

REGISTERED
SPEED POST



195/ 585 /12 – R.A.(CX)
195/ 681 /12 – R.A.(CX)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 19/5/16.....

ORDER NO. 61-62/2016-CX DATED 12.05.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal Nos. 120/2012/Commr(A)/RBT/RAJ dated 15.03.2012 and 108/2012/Commr(A)/RBT/RAJ dated 02.03.2012 passed by Commissioner of Central Excise & Customs (Appeals), Rajkot.

Applicant : M/s Mahashakti Coke, Mundra.

Respondent : Commissioner of Central Excise & Customs, Rajkot.

ORDER

These Revision Applications are filed by M/s Mahashakti Coke, (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 120/2012/ Commr(A)/ RBT/RAJ dated 15.03.2012 and 108/2012/Commr(A)/RBT/RAJ dated 02.03.2012 passed by Commissioner of Central Excise & Customs (Appeals), Rajkot with respect to the Orders-in-Original No. 1261/2011-12 dated 15.11.2011 and 1107/2011-12 passed by the Assistant Commissioner of Central Excise, Gandhidham, Kutch.

2. The issue in brief is that the applicant has filed rebate claims for the central excise duty paid on the goods manufactured by them, cleared under various ARE-1s and exported through M/s. Saurashtra Fuels Pvt. Ltd., Ahmedabad. During the scrutiny of the documents filed with the rebate claim, the lower authority observed that the applicant had cleared Metallurgical coke under various ARE-1s and Central Excise invoices from the factory on payment of central excise duty. However, as per the shipping bill, the quantity of exported goods was shown lesser than quantity cleared from the factory and as such there was a short shipment. Therefore, the lower authority has restricted the rebate claim for the actual quantity of coke exported and not for the entire quantity cleared from the factory

3. Being aggrieved by the said Orders-in-Original applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision applications under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 It is to submit that the observation of the Commissioner (Appeal) that the applicant had not able to produce any concrete documentary evidence to prove his claim. It is pertinent to note that the observation was given in spite of the fact that the applicant had produced the various certificates of a Survey Agency having international repute that was responsible for the supervision, handling, quality and analysis of the cargo. The legality of the certificates as issued by the Survey Agency can be assessed from the following points:

a. The Survey Agency had conducted the draught survey of the whole vessel and based on which report, the EP copy of the shipping bill was finalized by the proper officer of the customs. The Customs officer relied on the certificate and various assessments were completed on the basis of such certificates.

b. On the basis of the certificate as issued by the Agency, the master of vessel issued the mate receipt in respect of exported goods.

c. On the basis of the certificate as issued by the Survey Agency, the applicant had issued Commercial invoice and after given effect of excessive moisture content, the final value of the commercial invoice is determined and on the basis of the said

commercial invoice, FEMA compliance was effected under Foreign Exchange Management Act, 1999.

d. The certificate as issued by the Survey Agency is also acceptable in the international trades of product. The agency given certificate almost for whole consignment exported from Kandla and Mundra Port.

4.2 Therefore, the certificate issued by the Survey Agency M/s. IGI Pvt Ltd. have the legal validity and when such certificate become necessary and even considered as part of the assessment procedure when the export assessment were done by the proper officer of customs, then such certificate must be relied upon while granting the various exemption to the assessee.

4.3 Accordingly the contention of both the Adjudicating Authority and the Appellate Authority that while granting the rebate, various certificate as issued by the Survey Agency M/s. IGI Pvt. Ltd. cannot relied upon is clearly wrong, invalid and must be considered as illegal and therefore the Order-in-Original as well as the Order-in-Appeal must be quashed and the consequential relief may be granted to the applicant.

4.4 The Commissioner (Appeals) wrongly observed that the loss due to moisture content is not allowable under any Rules / Act / Law or any Circular / Clarifications etc. The Act / Rules governing the rebate nowhere specified the remedies for the goods loss due to moisture content as well as transportation handling loss. Further he also distinguished the case laws as cited by the applicant in the appeal memorandum and stated that the cases are not related to the rebate claim therefore the same cannot be relied in the present case. Therefore, he upheld the order passed by the Adjudicating Authority. In this regard, the applicant herewith submit that this is the settle legal position that the losses due to natural causes are considered and even excise duties are not levied in the Central Excise Act. Further the spirit of cases as cited before the Commissioner (Appeal) are really identical to the present case. The cited cases detailed are as follows :-

- (a) The case of M/s. BPL Display Devices Ltd. reported at 2004 (174) ELT 5 (SC)
- (b) The case of M/s. Indian Metals & Ferro Alloys Ltd. VS. CCE. C. & ST, Bhubaneswar - I
- (c) The case of CCE, Chennai Vs. M/s. Bhuwalka Steel Industries Limited reported at 2010 (249) E.L.T. 218 (Tri. - LB)
- (d) The case of M/s. Roshan Lalit Mohan Vs. CCE, Delhi - III reported at 2009(238) E.L.T. 661 (Tri. - Del.)

