would be observed that Tinned Copper Terminal Ends were originally covered under DEPB and thereafter it was brought under duty drawback scheme and the CBEC clarified that in case of any variance in the classification of the products the duty drawback should not be denied if covered under the Schedule of duty drawback. It is a matter of record that the said Schedule of duty drawback specifically visualized Tinned Copper Terminal Ends under Heading 853504 with duty drawback rate of 4% under both the columns i.e. whether Cenvat availed or not. Accordingly they had shown the classification of the said products in the export documents with Heading 8535 and the duty drawback has been granted even if there was variance in the classification of the same. There can be no ulterior motive read in to such claim of duty draw back and even the CBEC Circular had visualized that there is possibility of variances in the classification of the products in the duty draw back schedule.

5.20 Before claiming the said heading in the export documents, they under bonafide belief and claim had approached the Central Excise department under their letter dated 16/02/2012. In the said letter they had approached Division Office and Range Office with request to clarify whether they should continue to classify the product in the excise documents under Heading 7419 when the duty drawback notification on customs side shows Heading 853504. Since the Division and Range authority refused to accept the said letter they had to send it by Regd. Post. They feel very sorry to observe that the Excise authorities instead of guiding the manufacturer exporter to meet with the export compliance and instead of responding to the intimation, they proceeded to reject all their rebate claims for

subsequent periods on the very same grounds on which the clarification was sought;

5.21 Showing different Heading in the excise invoice and on the export documents is a technical issue and the rebate claim which is otherwise legally due to the manufacturer exporter cannot be denied. The reference given to the DGFT Custom Heading in the export documents is as per the duty drawback Notification and there is no dispute as regards to the duty drawback claim. In fact the only dispute in these proceedings is for denying rebate claim on the ground that different heading is claimed in the excise invoice. However the said technical lapse cannot be made the ground to reject the rebate claim when all the other requirements of Rule 18 read with Notfn.No.19/2004-C.E. (NT) have been duly complied and there is no dispute on the duty paid nature of the goods and on the export of the same goods. The rate of duty for Heading 7419 and Heading 8535 is the same i.e. highest rate of 12.36% which stands paid at the time of clearance for export and on export applicants have claimed the very same duty of 12.36%. Accordingly the present proceedings denying the rebate claim deserve to be quashed with all consequential relief to them.

6. The respondent Department vide Letter F.No. XXIV/Div-UMG/Star Extrusion- JS (RA)/2019 dated 10.01.2020 filed counter objection to the instant Revision Applications filed by the applicant. While countering the grounds of Revision Applications the department in nutshell contended as under:-

6.1 The applicant itself admits at para 7 of Statement of Facts that the adjudicating authority issued common Show Cause Notice No. V/18-1464 to 1474/2012-13/R & V/18-98 to 99/2013-14/R/2241 dated 22-07-2013 issued by Regd. Post and served upon the applicants in an around 23rd or 24th July 2013. Even as per para 7 of OIA Commissioner (Appeal) has mentioned that principle of natural justice had been followed. The appellant's submission that Commissioner (Appeal) has failed to appreciate the legal position that failure of natural justice at the first Adjudicating state can not be substituted by granting hearing at the appellate forum is not sustainable as it is evident from the appellants own statement of facts that SCN was issued and PH was fixed on 29-07-2013, 30-07-2013 or 31-07-2013 thus during the process of rebate claim and considering the time bound matter the adjudicating authority had followed principle of natural justice which was a time consuming factor. However the appellant had never come forward even after receipt of SCN and Personal hearing letter or informed the adjudicating authority, at any point of time regarding their views prior to issuance of OIO. Thus applicant,'s contention that principle of natural justice had not been followed is misconceived.

