

**REGISTERED**  
**SPEED POST**



**195/150 /2012 – R.A.(CX)**

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue.. 30.5.16.

**ORDER NO. 67/2016-CX DATED 23.05.2016** 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 No.  
US/104/RGD/2012 dated 17.02.2012 passed by the  
Commissioner of Central Excise (Appeals), Mumbai – II.

Applicant : M/s. Ind – Metal Extrusions (P) Ltd.

Respondent : Commissioner of Central Excise, Raigad.

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## ORDER

This Revision Application is filed by M/s Ind – Metal Extrusions (P) Ltd. (hereinafter referred to as the Applicant) against the Orders-in-Appeal No. US/104/RGD/2012 dated 17.02.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – II with respect to the Orders-in-Original No. 388/10-11 dated 31.05.2011 passed by the Deputy Commissioner of Central Excise (Rebate) Raigad.

2. Brief facts of the case are that the applicant are merchant exporter, exported the goods procuring the same from manufacturer M/s Met Trade India Ltd., Sonepat and the applicant filed rebate claims of amount Rs. 72,47,893/-. The original authority sanctioned rebate claims amounting to Rs. 70,07,197/- of duty payable at FOB value. The Department filed appeal with respect to part sanction of rebate amounting to Rs. 15,18,937/- pertaining to ARE-1 No. 04 dated 30.05.2009 on the ground that the exporter has not submitted the relevant central excise invoice which is in violation of Rule 18 of the Central Excise Rules, 2002. Commissioner (Appeals) set aside impugned Order -in-Original and allowed department's appeal.
3. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-
  - 3.1 The manufacturer has charged the duty from us as described in the invoice raised by him. The Deputy Commissioner before sanctioning the rebate claim satisfied himself that the goods exported were duty paid and there was no room of doubt that the goods have not been exported.
  - 3.2 As per the requirements of Chapter 8 of the Central Excise Manual invoice issued Under Rule 11 was to be filed with the rebate claim, which we did. We submitted the Original and Duplicate copy of the Invoice No.18 issued by the Manufacturer on 29.05.09. This is the basic documents for determination, calculation and payment of Central Excise duty. We being a merchant exporter, did make an Invoice No.807 Dated 13.06.2009 which is nothing but an invoice made for our account purposes. The invoice shows duty paid to the manufacturer while procuring the goods along with the particulars of duty paying entries.
  - 3.3 The invoice raised by the merchant exporter has nothing to do with the determination of the Central Excise duty paid on the goods exported. The duty paid is determined by the invoice raised by the manufacturer and the same is rebated in the Rule 18 of the Central Excise Rules 2004. We did submit that to the rebate sanctioning authority and the same fact has been recorded in the rebate sanctioning order by the Deputy Commissioner (Rebates), Central Excise, Raigad.
  - 3.4 We filed the rebate claim on 21.07.09. The Deputy Commissioner kept the documents with him and never pointed out any deficiency in the rebate claim



documents although the rebate claim was sanctioned to us after a lapse of two years from the date of filing, whereas the Deputy Commissioner has been given a term of 15 days to raise any deficiency, which was never done, this goes to show that the invoice of the merchant exporter has no impact on the sanctioning of the rebate.

3.5 A careful reading of the para 1.1 of section IV of Chapter 8 of the Central Excise manual mandates for pointing out the deficiency and rectification thereof. It does not say that in case of non compliance of any deficiency rebate claim is to be rejected. This is more so in our case as no deficiency in the rebate claims was ever raised.

3.6 Assuming though not accepting, if the invoice raised by the merchant exporter has any bearing on the determination of the rebate, we can always submit that. This will suffice the deficiency and the rebate sanctioned is regularized. We have submitted the original and duplicate copy of the invoice no. 807 dated 13.06.2009 during the hearing of the case before the Commissioner (Appeals), Mumbai. The fact has been narrated in the impugned order-in-appeal.

