

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. 195/38-46/15-RA /1054

Date of Issue 10.02.2021

ORDER NO. 60-68 /2021-CEX (SZ) /ASRA/MUMBAI DATED 28.1.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 209 to 217/2014 dtd. 31.12.2014 passed by the Commissioner of Central Excise (Appeals-II) Trichirappalli .

Applicant :- M/s. Sanmar Foundries Ltd., Viralimalai, Pudukottai Dist.

Respondent :- Commissioner of Central Excise, Trichy.

ORDER

These Revision Applications have been filed by M/s. Sanmar Foundries Ltd., Viralmalai, Pudukottai District. (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals-II) Trichirappalli shown at column 5 of Table shown below:

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide OIO No.	OIO upheld vide OIA No.
1	2	3	4	5
1.	195/38/2015	6,20,183/-	88/2014-R dtd. 03.09.2014	209 to 217/2014 dtd. 31.12. 2014
2.	195/39/2015	8,44,102/-	86/2014-R dtd. 02.09.2014	--- do ---
3.	195/40/2015	11,08,128/-	85/2014-R dtd. 02.09.2014	--- do ---
4.	195/41/2015	1,38,163/-	79/2014-R dtd. 01.09.2014	--- do ---
5.	195/42/2015	1,07,016/-	81/2014-R dtd. 01.09.2014	--- do ---
6.	195/43/2015	1,34,449/-	87/2014-R dtd. 03.09.2014	--- do ---
7.	195/44/2015	2,479/-	78/2014-R dtd. 01.09.2014	--- do ---
8.	195/45/2015	1,40,045/-	83/2014-R dtd. 01.09.2014	--- do ---
9.	195/46/2015	82,875/-	82/2014-R dtd. 01.09.2014	--- do ---

2. The brief facts of the case are that the applicant is engaged in the manufacture of Stainless Steel Castings & Non-Alloy Steel Castings and machined castings falling under Chapter 73, 84 and 90 of the Central Excise Tariff Act, 1985. The applicant had filed rebate claims on various dates being the duty paid on goods cleared for export from the factory of manufacture. The rebate claims filed by the applicant were partly rejected by the rebate sanctioning authority on several grounds against which the applicant filed appeal before Commissioner (Appeals). The Commissioner (Appeals) upheld the orders rejecting rebate claims. Aggrieved by said Orders in Appeal, the applicant filed Revision Application before Joint Secretary to the Government of India, who vide Order No. 103-141/14-Cx dated 31.03.2014 set aside Orders in appeal only to the extent of disputed / rejected

rebate claims and remanded the cases to the Original Authority for deciding the cases afresh after conducting the necessary verification and also by taking into account GOI observations made in the said Revision Order.

3. The adjudicating authority during the denova proceedings once again rejected the rebates claims on the following grounds:

3.1 Reasons for rejection of Rebate to the extent of Rs. 6,20,183/- vide Order in Original No. 88/2014-R dated 03.09.2014 (Sr. No. 1 of the Table above):-

- In one ARE-1, two Air Way Bills No.4252964 & 4252745 were submitted for the export of goods but in Part-II certification in ARE-1, the customs officer certified that goods were exported through shipping bill No.4252964 Only. Gross weights / Net weights of goods removed for exports under vary with Gross weights / Net weights of goods finally exported through Air Way Bills.
- In 2 ARE-1s Details of the original and duplicate copies of these ARE-1s do not tally with corresponding triplicate copy. Gross weights / Net weights of goods removed for exports under vary with Gross weights / Net weights of goods finally exported through Air Way Bills.
- In 12 ARE-1s Gross weights / Net weights of goods removed for exports under vary with Gross weights / Net weights of goods finally exported through Air Way Bills.

3.2 Reasons for rejection of Rebate to the extent of Rs. 8,44,102/-vide Order in Original No. 86/2014-R dated 02.09.2014 (Sr. No. 2 of the Table above):-

- In 10 ARE-1s variation in net weight/gross weight noticed in ARE-1 and shipping bills.
- In 2 ARE-1s Shipping Bill No. indicated in subject ARE-1 did not tally.
- In 1 ARE-1, 2 Nos. of Triplicate copies found.
- In 1 ARE-1 shipping Bill No. is not indicated in Part B Certification.