6.2 The description of goods is not the matter of dispute but they had classified the exported goods under 8535 from CETH 7419 and on

such goods the drawback rate has been apparently increased from 1 % to 4% which Commissioner (Appeal) has elaborately mentioned in para 12 in their Order in Appeal which is shown below:-

- There is no dispute as regards to the duty paid nature of the goods but the claimant classified the exported goods under 8535 from CETH 7419 and on such goods the drawback rate has been apparently increased from 1 % to 4%
- There is no dispute as regards to the export being completed but they had classified the exported goods under 8535 from CETH 7419 and on such goods the drawback rate has been apparently increased from 1 % to 4%
- The description of goods is not the matter of dispute the appellant deliberately and consciously exported goods other than "tin copper terminal ends" which were appropriately classifiable under CETH 8535 as electrical items/apparatus and claimed higher rate of drawback @ 4% in place of 1% admissible for CETH 7419
- From the plain reading of the condition no. 6 to the Notification, it is clear that when the rates indicated are same in both the column A and B of the drawback schedule viz. "Drawback when Cenvat facility has not been availed" and "Drawback when CENVAT facility has been availed", the said drawback is available irrespective of whether the exporter has availed cenvat credit or not, as the same pertains to customs components only. In the instant case the tariff item 853504 of the drawback schedule covers the product " Tinned/untinned Copper Terminal Ends" specifically and prescribe the rate of drawback as 4% (with a cap of Rs.24 per unit) in both the columns A and B of the schedule. The appellant has availed drawback under tariff item 853504B as is evident from the shipping bill . Hence, there remains no confusion to the fact that the appellant has not availed drawback of the excise duty portion as well as rebate of excise duty. Further the rebate claims were filed for the ARE-1 and their Shipping Bills were dated prior to 10-10-2012. Hence appellant claim appears to be not sustainable.
- The Commissioner (Appeal)) has already observed the issue of drawback schedule applicable at the material time and mentioned at para 12 in their OIA that drawback schedule applicable at the material time does not either contain tariff item 85351090 or 74199990 in respect of the said product. However it also not disputed by the appellant that they had been classifying the same product under CETH 74199990 in the central excise invoices and the past, they had also availed drawback under tariff item 7419 of the drawback schedule as "other articles of copper" and not under tariff item 8535.

There is no dispute of the provisions of Rule 18 read with notification no. 19/2004 - C.E (NT) which is mainly related with the export under payment of duty but in the instant issue there is

dispute of the goods cleared from the factory under relevant documents like invoice, ARE-1 under which they had classified their products under CETH 7419 and export from place of export under shipping bill under which they had classified their products under CETH 8535 and claimed 4% of drawback in place of 1% admissible for CTH 7419.

- There is no dispute as regards to the filing of rebate claims but they had classified the exported goods under 8535 from CETH 7419 and on such goods the drawback rate has been apparently increased from 1 % to 4%

- Issue is mis-declaration of the contents in the export documents by classifying the exported goods under 8535 from CETH 7419 and on such goods the drawback rate has been apparently increased from 1 % to 4%. In such condition the commissioner (Appeal) has relied upon the case of M/s Kaizen Organics Pvt Ltd 2013 (293) E.L.T. 326 (Raj), Hon'ble High Court of Rajasthan where in it was held that for the difference in description of the goods in ARE-1 and the export documents does not establish the proof of export and hence the goods cleared by them for export could not be allowed without payment of duty under Rule 19 of CER. It was further held that absence of evidence for diversion of goods to domestic markets, ipso facto, could not entitled exporter to benefit of Rule 19 ibid, in view of apparent misdescription.

6.3 As per para 11 of the said OIA, it is observed that there is not a problem in simultaneous availment of drawback and rebate and it is not the issue of dispute in the instant case they had classified their products under CETH 8535 and claimed 4% of drawback in place of 1% admissible for CTH 7419.

6.4 The appellate authority has denied the rebate claim as the appellant had themselves declared description and classification of the goods in export documents which did not tally with that of the goods cleared from the factory, which were described and classified in the ARE-1s and Central Excise invoices differently. The goods cleared from the factory under relevant documents like invoice, ARE-1 under which they had classified their products under CETH 7419 and exported from place of export under shipping bill under which they had classified their products under CETH 8535 and claimed 4% of drawback in place of 1% admissible for CTH 7419. The appellant has not been able to meet the mandatory requirement of claiming rebate that the same goods which have been manufactured, suffered duty and cleared from the factory, have actually been exported. As per Commissioner (Appeals) order, the authority also noted that stipulations/safeguard of Rule 18 of C. Excise Rules 2002 and notifications issued thereunder are specifically for the purpose that only those very goods which were actually manufactured should be exported and the rebate sanctioning authority is required to fully satisfy himself for the same. In such condition, the exporter fails to

incorporate the description of goods in ARE-1 with the relevant export documents.

