

REGISTERED SPEED POST



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. 195/975-978/13-RA

Date of Issue:-

ORDER NO. ~~590~~ 593/2020-CX(SZ)/ASRA/MUMBAI DATED 26.08.2020
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.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/975-978/2013-RA	M/s Calmet Engineering India (P) Ltd., Coimbatore	Commissioner of CGST, Coimbatore.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No.CMB-CEX-000-APP-299-302-13 dated 04.09.2013 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Coimbatore.

ORDER

This Revision application is filed by M/s Calmet Engineering India (P) Ltd., S. F. No. 419/5D, Maniyavi Thottam, West Arasur, Sulur Taluk, Coimbatore- 641 047 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. CMB-CEX-000-APP-299-302-13 dated 04.09.2013 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Coimbatore.

2. The applicants are manufacturer and exporter of Cast Iron Pump Parts. The Applicant have filed the rebate claims with the jurisdictional Rebate Sanctioning Authority under Rule 18 of the Central Excise Rules, 2002. The Details are as under :-

2.1 Rebate Claim filed on 12.02.2013 for Rs. 3,55,493/- :- The Rebate Sanctioning Authority vide Order in Original No. 165/2013-14 dated 29.05.2013 sanctioned the amount of Rs. 2,53,312/- and rejected the balance amount of Rs. 1,01,559/- in respect of ARE-1 No. 24 dated 01.03.2012 as the final destination of country of export was mentioned as UK in ARE-1 whereas the Invoice and Shipping Bill show the final destination as Canada.

2.2 Rebate claim filed on 09.01.2013 for Rs. 4,54,096/- :- The Rebate Sanctioning Authority vide Order in Original No. 206/2013-14 dated 29.05.2013 sanctioned the amount of Rs. 3,13,539/- and rejected the balance amount of Rs. 1,40,557/- in respect of ARE-1 No. 13 dated 08.05.2012, 14 dated 09.05.2012 and 20 dated 25.05.2012 as the final destination of country of export was mentioned as UK in ARE-1 whereas the Invoice and Shipping Bill show the final destination as Canada. In ARE-1 No.18 dated 23.05.2012 duty was debited short by Rs. 2,421/-.

2.3 Rebate claim filed on 24.01.2013 for Rs. 4,91,431/- :- The Rebate Sanctioning Authority vide Order in Original No. 207/2013-14 dated

29.05.2013 sanctioned the amount of Rs. 71,161/- in cash and Rs.1,256/- as re-credit and rejected the balance amount of Rs. 4,19,012/- in respect of ARE-1 No. 20 dated 31.01.2012, 2 dated 04.04.2012, 5 dated 11.04.2012 and ARE-1 No. 6 dated 16.04.2012 as the final destination of country of export was mentioned as UK in ARE-1 whereas the Invoice and Shipping Bill show the final destination as Canada. In addition to this in ARE-1 No. 20 dated 31.01.201, no. of packages, marks & nos. on the packages in ARE-1 and in the Invoice differ.

2.4 Rebate claim filed on 12.02.2013 for Rs. 4,16,671/- :- The Rebate Sanctioning Authority vide Order in Original No. 208/2013-14 dated 29.05.2013 sanctioned the amount of Rs. 2,35,628 and rejected the balance amount of Rs. 1,81,043/- in respect of ARE-1 No. 94 to 96 all dated 12.12.2012 as the shipping bill nos. certified by the Customs Officers in Part-B of these ARE-1s differ with actual shipping bills. Hence, aggrieved by the said Orders-in-Original the applicant filed an appeal before the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

4. The Appellate Authority vide impugned Orders in Appeal upheld the Orders-in-Original on the following grounds :-

4.1 In the absence of correct destination in the corresponding ARE-1 , the fact of export of goods cannot be established. Also, if the destination is different, the export proceeds will also be realised from the different country which is considered as a fatal a deficiency.

4.2 It is seen that there is no proof of evidence to counter the allegation or any satisfactory explanation is submitted by the applicant to establish the facts of the export. So the defects not yet cured even at appellate level.

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

5.1 The applicant have filed an application on 24.02.2014 for condonation of delay in filing the Revision Application.

5.2 The appellate authority had travelled beyond the Order in Original and rejected the rebate claims on new ground that there is no proof of export of goods.

5.3 It is admitted and undisputed fact that the country of export is Canada, which was correctly mentioned in their export invoice, shipping bill and also in the Bill of Lading. The mentioning of country of export as UK in ARE-1 was by mistake and was only a clerical error and at the most it can be called as procedural infraction.