3.3 Reasons for rejection of Rebate to the extent of Rs. 11,08,128/-vide Order in Original No. 85/2014-R dated 02.09.2014 (Sr. No. 3 of the Table above):-

- In 11 ARE-1, case Nos. mentioned in ARE-1 are either not found or not tallied with Bill of Lading
- In 1 ARE-1 Net weight mentioned in Shipping Bill did not tally with ARE-1
- In 1 ARE-1 Shipping Bill No. mentioned in the Bill of Lading not tallying with the ARE-1
- In 1 ARE-1 Shipping Bill No. mentioned in part B certification of ARE-1 is not tallying with the enclosed shipping Bill.

3.4 Reasons for rejection of Rebate to the extent of Rs. 1,38,163/-vide Order in Original No. 79/2014-R dated 01.09.2014 (Sr. No. 4 of the Table above):-

- In r/o ARE-1 No. 2500, the Gross weight and Net weight between ARE-1 and Shipping Bill was found varying. Also the ARE-1 No. in Shipping bill copy is wrong. Further DEPB copy of shipping Bill instead of EP copy has been submitted for verification.

3.5 Reasons for rejection of Rebate to the extent of Rs. 1,07,016/-vide Order in Original No. 81/2014-R dated 01.09.2014 (Sr. No. 5 of the Table above):-

- The description of goods given in Invoice No. 7100031770 dtd.08.12.2010 & ARE-1 is machined castings but in the corresponding shipping bill the same is given as Non-Alloy Steel Castings-Rough.

3.6 Reasons for rejection of Rebate to the extent of Rs.1,34,449/-vide Order in Original No. 87/2014-R dated 03.09.2014 (Sr. No. 6 of the Table above):-

- There is variation in gross weight & net weight of the goods removed for export under 2 ARE-1s and goods exported in shipping bill.
- In addition to the discrepancy that package Nos in 2 ARE-1 are handwritten without proper authentication the vessel name voyage No. in Part B certification by the Customs officer do not tally with the vessel name and voyage No. in corresponding shipping bill.

3.7 Reasons for rejection of Rebate to the extent of Rs. 2,479/-vide Order in Original No. 78/2014-R dated 01.09.2014 (Sr. No. 7 of the Table above):-

- In r/o ARE-1 2651, it is seen that date of shipment is after the date of sailing of vessel. Such situation is not possible and the assessee also did not produce any BRC copy.

3.8 Reasons for rejection of Rebate to the extent of Rs. 1,40,045/-vide Order in Original No. 83/2014-R dated 01.09.2014 (Sr. No. 8 of the Table above):-

- In ARE-1 No. 0210, the assessee had not produced the relevant ARE-1 copies alongwith copies of Shipping Bill and Bill of Lading for verification.

3.9 Reasons for rejection of Rebate to the extent of Rs. 82,875/-vide Order in Original No. 82/2014-R dated 01.09.2014 (Sr. No. 8 of the Table above):-

- The description of goods in the ARE-1 was given as machined castings, in shipping bill it was given as Non Alloy Steel castings-Machined and in the Bill of Lading, it was Non Alloy Steel castings-rough,

Aggrieved with the aforesaid Orders in Original, rejecting rebate claims for the reasons mentioned above, the applicant filed the appeals before Commissioner (Appeals). However, Commissioner of Central Excise (Appeals-II) Trichirappalli vide Orders in Appeal mentioned at column No. 5 of Table at para 1 supra, upheld these Orders in Original and rejected all the appeals filed by the applicant.

4. Being aggrieved, the applicant filed present revision applications against the impugned Orders mainly on the following common grounds:

4.1 The order Commissioner (Appeals) rejecting the claim is against the law and facts for the following reasons:

(a) The reasons for the rejection of rebate had been condoned by the Revision Authority vide Order No. 103-141/2014 dated 31.03.2014.

(b) In a denova proceeding the original authority is not legally permitted to travel beyond the directions. There is no observation that the goods were not exported and payment of duty at the time of export.

(c) It is evident from the order passed by the Revision Authority that the variation in gross weight/ net weight in the Shipping Bill and ARE-1, overwriting in the Shipping Bill, mismatch in the vessel number, rewriting in the ARE-1, details in original and duplicate copies of ARE-1 s not tallying, independent Airway Bill not mentioned, etc. are procedural in nature and the same cannot be a reason for the rejection of a substantial benefit.

(d) The order of the original authority is without following the directions and on an appeal, the First Appellate Authority upheld the order with a different reason. This makes it clear that the Department was pre-determined not to grant rebate even after specific directions from the revision authority.

(e) It is a well settled principle that the original authority as well as the First Appellate Authority is bound to follow the order passed by the Revision Authority. Therefore, the order in appeal and the Order in Original have no legs to stand, hence liable to be set aside.