6.5 The matter of dispute for the description of goods which were actually manufactured and cleared under ARE-1 were not the same which were exported under relevant export documents. In such condition the rebate sanctioning authority had to take attention towards the stipulations/safeguard of Rule 18 of C.Excise Rules 2002 and notifications issued thereunder are specifically for the purpose that only those very goods which were actually manufactured should be exported and the rebate sanctioning authority is required to fully satisfy himself for the same. As the appellant had themselves declared the description and classification of the goods in export documents which did not tally with that of the goods cleared from the factory, which were described and classified in the ARE-1s and Central Excise invoices differently. The goods cleared from the factory under relevant documents like invoice, ARE-1 under which they had classified their products under CETH 7419 and exported from place of export under shipping bill under which they had classified their products under CETH 8535 and claimed 4% of drawback in place of 1% admissible for CTH 7419. In such conditions there is violation of Rule 18 of C.Excise Rules 2002 and Notifications issued thereunder.

6.6 The facts of the case is that the goods cleared from the factory under relevant documents like invoice, ARE-1 under which they had classified their products under CETH 7419 and export from place of export under shipping bill under which they had classified their products under CETH 8535 and claimed 4% of drawback in place of 1% admissible for CTH 7419. This clearly shows that goods which were cleared from factory were not the same which were exported. The Commissioner (Appeal) has carefully gone through the impugned OIO and contention made in the appeal memorandum and records of personal hearing that's why they have discussed all the findings carefully and finally arrived at the conclusion that goods which were cleared from factory were not the same which were exported and being agreed with the findings of the adjudicating authority the Commissioner (Appeal) held that the instant claims of rebate are not admissible to the appellant.

6.7 As per para 12 of the OIA the Commissioner (Appeal) has clearly mentioned that the appellant deliberately and consciously exported goods other than "Tinned Copper Terminal Ends" which were appropriately classifiable under CTH 8535 as electrical items/apparatus and claimed higher rate of drawback @ 4% in place of 1% admissible for CTH 7419. In such condition a question arise that whether the goods manufactured and cleared under cover of ARE-1 are the same which were exported and rebate claims filed for the same. And it is also emphasized that in such condition the appellant had violated the conditions of Rule 18 of C.Excise Ruls, 2002.

6.8 As per para 12 of the OIA it has been observed that the goods cleared under the ARE-1/Invoice from the factory were not the same as was exported under the relevant export documents. As the applicant had cleared the goods viz. 'Tinned copper Terminal Ends by classifying under CETH 74199990 in C.E. Invoice as well as in ARE-1 for the purpose of payment of excise duty but had declared the classification of export goods under CTH 85351090 in the shipping bills. In the similar case of Kaizen Organics Pvt Ltd 2012 (281) E.L.T. 743 (G.O.I), wherein the Revision Authority rejected the rebate claim on finding similar differences in the description of goods. In that case, the applicant had cleared their goods having description as "Menthol Powder" vide the relevant ARE-1 and Excise invoice and exported the goods vide Shipping Bills, wherein the description was mentioned as "Menthol Powder-BP/USP,TMP>97%. Revision Authority held that the goods exported were exactly not the same, which were cleared vide the relevant ARE-1 and accordingly, he rejected the rebate claim.