4.5 The Commissioner (Appeals) as well as the Adjudicating Authority had also stated that section 11(2)(a) of the Central Excise Act, 1944, Rule 18 of the Central Excise Rules, 2002 as well as the Notification 19/2001-CE(NT) dated 06.09.2004 are

related to the goods exported out of India and since the actual exported goods is lesser than quantity cleared from the factory as per the EP copy of the shipping bill therefore the Commissioner (Appeals) held that the rebate must be allowed only on actual quantity not on the whole quantity as cleared for export from factory. The applicant had cleared goods total for export under rebate claim under various ARE - 1s. The Supervisory Agent certified that weight quantity received in port is lesser (at moisture ranging between 13.22 to 19.52), therefore it can be understand that when the lot of quantity had been shifted from the factory premises to the port area then the transportation loss may also be occurred since large trips of trucks from places in just 16-17 days and accordingly the loss in terms in negligible which is because of transportation / handling loss. Further the same agency supervise the loading of cargo from the port area to the foreign going vessel and after carrying the draught survey, they certified that the actual weight of the cargo is having moisture at (18.68).

4.6 Since the goods cleared from the factory had been fully exported except for the moisture loss therefore the benefit as explained in the section 11(2)(a) and rule 18 of Central Excise Rules as well as the Notification No. 19/2001-CE(NT) dated 06.09.2004, may be granted on the quantity which is removed from the factory.

4.7 It is submitted that the difference in quantity is only due to moisture and when dry weight is considered the quantity remain same at every calculation. (small differences of about 3.5% will always remain as the ratio of moisture content is calculated on weighted average basis).

5. Personal Hearing in these cases were held on 11.05.2015, 03.08.2015 and 24.08.2015. Shri Abhishek Darak, Chartered Accountant attended the hearing on behalf of applicant. He reiterated grounds of Revision Application. The applicant further in his written submission dated 03.08.2015 mainly reiterated contents of Revision Application.

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

7. Upon perusal of records during the scrutiny of the rebate claims filed by the applicant, it was noticed by the original authority that the quantity of impugned goods cleared from the factory was more than the quantity shipped as per the Shipping Bills. The rebate claim for the quantity held to be short shipped was thus denied vide impugned Order-in-Original. As the actual quantity exported was less than the quantity cleared from the factory, the original authority sanctioned rebate claim to the extent of actual quantity exported. The Commissioner (Appeals) upheld the impugned Order-in-Original. Now the applicant has filed these revision applications under Section 35EE of the Central Excise Act, 1944 on the grounds in para 4.

8. Government observes that the issue to be decided in which the impugned goods can be said to have been "exported" for the applicant to be entitled to rebate

in terms of Rule 18 of the Central Excise Rules, 2002. The lower authorities have held the part rebate claims inadmissible on the ground that the full quantity cleared from factory was actually not exported. The applicant on the other hand has claimed that moisture loss has occurred between clearance from factory and loading in ship and as such there is no short shipment. In view of the rival contentions, Government first proceeds to examine the issue on the basis of prevalent statutory provisions.

8.1 Rule 18 of Central Excise Rules, 2002 deals with rebate of duty which reads as under :

Rebate of duty - Where any goods are exported, the Central Government may, by notification grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

[Explanation. - "Export" includes goods shipped as provision for stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.]

8.2 Further the word export is defined in Section 2 of the Customs Act, 1962 as under :

'(18) "Export" with its grammatical variations and cognate expressions means taking goods out of India'.

9. The harmonious reading of the above provisions reveal that the rebate is admissible only on duty paid / payable on goods exported outside India. In this case it is an admitted fact that total quantity of the goods cleared from the factory as reflected in ARE-1 and Central Excise Invoices was not exported as reflected in Shipping Bill. By virtue of interpretation of above said provisions, only duty paid on actual quantity of goods becomes eligible for rebate. As such, Government finds no illegality in order of original authority restricting rebate to actual quantity of goods exported.