4.2 The Commissioner (appeals) failed to appreciate that the rejection of rebate is only on account of non-following the directions given by the revision authority. (The applicant has reproduced para 7.1 and para 7.8 of Revision Authority's order No. 103-141/2014 dated 31.03.2014 and contended that the Joint Secretary condoned all procedural lapses and the original authority has now taken a different ground for rejection which is legally not sustainable).

4.3 They are engaged in the manufacture of Non-alloy steel castings, stainless steel castings, Machined castings and meter/assembly components falling under Chapters 73,84 & 90 of CETA, 1985, respectively.

4.4 The Commissioner (Appeals) failed to appreciate that there is no dispute on the fact that they produced all relevant documents such as ARE-1, Invoice, Bill of lading, Description of goods, the details of the duty debited, realization in foreign exchange, packing list etc. This fact makes it abundantly clear that the goods have been exported and the claim cannot be rejected on the ground of mere procedural lapses.

4.5 The Commissioner (Appeals) failed to appreciate that the scope of the order of the Joint Secretary was clear to the effect that if export has been established then rebate should be granted. There is no shortage or excess on the quantity removed from the factory and the quantity exported. In the case of transportation through air cargo, the air freight is being charged by the airline using their own scientific method of calculation and not based on actual. The method adopted by the airline for calculating the freight cannot be compared with the actual quantity to conclude the excess or shortage. The airline usually calculates the charge using a formula namely, length x breath x height x number of packages, then the resultant amount would be divided by 6,000/-. The airway bill contains 2 columns namely, one for actual quantity and another quantity for freight. The weight

mentioned in all these cases is only a reference weight and the value as stated in the invoice is final which can be further established by the fact that the full value of the proceeds have been received for such invoices from the overseas customers, which is also evident from the Bank Realization Certificate (BRC) submitted to RBI. There is no dispute with reference to the value of goods referred to ARE-1 and there is also no dispute on the fact that they have realized the value shown in ARE-1.

4.6 They satisfied all the requirements of para No.8.3 of CBEC's Central Excise Manual and has satisfied all the conditions set out in Notification No.24/2011 dated 05.02.2011 issued under Rule 18 of Central Excise Rules, 2002 which deals with rebate of duty on export of goods to all countries other than Nepal and Bhutan. There is no dispute on the fact that they have satisfied all the conditions of Notification and followed the procedures prescribed under the Notification.

4.7 The scope of the Order of the Joint Secretary was clear to the effect that there is no shortage or excess on the quantity removed from the factory and the quantity exported. There is no dispute with reference to the value of goods referred to ARE-1 and there is also no dispute on the fact that they have realized the value shown in ARE-1

4.8 Non tallying of Vessel name & Voyage No. in ARE-1 with the shipping Bill and handwritten Package Nos. and non production of original EP copy cannot be taken as a ground for rejecting the rebate claim since these are in the nature of procedural lapse. Also Non-production of certified copies of ARE-1 alongwith certified copies of Shipping bill, Bill of lading and invoice cannot be taken as a ground for rejecting the rebate claim since these are in nature of procedural lapse.

4.9 The Commissioner (Appeals) erred in upholding the Order of the Original authority disallowing the rebate claim on a new ground that the date of shipment after the date of sailing vessel. The order of Joint Secretary was clear to the effect that if export has been established then rebate should be granted.

4.10 The Commissioner (Appeals) ought to have appreciated the settled position of law that if the goods are exported, the duty paid at the time of removal for exports is eligible as rebate. In the instant cases there is no finding that the goods have been exported.

The applicant has also relied upon number of case laws holding the core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned and substantive benefit cannot be denied for procedural infractions.

5. Personal hearing in this case was held on 23.12.2020 through video conferencing and Shri K Vaitheeswaran, Advocate appeared online for hearing on behalf of the applicant. He informed that written submission dated 21.12.2020 have been submitted in case of M/s Sanmar Foundries Ltd. He submitted that in these set of Revision Applications cases were remanded by the Revision Authority, however the same were again rejected on clerical and insignificant errors in documents having no bearing on value, duty, rebate amount, fact of exports etc.