6.9 By considering all the facts of the Notification No. 68/2011- Cus(NT) and others Commissioner (Appeal) did not find merit in the rejection of the subject rebate claims on the ground of simultaneous availment of drawback and rebate in this case whereas they have rejected the appeals on the ground that the applicant had cleared the goods viz. 'Tinned copper Terminal ends' by classifying under CETH 74199990 in CE invoice as well as in ARE-1 for the purpose of payment of excise duty but had declared the classification of export goods under CTH 85351090 in the shipping bills which clearly shows that the goods cleared under the ARE-1/Invoice from the factory was not the same as was exported under the relevant export document. The Commissioner (Appeal) has rejected the appeal as the applicant has not been able to meet the mandatory requirement of claiming rebate that the same goods which have been manufactured, suffered duty and cleared from the factory, have actually been exported. The authority also noted that stipulations/safeguards of Rule 18 of Central Excise Rules, 2002 and notification issued thereunder are specifically for the purpose that only those very goods which were actually manufactured should be exported and the rebate sanctioning authority is required to fully satisfy himself for the same. Thus the appellant had not been able to meet the mandatory requirement for claiming rebate that the same goods which have been manufactured, suffered duty and cleared from the factory, had actually been exported.

7. A Personal hearing in this case was held on 14.01.2020 which was attended by S/Shri Vinay S. Sejpal, Advocate, Tejas Thakkar, Vice President and D.C.Patel, who were duly authorized by the applicant for hearing. They made written submissions dated 14.01.2020 reiterating therein grounds already made in Revision Applications and stressed that the Orders in original passed by the Assistant Commissioner are *exparte*; that the para 10 & 12 of the impugned Orders in Appeal are contradictory and that there was no response from the

department to their letter dated 16.02.2012 seeking clarification regarding mentioning of chapter heading subsequent to classification of 'Tin Copper Terminal' manufactured by them under Chapter heading No. 853504 vide Drawback Schedule issued under Notification No. 68/2011-Cus(N.T.).

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. As the issues involved in these 13 Revision Applications being common, they are taken up together and are disposed of vide this common order.

9. Government observes that the 13 rebate claims filed by the applicant totally amounting to Rs. 29,82,525/ were rejected by the Original Authority on the grounds that the applicant cannot claim rebate and duty drawback simultaneously on the goods exported. On appeal being filed by the applicant, Commissioner (Appeals) observed that the applicant had not availed drawback of the excise duty portion as well as rebate of excise duty and in such a situation, the rebate is also admissible to the applicant in terms of Rule 18 of CER read with Notification No. 19/2004-CE(NT).

10. However, while deciding the second ground for rejection of claim i.e. difference in classification of goods in ARE-1/CE invoice and export documents, Commissioner (Appeals) observed that the applicant had mentioned Chapter sub heading 74199990 in Central Excise Invoice as well as in ARE-1 for payment of Central Excise duty but had declared the classification of Chapter sub heading 85351090 in the Shipping Bill for purpose of claiming of drawback and that the drawback schedule applicable at the material time did not either contain Tariff item 85351090 or 74199990 in respect of the said product. Commissioner (Appeals) also noted that the applicant has not disputed that they had been classifying the same product under CETH 74199990 in the central excise invoices and in the past, they had also availed drawback under tariff item 7419 of the drawback schedule as "other articles of copper" and not under tariff item 8535. The appellant resorted to classification under chapter 7419 in the past as the drawback rate for the tariff item 7419 was 11% 'if no cenvat credit was availed' and they changed the classification of their product to Tariff item 8535 during 2010-11 apparently to claim higher drawback, as with the cenvat credit facility availed, the rate of drawback prescribed was 4% for Tariff item 8535 and only 1% for Tariff item 7419. Commissioner (Appeals) further observed that it is on record that the goods exported under the shipping bills, bills of lading and packing list were declared as