10. The applicant has further claimed that the difference in quantity cleared from the factory and that exported was due to loss of goods occurred on account of moisture content and transportation handling losses subsequent to clearance from factory. In this regard, Government notes that the applicant could not cite any applicable provisions, where such loss subsequent to clearance from the factory for the impugned goods is allowed under the relevant provisions of the Central Act and Rules thereof. In absence of any such provision for loss of goods on account of moisture loss and fixing of any percentage loss for the purpose, Government finds no ground to interfere with the order to hold as inadmissible the rebate of duty paid over and above actual quantity exported.

11. Notwithstanding the above, Government notes that applicant has placed heavy reliance upon Survey Report in support of its claim for moisture content and loss thereof. In this regard, the original authority has observed that there are many

factual discrepancies in data given in the said Survey Report viz-a-viz quantity mentioned in excise / export documents which has not been refuted by the applicant. As such, reliance placed by the applicant on such Survey Report does not hold much ground for the reasons of said discrepancies and also the moisture content loss is claimed to be of a relatively high percentage considering the fact that the goods have travelled within the same district. Further, Government notes that the applicant has failed to declare the moisture content in the goods at the point of taxation viz. the clearance from the factory of export. Hence the lower authorities have rightly observed that any such exercise to determine moisture loss or to argue that the difference in quantity is due to moisture loss is futile. In any case it is a fact on record that the goods have been short shipped for whatever reason and as per provision of law rebate of duty cannot be allowed on the quantity of goods which have not been exported.

12. Government notes that applicant has relied upon various case laws. These case laws were also relied upon by the applicant before Commissioner (Appeals). Commissioner (Appeals) has discussed each case laws in details and concluded that facts of this case are different from facts of cases relied upon by the applicant. Government concurs with such detailed findings of appellate authority regarding non-applicability of case laws.

13. In view of above discussion, Government finds no infirmity in order of Commissioner (Appeals) and hence upholds the same as just and legal.

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

15. So, ordered



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Mahashakti Coke
(A Unit of Saurashtra fuel Pvt. Ltd.),
Barava Patri Road,
Village : Lakhpur, Taluka: Mundra,
District : Kutch - 370 140 (Gujarat)

Attested.



BHAGWAT P. SHARMA
OSD (R.A. WING)

ORDER NO. 61-62/2016-CX DATED 12.05.2016

Copy to :

1. Principal Commissioner of Central Excise & Service Tax, Central Excise Bhavan, Race Course, Ring Road, Rajkot - 360 001.
2. The Commissioner of Central Excise & Customs (Appeals), 2nd Floor, Central Excise Bhavan, Race Course, Ring Road, Rajkot - 360 001.
3. The Assistant Commissioner of Central Excise, Plot No. 16, IFFCO Colony, Main Gate, Ward IOA, Gandhidham, Kutch - 370 201
4. Shri Abhishek Darak, Chartered Accountant, C/o. Lahoti and Lahoti, Plot No. 220, Akshat House, Sector IA, Near Mamlatdar Office, Taluka : Gandhidham Kutch (370 201) (Gujarat)
- ✓ 6. Guard File.
7. PA to JS (RA)
8. Spare Copy

ATTESTED



(B.P.Sharma)
OSD (Revision Application)

TOP SECRET

1. The purpose of this document is to provide a comprehensive overview of the current state of the project and to identify the key areas that require attention.

2. The project has made significant progress since the last meeting, and it is expected that the final deliverables will be completed by the end of the quarter.

3. However, there are several critical issues that must be addressed immediately to ensure the project remains on track and meets the required standards.

4. The primary concern is the lack of communication between the development and testing teams, which has led to several errors in the code that have not been caught during the testing phase.

5. It is recommended that a daily stand-up meeting be implemented to facilitate better communication and collaboration between the teams.

6. Additionally, a thorough code review process should be established to catch errors before they reach the testing phase.

7. The project manager should also ensure that the team is adequately resourced and that all team members have the necessary skills and knowledge to complete their tasks.

8. The following table provides a detailed breakdown of the project's progress and the status of the various tasks.

Task	Status	Progress (%)
Task A	Complete	100%
Task B	In Progress	75%
Task C	Not Started	0%
Task D	Delayed	50%

9. The project is currently on track, and it is expected that the final deliverables will be completed by the end of the quarter.

10. The project manager should ensure that the team is adequately resourced and that all team members have the necessary skills and knowledge to complete their tasks.