6. In their written submissions dated 21.12.2020 the applicant reiterated the grounds of the Revision Application and additionally submitted as under:-

6.1 The Revision Authority had remanded the matter back to the Assistant Commissioner for granting appropriate relief. However, the Assistant Commissioner had rejected the claim once again which was confirmed by the Commissioner (Appeals) resulting in these Revision Applications. The fact that goods have been exported is never in dispute in respect of these matters. The discrepancies pointed out are on account of errors in the description of the goods etc.; difference in weight in airway bill without taking into the fact that the ARE-1 would show the gross weight and net weight whereas the airway bill would show the chargeable weight which is based on the dimension of the boxes used in air cargo freights. The flight details are certified by the customs and the goods have been exported. Further in certain cases the lower authority has travelled beyond the directions given by the Joint Secretary and has confirmed the denial of the rebate for fresh reasons. (The reasons for denial of rebate; the remarks made and the response of the applicant explaining the minor clerical error is set out in a table forming part of Annexure-7)

6.2 The objective of excise rebate under Rule 18 is to ensure that only the goods are exported and the taxes are not exported. Even though there is no requirement for receipt of convertible foreign exchange in Rule 18 this receipt has also been demonstrated and denial of the rebate has affected the financial position of the applicant and significant money paid on exports remained locked up.

6.3 A number of decisions of the Government of India in revision proceedings and the decisions of the Supreme Court on export benefits are relevant to the issue are as follows:-

1. In Re. Electro Steel Castings (2015) 321 ELT 150 (GOI),
2. In Re. Socomed Pharma Pvt. Ltd. (2014) 314 ELT 949 (GOI),
3. In Re. Aventis Pharma Ltd (2012) 285 ELT 151 (GOI)
4. In Re AG Enterprises (2012) 276 ELT 127,
5. Suksha International Vs. UOI (1989) 39 ELT 503 (SC),
6. Formica India Vs. Collector of Central Excise (1995) 77 ELT 511 (SC),
7. Mangalore Chemicals and Fertilizers Ltd. Vs. Dy. Commissioner — (1991) 55 ELT 437 (SC),
8. Ford India Pvt. Ltd. Vs. ACCE (2011) 272 ELT 353;
9. Shasun Pharmaceuticals Vs. IV (2013) 291 ELT 189;
10. Union of India Vs. Farheen Texturisers (2015) 323 ELT 104 — Bom SLP Dismissed by Supreme Court in (2015) 323 ELT A23;
11. Zandu Chemicals Ltd. Vs. UoI (2015) 315 ELT 520 (Bom.)
12. Shree Ambika Sugars Ltd. V/s JS (2019) 368 ELT 334-Mad.

The period of dispute is 2010, 2011, 2012 and 2013 and even though the excise duty has been paid on exports, they have not received the excise rebate under Rule 18 and given the fact that even the excise regime is no longer in existence, it is prayed that Revision Applications may be allowed.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and orders-in-appeal cross objections filed by the department as well as written submissions dated 21.12.2020 filed by the applicant. As the issue involved in these 9 Revision Applications are similar, they are taken up together and are disposed off vide this common order.

8.1 As regards the reasons of rejection of Rebate claim to the extent of Rs.6,20,183/- listed at para 3.1 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"the Chargeable weight has been appearing in the Air Way Bill instead of Net and Gross weight. The Chargeable weight varied based on dimension of boxes. Other than the weight of the Air Way Bill, the Net Weight and Gross weight matched with ARE 1, Shipping Bill and Invoice. The House and Master Air Way bill No. mentioned in Shipping Bill. The flight No. certified by the Customs officer which was mentioned in the Air Way Bill". The Shipping Bill No. also certified by the Customs Officer through Part B Certification". Goods under cover of these ARE-1s have been exported.

8.2 As regards the reasons of rejection of Rebate claim to the extent of Rs. 8,44,102/- listed at para 3.2 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

" Even though there is a variation in gross weight / net weight between ARE1s and Shipping Bills, Value, Shipping Bill No. Airway Bill No./Flight No./BL No. Vessel name /Voyage No./Flight No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had certified the proof of exports, verifying the various documents like commercial invoice, ARE-1 declaration, shipping bill".

"Customs officer inadvertently mentioned the Shipping Bills No. 4202884/383499 instead of 4206486 / 3834944 in ARE 1 Part B. This is only the hand written for which more possibilities for human error. But the ARE 1 No. was correctly printed in Shipping Bill. Other than the Shipping bill no. in ARE 1, the Bill of Lading contains Shipping Bill No. and invoice Nos., the Customs authority certified the Vessel Name and Voyage No. by way of hand written in Part B of ARE 1 and also all other contents matches (Net Wt. Gross Wt., No. of Cases, Case Nos, Vessel Name, voyage No. and Container No.). These are clerical / inadvertent errors. Goods under cover of these ARE-1s have been exported".