5.4 The Customs Officers by oversight mixed up the shipping bills Nos. and mentioned the shipping bill no. relating to ARE-1 No. 94 dated 12.12.12 in Part B of ARE-1 No. 96 dated 12.12.12. Likewise the shipping bill no. relating to ARE-1 No.95 dated 12.12.12 in part B of ARE-1 No. 94 dated 12.12.12 and shipping bill no. relating to ARE-1 No. 96 dated 12.12.12 in part B of ARE-1No. 95 dated 12.12.12. This mistake done by the Customs officer cannot be said as fatal for claiming the rebate, as it is only a clerical mistake.

6. A Personal Hearing in the matter was held on 11.12.2019. Shri M. Saravanan, Consultant attended the same on behalf of the applicant.

7. Government first proceeds to discuss issue of time bar in filing this revision application. The chronological history of events is as under.

- a) Date of receipt of impugned order in Appeal
dated 04.09.2013 : 06.09.2013
- b) Date of filing of Revision Application : 06.12.2013

From the above, it is clear that applicant has filed this revision application after 100 days i.e. 3 months and 1 day. As per provisions of Section 35EE of Central Excise Act, 1944, the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay upto another 3

months can be condoned provided there are justified reasons for such delay. The Government considers that revision application is filed after a delay of only 1 day which is within condonable limit. Government, in exercise of powers under Section 35EE of the Central Excise Act, 1944 condones the said delay and takes up the revision application for decision on merit.

8. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

9. The Government notes that the major discrepancy for reduction and thereby rejection of partial amount of rebate claim filed by the applicant is that the ARE-1 contained a different destination when compared with other documents of export. The appellate authority has not discussed other grounds on which the original authority had rejected the rebate claims filed by the applicant.

10. In respect of reduction / rejection of the rebate claims on the ground of different destination, the Government observes that though the destination mentioned in ARE-1 is U.K., the corresponding Customs Invoices and Shipping Bills contain the address of Consignee situated in Canada. Further, the description of goods, weights, No. of packages tallies in all these documents. Also, the endorsement of Customs Authorities in Part B of ARE-1s to the effect that the goods have been exported / shipped on Board confirms the factual position of export in these cases. The applicant have also enclosed the copies of corresponding Bank Realisation Certificates which show that the export proceeds have been received by them. Thus the goods mentioned in the impugned ARE-1s stand exported without any dispute. In view of above discussion, the Government holds that the rebate claims cannot be denied to the applicant under Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-CE (NT) dated 06.09.2004 on the ground that the destination differs in ARE1-1 and corresponding Shipping Bills.

11. It is also observed that the original authority had rejected the partial rebate claim pertaining to following ARE-1s for wrong shipping bill nos. endorsed in Part-B of ARE-1.

ARE-1 No. & Date	Shipping Bill No. & dated mentioned in ARE-1 by Customs Authority	Actual Shipping Bill No. / Date
94/12.12.2012	3005040 / 12.12.2012	3005042/12.12.2012
95/12.12.2012	3005030/12.12.2012	3005040 / 12.12.2012
96/12.12.2012	3005042/12.12.2012	3005030/12.12.2012

On perusal of the above table, it is obvious that all the consignments under above ARE-1s are exported on same day i.e. on 12.12.2012. Further all three Shipping Bills pertain to the consignments exported by the applicant. However, the endorsement of the shipping bill number on respective ARE1s are muddled. Since all the ARE-1s and respective shipping bills too pertain to applicant, there is scope for rational belief that the mistake could have occurred on part of the Authority unconsciously while endorsing the Part-B of ARE-1. Yet, the fact remains that the goods under the said shipping bills as well as ARE-1s, since they are endorsed by the Customs Authority, have been exported without any doubt. In view of above discussion, the Government holds denial of impugned rebate claims to the applicant would be unjust and not proper.

12. Government finds that the deficiencies observed by the original adjudicating authority and by the first appellate authority are merely of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the goods have been exported. If the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical

interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International - 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

13. In view of above, the Government finds that the impugned Order in Appeal is not proper and liable to be set aside.

14. The revision application is allowed on the above terms.

15. So ordered.



(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER NO. ⁵⁹⁰⁻⁵⁹³ /2020-CX(SZ)/ASRA/MUMBAI DATED 26.08.2020

To

M/s Calmet Engineering India (P) Ltd.,
S.F. No. 419/5D, Manaiyavi Thottam,
West Arasur, Sulur Taluk,
Coimbatore- 641 047

Copy to :

1. The Commissioner of CGST, GST Bhavan, 6/7, A.T.Devraj Street, Race Course Road, Coimbatore, Tamil Nadu -641018.
2. The Commissioner of CGST & Central Excise (Appeals), GST Bhavan, 6/7, A.T.Devraj Street, Race Course Road, Coimbatore, Tamil Nadu -641018.
3. Sr.P.S. to AS (RA),Mumbai.
4. Guard File.
- ~~5.~~ Spare copy.