"Tinned Copper Terminal ends - straight Copper tube" "Tinned Copper Terminal ends - straight Copper tube KCL" or "Tinned Copper Terminal ends - C/ tube Flarred Term KCL" or "Tinned Copper Terminal ends - C/parallel connector KTB" or Tinned Copper Terminal Ends - Flarred copper tube" or "Tinned Copper Terminal ends - Copper butt connector KTB" or "Tinned Copper Terminal ends - straight C/tube term KCL" or "Tinned Copper Terminal ends - C/parallel connector KIP" etc. and not merely and simply "Tinned copper terminal end" as cleared from the factory under ARE- I and Invoices. It therefore appears that the appellant deliberately and consciously exported goods other than "Tinned Copper Terminal Ends" which were appropriately classifiable under CTH 8535 as electrical items/apparatus and claimed higher rate of drawback @4% in place of 1% admissible for CTH 7419 and therefore, it is established that the goods of description "Tinned Copper Terminal ends" cleared under the excise invoice and ARE-1 was actually not exported out of country. Placing reliance on case laws viz. M/s Kaizen Organics Pvt Ltd. [2012 (281) E.L.T 743 (GOI)] and M/s Kaizen Organics Pvt Ltd. [2013 (293) E.L.T. 326 (Raj)] Commissioner (Appeals) rejected all the thirteen appeals filed by the applicant and upheld the respective Orders-in-original rejecting the rebate claims.

11. Whereas the applicant in grounds of instant Revision Applications as well as in their written submissions dated 14.01.2020 has contended that "they were manufacturing and clearing the goods i.e. Tinned Copper Terminal Ends under sub-heading 7419 on payment of duty @12.5% which was covered under DEPB; that subsequently in September, 2011, DEPB scheme was discontinued and all the products covered under DEPB were brought under duty drawback scheme introduced vide Notfn.No. 68/2011-CUS (NT); that the said Notification visualized almost 4000 products along with its classification for duty drawback and the products covered under erstwhile DEPB were also covered in the duty drawback to the nearest heading of the Customs; that accordingly the product "Tinned Copper Terminal Ends" were specifically referred under Heading 8535 in the schedule to the said Notfn.No.68/2011-Cus (NT). The applicant further submitted that CBEC had issued Circular No.42/2011-Cus dated 22/09/2011 clarifying at Para-3 that duty drawback scheme also incorporated goods which were previously under DEPB and it also stated that while incorporating the same care was taken to classify the said DEPB products under duty drawback at the appropriate four (4) digit level; that there may be some doubt about the classification of the DEPB goods in the duty drawback schedule notified. Accordingly it was clarified in the said circular that the rate of duty drawback as specified for this item in the drawback schedule

was not required to be denied in all such cases. The applicant further contended that the said product 'Tinned Copper Terminal Ends' which were originally covered under DEPB and was classified under Heading 7419 for Central Excise purpose. The same were thereafter covered under duty drawback scheme and the table to the said scheme covered them under Heading 8535; that since the duty drawback scheme visualized the same product i.e. Tinned Copper Terminal Ends under 8535, they wrote letter dated 16/02/2012 to the Jurisdictional excise authority communicating the variance in classification and informed that for excise purpose they would continue to show Heading 7419 on the excise documents and for customs purposes they would show the Heading 8535 as per the duty drawback Notification. The said letter was not responded by the Jurisdictional Authority.

12. Government finds it pertinent to refer to earlier Revision Applications filed by the applicant namely, Revision Application No. 195/225/2013-RA and 195/890/2013-RA which were filed against the Order in Appeal Nos. SRP/144/VAPI/2012-13 dated 16.11.2012 and SRP/227 to 230/VAPI/13-14 dated 06.08.2013 respectively, passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi. Both these Revision Applications were before the same revision authority for adjudication. In both these cases the applicant had filed rebate claims in respect of duty paid by them on their goods viz. "Tinned Copper Terminal Ends" exported under Drawback scheme upto October, 2011. The rebate sanctioning authority was of the view that the applicant had earlier classified the same products under CHS No. 85369090 instead of CSH No.74199990 of CETA,1985, when they had exported the said goods under DEPB Scheme, and thus the variance in the classification was doubtful. He also observed that the relevant shipping bills indicated that they had availed full benefit of drawback from Customs i.e. Excise + Customs Components. Accordingly, rebate sanctioning authority rejected rebate claims in both these cases on the ground that the applicant could not claim dual benefit of full drawback on Customs as well as Excise portion and rebate of duty paid on final products. The Commissioner (Appeals) vide Order in Appeal No. referred above upheld the Orders of rebate sanctioning authority in both these cases. The Revision applications filed against these Orders in Appeals were also rejected by this authority.