"Customs officer inadvertently omitted the Shipping Bills No. in ARE 1 Part B. This is only the hand written for which more possibilities for human error. But the ARE 1 No. was correctly printed in Shipping Bill. Other than the Shipping bill no. in ARE 1, the Bill of Lading contains Shipping Bill No. and invoice Nos., the Customs authority Certified the Vessel Name and Voyage No. by way of hand written in Part B of ARE 1 and also all other contents matches (Net Wt. Gross Wt., No. of Cases, Case Nos, Vessel Name, voyage No. and Container No.). These are clerical / inadvertent errors. Goods under cover of these ARE-1s have been exported".

8.3 As regards the reasons of rejection of Rebate claim to the extent of Rs. 11,08,128/- listed at para 3.3 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"Case No. inadvertently mentioned in ARE-1 as 6999 to 6901 instead of 6899 to 6901 which was appearing in Bill of Lading. Other than the case No. in ARE-1 the Bill of Lading contains Shipping Bill No. and invoice Nos., the Customs authority Certified the Vessel Name. and Voyage No. by way of hand written in Part B of ARE 1. and also all other contents matches (Net Wt. Gross Wt., No. of Cases, Case Nos, Vessel Name, voyage No. and Container No.). These are clerical / inadvertent errors. Goods under cover of these ARE-1s have been exported".

"In respect of ARE-1 No.1269 case no. appeared in Bill of Lading / Airway Bill and in r/o ARE-1 Nos. 0993,0994, 1020, 1038, 1145, 1187 & 1049 case No. matched between ARE-1 and Bill of Lading".

"Case No. inadvertently missed in Airway Bill. But No. of case tallied with ARE-1, the net weight and Gross weight matched with ARE-1, Shipping Bill and Invoice. The House and Master Airway Bill No. mentioned in shipping bill. The flight No. certified by the Customs officer which was mentioned in the Airway Bill. The shipping Bill No. also certified by the Customs Officer through Part B Certification.

The Customs officer inadvertently mentioned the wrong shipping bill No. in ARE-1s Part B. These are only the hand written for which more possibilities for human error. But the ARE 1 No. was correctly printed in Shipping Bill. Other than the Shipping bill no. in ARE 1, the Bill of Lading contains Shipping Bill No. and invoice Nos., the Customs authority Certified the Vessel Name and Voyage No. by way of hand written in Part B of ARE 1 and also all other contents matches (Net Wt. Gross Wt., No. of Cases, Case Nos, Vessel Name, voyage No. and Container No.). These are clerical / inadvertent errors. Goods under cover of these ARE-1s have been exported".

8.4 As regards the reasons of rejection of Rebate claim to the extent of Rs. 1,38,163/- listed at para 3.4 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"The chargeable weight has appeared in the Air Way Bill instead of Net and Gross weight. The chargeable weight varied based on dimension of boxes. Other than the weight of the Air Way Bill, the Net Weight and Gross weight matched with ARE 1, Shipping Bill and Invoice. The House and Master Air Way bill No. mentioned in Shipping Bill. The flight No. certified by the Customs officer which was mentioned in the Air Way Bill. The Shipping Bill No. also certified by the Customs Officer through Part B Certification.

"The ARE 1 No. hand written in S.B with Customs seal, but the Shipping bill No. certified by Inspector of Customs through Part B certification. EP copy of S/B submitting herewith".

"These are clerical / inadvertent errors. Goods under cover of these ARE-1s have been exported".

8.5 As regards the reasons of rejection of Rebate claim to the extent of Rs. 1,07,016/- listed at para 3.5 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"Even though the description of goods mismatched between Invoice, ARE-1 and Shipping Bill, the Rate of Duty is same for both description i.e., 10.30% for which discharged by us through CENVAT credit. Further to the above, Net weight, Billing Value, Shipping BL No, Airway bill No, Vessel/flight, Voyage No and invoice No. remained consistent across records. In addition, Inspector of customs, at the time of clearance of good at port, in ARE - Part B had certified the proof of exports, verifying the various documents like ARE declaration, Shipping bill"

8.6 As regards the reasons of rejection of Rebate claim to the extent of Rs. 1,34,449/- listed at para 3.6 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"Even though there is a variation in gross weight / net weight between ARE1s and Shipping Bills, Value, Shipping Bill No. Airway Bill No. Vessel / Flight and Invoice No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had certified the proof of exports, verifying the various documents like ARE-1 declaration, shipping bill".

