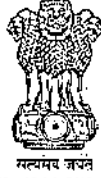


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/602/2013-RA

Date of Issue:

ORDER NO. 636 /2020-CX (WZ)/ASRA/MUMBAI DATED 15.09.2020 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 Emerson Process Management India Pvt. Ltd.,

Respondent : Commissioner of Central Excise(Appeals), Mumbai-III

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/572/BEL/2012-13 dated 07.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

This Revision Application is filed by the M/s Emerson Process Management India Pvt. Ltd, Plot No. A-145/4 TTC Industrial Area, MIDC, Pawane, Navi Mumbai 400 705 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/572/BEL/2012-13 dated 07.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

2. The issue in brief is that the Applicant, manufacturer of excisable goods falling under Tariff Item No. 90328990 of the Central Excise Tariff Act, 1985. The Applicant had filed a rebate claim for Rs. 8,57,947/- (Rupees Eight Lakhs Fifty Seven Thousand Nine Hundred Forty Seven Only). On scrutiny of the claim, it was noticed that the description of the goods in the ARE-1 No. 125/11-12 dated 01.08.2011 and Tax invoice did not tally with the description in the Shipping Bill No. 4762254 dated 28.07.2011. The Assistant Commissioner, Central Excise, Belapur-II Division, Belapur Commissionerate vide Order-in-Original No. Belapur/Dn.II/Range-II/R-227/12-13/AC dated 31.10.2012 rejected the rebate claim since the description of the goods as mentioned in ARE-1 cannot be correlated with the export documents. Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise(Appeals), Mumbai-III, who vide Order-in-Appeal No. BC/572/BEL/2012-13 dated 07.02.2013 rejected their appeal.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

- (i) The description in the ARE-1 No. 125/11-12 dated 01.08.2011 and Central Excise Invoice was '*Delta V System*' whereas the description in the Shipping Bill was '*90328990 DCS SYSTEM - SUPPLY AND DELIVERY OF ELECTRICAL INSTRUMENTION PACKAGE FOR CRF AGAINST CONTRACT NO. CRF 010 DATED 15TH MA*'.

- (ii) The Applicant submitted the copy of download of Applicant's Web Site, shows the product as Delta V Distributed Control System. Thus it can be seen that "DCS" stands for Distributed Control System.
- (iii) The following facts also prove that the goods covered under ARE-1 No. 125/11-12 dated 01.08.2011 were shipped under the Shipping Bill No. 4762254 dated 28.07.2011:
 - (a) The Shipping Bill clearly shows the ARE No. as "125" and ARE date as "01/08/2011"
 - (b) The ARE-1 No. 125 bears the endorsement of the Customs Officer that the consignment covered under the ARE-1 was shipped under Shipping Bill No. 4762254.
 - (c) The Central Excise Invoice shows the buyer/consignee as KONKOLA COPPER MINES PLC which matched with the consignee details shown in the Shipping Bill.
- (iv) Since the Original and Duplicate copies of ARE-1 bear the endorsement of the Customs to the effect that the goods were shipped and this shall have to be taken as the evidence of export and the Triplicate copy bears the endorsement of the Range Officer evidencing the duty paid character of the goods.
- (v) The Applicant prayed that the impugned Order-in-Appeal be set aside and to order for the sanction of the rebate claim of Rs. 8,57,947/-.

4. A personal hearing in the case was held on 07.11.2019. Shri Sunil Agrawal, Advocate appeared on behalf of the Applicant. The Applicant reiterated the grounds of the revision application.

5. 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.

6. The Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

7. In respect of issue regarding description of the goods as mentioned in ARE-1 cannot be correlated with the export documents the, Government observes that the Applicant vide their letter dated 30.10.2012 addressed to the Superintendent(Tech), Central Excise, Belapur-II Division had clarified that

"The goods are cleared under ARE-1 No. 125 dated 1.8.2011 showing the goods as 'Delta V System'. The Shipping Bill clearly mentions the ARE 1 No. as 125 dated 1.8.11. 'DCS System' stands for Distributed Control System. 'Delta V System' is our patented name for Distributed Control System created as per the requirements of the customers to enable the customer to deploy state of the art intelligent control for the process plant. This is the name given to the tailor made process control which consists of hardware and the software. The Delta V System' is provided for various applications. Thus all 'DCS System' are 'Delta V Systems'."

8. Government finds that the deficiencies observed by the first Appellate authority are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, 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.

9. Therefore the documents so furnished by the Applicant prove the fact that goods under claim for rebate have been exported. It is incumbent upon the adjudicating authority to verify the document evidences furnished by the Applicant and resorting rejection on technical grounds/procedural lapses did not serve the purpose of justice.

10. In view of the above, Government sets aside the impugned Order-in-Appeal No. BC/572/BEL/2012-13 dated 07.02.2013 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

11. The Revision Application is allowed in terms of above.

12. So ordered.


(SEEMA ARORA)

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

ORDER No 636 /2020-CX (WZ)/ASRA/Mumbai DATED 15.09.2020.

To,
M/s Emerson Process Management India Pvt. Ltd,
Plot No. A-145/4 TTC Industrial Area,
MIDC, Pawane,
Navi Mumbai 400 705.

Copy to:

1. The Commissioner of GST & Central Excise , Belapur Commissionerte, 1st floor, CGO Complex, Sector 10, CBD Belapur, Navi Mumbai 400 614.
2. Sr.P.S. to AS (RA), Mumbai
3. Guard Copy
4. Spare Copy.