13. During the adjudication of these Revision applications it was observed that the applicant vide letter dated 28.07.2010 had clarified about the classification of product manufactured by them. The applicant vide aforesaid letter clearly informed the department that their product does not fall under any of the product headings in Chapter 85 nor do they find any other chapter heading of Chapter 85 for their

product under broad heading *"Electrical apparatus for switching or protecting electrical circuits, (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp holder and other connectors, junction boxes)"*. It was also informed by the applicant vide said letter that their product was properly classifiable under chapter sub heading 74199990 under the broad heading of "Other Articles of Copper" and that their competitors were also classifying the said product under 74199990. The body of the letter dated 28.07.2010 submitted by the applicant is reproduced in its entirety: :-

STAR EXTRUSION

FACTORY : PLOT NO 226/A, G.I.D.C. UMBERGAON – 396 171, DIST.VALSAD (GUJARAT)
PHONE : 0260-2560889.
E-MAIL : info@starextrusion.com

Date:28.07.2010

To,
The Assistant Commissioner,
Central Excise,
2nd Floor,Adarsh Dham Building,
Vapi Daman Road,
Vapi – 396.195

Dear Sir,

Sub: Classification of Copper Lugs Under Chapter Heading No.74199990-Intimation Reg.

This is to inform you that we are engagrd in the manufacture of copper lugs falling under central excise tariff Act, 1985 (5 of 1986) for which we are holding valid Central Excise Registration Bearing No. AAAHD3468HXM001.

The Copper Lugs manufactured by us was classified by us under chapter heading 85369090 of the Central Excise Tariff Act, 1985 (5 of 1986) The broad heading of the said chapter states that "Electrical apparatus for switching or protecting electrical circuits (for example, Switches, relays, fuses, surge, suppressors, plugs, sockets, lamp holders and other connectors, junction boxes) for a voltage not exceeding 1000 Volts; Connecting for optical fibre bundles or cables.

In this regard we wish to submit that our product does not fall under any of the product specified therein and as such we do not find any other chapter heading of chapter 85.However our product can find place in chapter 74 and properly classifiable under chapter sub-heading 74199990 under the broad heading of other articles of copper. Both the classification i.e. 85369090 and 74199990 attract Central Excise duty @ 10% BED + 2% Edu.Cess + 1% S.H.ED.Cess.

It is worthy mentioning here that our Competitors have classified the said product under chapter heading No.74199990 and as such we wish to classify the same under 74199990 instead of chapter heading No.85369090 to maintain the perity with other competitors. It is worth mentioning here that both the headings attract same rate of duty and hence there is no revenue loss to the exchequer.

This is for your information.

Thanking you,
Yours Truly,
For Star Extrusion

Authorised Signatory

c.c to The Superintendent of C.Excise Range-I,

RECEIPT
Received document on
29 JUL 2010
for Assistant / Deputy Commissioner,
C.Ex. & Cus., Div - II, VAPI

S. R. BHADELA
SUPERINTENDENT
CENTRAL EXCISE & CUSTOM
RANGE-I, U-BERGAON

14. It is pertinent to note here that prior to issuance of Notification No. 68/2011-Cus. (N.T.), dated 22-9-2011, the applicant was classifying Tinned Copper Terminal Ends under Chapter Sub Heading 74199990 in Shipping Bills showing the Description Tinned Copper Terminal Ends' and claimed drawback under Tariff

item No.741901A. As the applicant then claimed Drawback @ 11% (higher rate) under Category A i.e. when Drawback when Cenvat facility has not been availed, and thereby availed full drawback (Excise + Customs Components), therefore, another benefit of rebate of duty paid on final products exported was rightly denied to them, as double benefit was not available under any law. After 01.10.2011, the applicant claimed drawback under Tariff item 853504B of Drawback Schedule. The applicable drawback rate for Tariff item 853404 remained same @ 4% under both A & B columns, i.e. when "Drawback when Cenvat facility has not been availed" and "Drawback when Cenvat facility has been availed" respectively, thus indicating that the said rate pertained to only customs component and was available irrespective of whether the exporter has availed of Cenvat or not. However, during the relevant period the drawback rate for Tariff item 741910 under ' Other articles of copper' under column 'B' was 1%.