"The package Nos. in ARE-1 inadvertently missed out to mention invoice No.7101025229 dt.29.11.2010 but the case no. mentioned in Shipping Bill. In addition to that net weight in ARE 1 is matched with Shipping Bill and invoice inclusive of the hand written case no. in ARE-1.

8.7 As regards the reasons of rejection of Rebate claim to the extent of Rs. 2,479/- listed at para 3.7 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"The shipped on Board automatically changed at the time of printing of Bill of Lading at late night e.g. 12.01. AM. But Invoice date, Shipping Bill date, Let Export date and date of sailing sequence is correctly flowed as 03.03.2011, 16.03.2011, 18.03.2011 and 25.03.2011 (Date of sailing mentioned in Part B of Are-1 by Customs Preventive Officer. BRC is submitted as additional evidence".

8.8 As regards the reasons of rejection of Rebate claim to the extent of Rs. 1,40,045/- listed at para 3.8 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

"The EP copy of S.B No. 4095518 dt. 01.03.2011 were unable to generate by our CHAs. The reason for the problem is that they are unable to rectify the EGM as the system at customs shows "SHORT SHIP AMENDMENT". They have taken up this matter with EDI, Customs several times but they also could not help them in finding a solution to this problem. Finally, they have addressed this matter to the Jt. Commissioner (Systems) vide their letter dated 05.09.2011 and they understand that so for his office is also unable to find a solution in this matter. Hence the CHA has requested to the Deputy Commissioner of Customs, Exports - Custom House, Chennai - I to issue export certificate in lieu of EP copy for the shipping bill (Copy of the letter duly acknowledged by the Dy. Commissioner of Customs is enclosed)".

8.9 As regards the reasons of rejection of Rebate claim to the extent of Rs. 82,875/- listed at para 3.8 above, the applicant in its reply (Annexure-7 of submissions dated 21.12.2020) submitted that

“Even though the description of goods mismatched between Invoice, ARE 1 and Bill of Lading, the Rate of Duty is same for both description i.e., 10.30% for which discharged by us through CENVAT credit. Also, Net weight, Billing Value, Shipping Bill No, Bill of Lading No, Vessel, Voyage No. and Invoice No. remained consistent across records; c. BRC submitted as additional evidence d. In addition, Inspector of customs, at the time of clearance of good at port, in ARE - Part B had certified the proof of exports, verifying the various documents like ARE declaration, Shipping bill and Commercial Invoice”

9. Government notes that in all the above cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the various grounds mentioned at paras 3.1 to 3.9 supra. However, the applicant has in its reply/explanation mentioned at paras 8.1 to 8.9 supra has on the basis of collateral evidences, tried to establish the correlation between export documents and excise documents to explain that the goods exported have in fact are the same goods cleared from factory on payment of duty and hence, export of duty paid goods may be treated as completed.

10. It is pertinent to reproduce following paras of Joint Secretary to the Government of India's Order No. 103-141/14-Cx dated 31.03.2014.

7.3 In case of rebate claims covered vide revision application No. Mentioned at Sl.No.(3) of table above, the rebate claims were rejected mainly on the ground that there was wrong mentioning of shipping bill in ARE-1 on the shipping bill or the shipping bill No. was overwritten on ARE-1. In this regard Government finds that particulars of goods mentioned in ARE-1 may be tallied with the particulars mentioned in shipping bill and if the duty paid covered vide ARE-1 found to be exported vide impugned shipping bill, the rebate claims can be considered for sanction provided the discrepancies are properly explained by applicant. The original authority is required to carry out such verification on the basis of original documents taking into account the explanation given by applicant.

7.6 In case of revision application mentioned at Sl.No.(6) of the table above, the rebate claim was rejected on the ground that there are discrepancies in ARE-1 viz-a-viz export documents. In this regard Government observes that as part of correlativity, it is required to be seen from supporting excise and export documents to see as to whether the duty paid goods have been exported. If the correlation gets established by way of other documentary evidences, the rebate claim can be allowed by ignoring procedural infractions.

- 7.7 *In case of rebate claims covered vide revision application mentioned at Sl No.(7) & (8) the rebate claims were rejected on the grounds of discrepancies in ARE-1 like variation in gross weight in ARE-1 and shipping bill in ARE-1 etc. As discussed at para (7.5) above, the correlation may be examined on the basis of other documentary evidences in the form of various excise/export documents. If on such verification, the correlation gets established rebate claims should not be rejected for some discrepancies which are procedural in nature.*
- 7.8 *In rebate claims covered vide revision application mentioned at Sr.No.(9) to (22) the main allegation is that correction has been made without proper authentication. The applicant stated that authorised signatory did not countersign as an inadvertent omission; and that however, factum of export of duty paid goods is not in dispute. Government finds that there is no finding of lower authorities challenging corelatibility of impugned goods. If the corrections made by applicant without authenticate found to be proper with reference to other supporting excise / export documentary evidences, then broad criteria of export of duty paid goods cannot be disputed. Under such circumstances, Government finds that the original authority is required to carry out necessary verification as discussed herein above. In some AREs-1 some other discrepancies have also been noticed by the original authority. As discussed in above para(s), the original authority may decide the issue of corelatibility on the basis of other excise/export documents and if on such verification, the export of duty paid goods is established, the rebate claims may not be rejected on the grounds of discrepancies which are procedural in nature. Similar issues are involved in cases covered vide revision application mentioned at Sl. No.. 23,25,26,27,28,30,33 and issue in these revision applications may be decided as foregoing observation of this para.*

In view of its aforesaid observations the Revisionary Authority at para 9 of its Order No. 103-141/14-Cx dated 31.03.2014 directed as under:-

9. *However, Government sets aside the impugned orders which are not mentioned at para (8) above, only to the extent of above said disputed / rejected rebate claims and remands the case to the original authority for deciding the cases afresh after conducting the necessary verification and also by taking into account the observations made in foregoing paras. The applicants are directed to submit all the relevant records and their written clarification/reply before original authority. A reasonable opportunity of hearing will be afforded to the concerned parties before deciding the matter.*
11. From the perusal of foregoing paras of Government of India's Order No. 103-141/14-Cx dated 31.03.2014, Government has observed that on remand, the Original authority should have made efforts to confirm the basic ingredient of correlatability discussed supra. This was required to be examined by the original

authority on remand in order to arrive at a conclusion that the substantive fact of export having been made is not in doubt. However, despite specific directions from the Revision Authority supra, there are no findings of original authority regarding correlation between excise documents and export documents and the rebate claims were again rejected on the basis of discrepancies / ambiguities mentioned at paras 3.1 to 3.9 supra. All these ambiguities have been duly explained by the applicant as mentioned in paras 8.1 to 8.9 above and have claimed that correlation of goods cleared from factory is established with the goods exported as per the details given in excise documents and shipping bill and bill of lading etc. Department has not adduced any documentary evidences to prove that the goods cleared from factory were not exported. The contention of the department had been inclined towards procedural infractions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 on the part of applicant.

12. Government observes that in Re: Aventis Pharma Ltd.[2012(285)ELT 151 (GOI)] while dealing with the similar issue in its Order No. 547/2012-CX dated 09.05.2012, while allowing the Revision Application filed by Aventis Pharma Ltd. GOI observed as under:-

7. From above Government observes that except from the stated difference in nomenclature and classification as per respective tariffs there is neither any charge nor any evidence to suggest that the goods exported were other than the goods actually cleared from the factory of manufacture. Government also takes note of the fact that there are a number of connected documents i.e. commercial invoice, Bill of Lading and BRC etc. which in fact contains both the above nomenclature which clearly establishes the item as one and the same i.e. one which gets cleared after payment of duty and the one which finally stands exported herein. Hon'ble Supreme Court has in a number of cases has held that unduly restricting export benefit which otherwise is due as per policy should be avoided and alternatives should be devised to otherwise verify the prescribed substantive compliance of law which is actually available in this case. Government in its order in the case of M/s. Cotfab Exports reported as 2006 (205) E.L.T. 1027 (G.O.I.) has held that minor difference in description of goods, being a procedural lapse, was liable to be condoned, since the substantial benefit of rebate cannot be denied for minor procedural technical infractions.

In Re: Electro Steel Casting Ltd.[2015 (321) E.L.T. 150 (G.O.I.)] while dealing with the issue of ambiguity in net weight/gross weight, GOI vide Order No. 377/2014-CX, dated 11-12-2014 observed that

11.1 On perusal of sample AREs-1 No. 614 dated 11-7-12 and ARE-1 No. 757 dated 29-7-12 and relevant shipping bill No. 1157499 dated 1-8-12 and 1142621 dated 2-8-12, Government observes that goods covered vide said two sample AREs-1 have been cleared under physical supervision of central excise authorities and ultimately exported along with goods covered vide 18 other AREs-1, vide abovementioned two shipping bills, as evident from endorsement of customs authorities on part B of said ARE-1. There is no finding of original authority regarding correlation between excise documents and export documents except ambiguity in weight, which has been explained by the respondent as mentioned in para (11) above. Under such circumstances, keeping in mind whole fact of the case, Government finds force in argument of the respondent regarding ambiguity in net weight/gross weight. As such export of duty paid goods stands established. Under such circumstances, Government finds that rebate is admissible for the reasons of substantial compliance of export of duty paid goods.