15. Government observes that "Tinned/Untinned copper terminal ends", "Tinned/Untinned copper cables lugs /sockets/connections", "Tinned/Untinned copper ferules" and 'Tinned/Untinned copper terminal ends" find mention at Sr. No. 62,63 & 64 of DEPB Scheme and had been covered under Tariff Item 853502, 853503 & 853504 of Drawback Schedule respectively. However, it is pertinent to note that the broad heading under which these goods were classified remained the same i.e. ***Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lighting arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes), for a voltage exceeding 1,000 volts.*** The applicant vide their letter dated 28.07.2010 had already informed the department that the product manufactured by them does not fall under any of the Electrical apparatus mentioned above.

16. Tariff classification is based on commercial understanding/trade parlance coupled with the statutory definitions/requirements. Once the applicant admitted that their product does not fall under any of the Electrical apparatus mentioned under broad heading of Chapter 85 of Central Excise Tariff Act, 1985, seeking clarification from the department on this aspect was a futile exercise. Government observes that the applicant had by themselves admitted that their products were classifiable under chapter 74 and not under chapter 85 in respect of the same product in the revision proceedings for the previous period. As such the tariff classification of any product is based on the commercial understanding/trade parlance coupled with the statutory definitions/requirements.

17. Therefore, it is evident that the applicant by virtue of classification of 'Tinned Copper Terminal Ends' under chapter heading 8535 tried to gain dual advantage i.e. one by way of getting 4% drawback under Tariff item 853504B as against 1% drawback under Tariff item 741910B and as the rate indicated under Tariff item 853504 in both columns being same, and pertained only to Customs components, there was no restriction on claiming rebate of duty on final products exported by them. Moreover, the drawback in the instant cases has been sanctioned under Tariff item 853504 hence Government finds force in the Commissioner (Appeals) observations that *"the appellant deliberately and consciously exported goods other than "Tinned Copper Terminal Ends" which were appropriately classifiable under CTH 8535 as electrical items/apparatus and claimed higher rate of drawback @4% in place of 1% admissible for CTH 7419 and therefore, it is established that the goods of description "Tinned Copper Terminal ends" cleared under the excise invoice and ARE-1 was actually not exported out of country".*

18. Government also observes that Order in Appeal Nos. SRP/144/VAPI/2012-13 dated 16.11.2012 (Revision Application No. 195/225/2013-RA) and SRP/227 to 230/VAPI/13-14 dated 06.08.2013 (Revision Application No. 195/890/2013-RA) and the impugned Orders in the instant case are passed by the same Appellate Authority. Therefore, the *volte face* by the applicant vis a vis the classification of their manufactured goods was within his exclusive knowledge. It is observed that the entire issue was examined thoroughly by the Commissioner (Appeals) in case of the applicant in the context of Duty Drawback Scheme previously. Hence the contention of the applicant that the Commissioner (Appeals) cannot come up with whole new case at the said appellate stage without any evidences is out of place.

19. In view of the above discussion, Government does not find any infirmity with the Orders-in-Appeal No. VAP-EXCUS-000-APP-387 to 399-13-14 dated 02.12.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi and therefore upholds the same.

20. The Revision Applications are thus rejected being devoid of merits.

ATTESTED

(SEEMA ARORA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

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

ORDER No. 550-562 /2020-CX (WZ) /ASRA/Mumbai DATED 13/07/2020

To,

M/s Star Extrusion,
Plot No. 226/A, 1st Phase, GIDC,
Umbergaon, Valsad-396 171,
Gujarat.

Copy to :-

1. The Commissioner of CGST, Surat, Central Excise Building, Chowk Bazar, Surat, 395001- Gujarat.
2. The Commissioner of CGST, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395007
3. Assistant Commissioner of CGST, Division-XII, Umbergaon, Surat Commissionerate , Pooja Park, 1st Floor, Opp. Bank of Baroda, Bhilad, Pin Code-396105
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.