12. In this regard, Government further observes that rebate/drawback etc. are export-oriented schemes. A merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical lapse. In Suksha International v. UOI - 1989 (39) E.L.T. 503 (S.C.), the Hon'ble Supreme Court has observed 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 the Union of India v. A.V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observation was made by the Apex Court in the Formica India v. Collector of Central Excise - 1995 (77) E.L.T. 511 (S.C.) in observing that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so, had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statute similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.). In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars, etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned. This view of condoning procedural infractions in favour of actual export having been established has been taken by Tribunal/Govt. of India in a catena of orders, including Birla VXL Ltd. - 1998 (99) E.L.T. 387 (Tri.), Alpha Garments - 1996 (86) E.L.T. 600 (Tri.), T.I. Cycles - 1993 (66) E.L.T. 497 (Tri.), Atma Tube Products - 1998 (103)

E.L.T. 270 (Tri.), Creative Mobus - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI) and a host of other decisions on this issue.

13. In RE: Neptunus Power Plant Services Pvt. Ltd.(reported in 2015 (321) E.L.T. 160(G.O.I) in order to examine the issue of correlatibility, Government made sample analysis of the exports covered vide some of the shipping bills and observed that

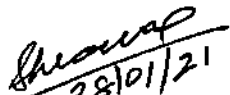
(iii) Government finds that in Shipping Bill No. 8083985, dated 19-3-2012, there is cross reference at ARE-1s No. 16 & 17 both dated 19-3-2012 and vice-versa. The above mentioned ARE-1s find mention of relevant duty paying invoice No. 815, dated 31-1-2012 and 955, dated 23-2-2012 issued by M/s. Shree Saibaba Ispat (I) Pvt. Ltd., Bhavnagar and M/s Arya Ship Breaking Corporation, Mumbai respectively. Further, description, weight and quantities exactly tally with regard to description mentioned in respective ARE-1s and other export documents including Shipping Bill and export invoices. Since, exported products i.e. the scraps of propeller are less in quantity and each quantity is very high in weight ranging from 500 kgs-5000 kgs, such tallying of marking cannot be brushed aside. As such there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation.

14. Government observes that in the instant cases there are no findings by the original authority regarding non establishing correlation between excise documents and export documents so as to outrightly negate claims of rebate. Therefore, what is required here in the interest of justice is that the department should make positive efforts to confirm the basic ingredient of correlatability discussed supra. As the findings of the original authority in all these cases is not based on any correlation between the excise documents and export documents, rejection of rebate claims is not justifiable on the grounds stated supra. Therefore, Government has no option but to remand the case again to the original authority for carrying out the exercise of correlating the exported goods with the duty paid goods cleared from factory of manufacturer to establish that duty paid goods had actually been exported.

15. In view of the above discussion and findings Government sets aside Orders in Appeal No. 209 to 217/2014 dtd. 31.12.2014 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli mentioned at column 5 of the Table at para 1 supra and directs original authority to decide rebate claims after due verification of documents and keeping in mind the above observations. The

applicant is also directed to provide all the documents evidencing export of the same goods to the concerned authorities. As directed vide GOI Order No. 103-141/14-Cx dated 31.03.2014 if the correlation gets established by way of other documentary evidences, the rebate claims can be allowed by ignoring procedural infractions. The original authority is directed to pass appropriate order in accordance with law after following the principles of natural justice, within 8 weeks from the receipt of this order.

16. Revision Applications are disposed off in the above terms.


28/01/21
(SHRAWAN KUMAR)

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

ORDER No. ⁶⁰⁻⁶⁸ /2021-CEX (SZ) /ASRA/Mumbai Dated 28.01.2021

To,
M/s. Sanmar Foundaries Limited,
87/1, Vadugapatti Village,
Viralimalai,
Pudukottai District- 621316

Copy to:

1. The Commissioner of CGST & CX, Tiruchirapalli (Trichy), No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
2. The Commissioner of CGST & CX (Appeals) Tiruchirapalli [Trichy] No.1, Williams Road, Cantonment, Tiruchirapalli - 620001
3. The Deputy / Assistant Commissioner, of CGST & CX, Trichy I Division, No.1, Williams Road, Cantonment, Tiruchirapalli 620 001
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard file~~
6. Spare Copy.