4. Personal Hearing was scheduled in this case on 12.10.2015, 04.11.2015 and 20.11.2015. Nobody attended the hearing either on behalf of the applicant or the department.

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. On perusal of records, Government observes that the applicant who is a merchant exporter and exported goods procured from the manufacturer M/s Met Trade India, Sonapat filed rebate claims under Rule 18 of the Central Excise Rules, 2002 which were initially sanctioned by the original authority restricting the same upto duty payable on FOB value. The department filed appeal before Commissioner (Appeals) against sanction of part rebate amounting to Rs. 15,18,937/- pertaining to ARE-I No. 4 dated 30.05.2009 on the ground that the exporter has not submitted relevant excise invoice no. 807 dated 13.06.2009 along with the claim. Commissioner (Appeals) allowed department's appeal. Now, the applicant has filed this revision application on grounds mentioned in para (3) above.

7. Government observes that the Commissioner (Appeals)'s order states that the short issue involved in the appeal before him is that the exporter has not submitted Central Excise duty paying document i.e. Invoice No. 807 dated 13.06.2009 along with the claim for rebate. As per para 8.3 of CBEC's Manual for supplementary Instructions documents mentioned at Sl. No.(i) to (vi) 'shall be' required for filing rebate claim. Submission of invoice is compulsory. This is the basic document for determination, calculation and payment of duty. The exporter have submitted copy of Invoice No.807 dated 13.06.2009 which is merchant exporter's invoice whereas submission of manufacturer invoice is compulsory for sanction of rebate.



8. The applicant on the other hand have stated that they have submitted original and duplicate copy of the Invoice No. 18 dated 25.05.2009 issued by the manufacturer along with rebate claims. Being a merchant exporter they did make a correspondir Invoice No. 807 dated 13.06.2009 for their own account purposes which shows the duty paid to the manufacturer while procuring the goods alongwith particulars of duty paying entries. No deficiency memo was issued by the rebate sanctioning authority before sanctioning of rebate regarding non-submission of said merchant exporter's invoice No. 807 dated 13.06.2009 . The original authority verified the duty payment details from the Central Excise Range. Assuming that merchant exporter's invoice has any bearing on the claim it has already been presented before Commissioner (Appeals).

9. Government notes that para 8 of CBEC's Manual for Supplementary instructions reads as under:

*"8.3 The following documents shall be required for filing claim of rebate:*

- (i) A request on the letterhead of the exporter containing claim of rebate, ARE-I numbers and dates, corresponding invoice numbers and dates amount of rebate on each ARE-I and its calculations,*
- (ii) Original copy of the ARE-I,*
- (iii) Invoice issued under Rule 11,*
- (iv) Self attested copy of Shipping Bill, and*
- (v) Self attested copy of Bill of Lading*
- (vi) Disclaimer Certificate (in case where claimant is other than exporter)".*

From the above, it is seen that the invoice which is required to be filed for the purpose of rebate is the invoice under which goods are cleared from the factory upon payment of duty.

10. From a perusal of the Order-in-Original, it is seen that the relevant invoice pertaining to ARE-I No.4 dated 30.05.2009 is Invoice No.807 dated 13.06.2009. However, as stated by the applicant and observed by the Commissioner (Appeals) this is the merchant exporter's invoice. The applicant has also stated that the relevant manufacture's invoice is Invoice No.18 dated 25.05.2009. However, there is nothing on record to establish that the manufacturer's invoice was submitted along with the rebate claim.

11. Government further notes that at no stage any doubt has been raised on the duty paid nature of the impugned goods. The only dispute is whether copy of the relevant invoice was appended with the rebate or not. From the case records before this Authority, it is not forthcoming whether the manufacturer's invoice was presented with the claim. There seems to be apparent confusion about the correct Invoice No. In the interest of justice, Government, therefore, deems it fit that the applicant may be given an opportunity to present the correct and relevant manufacturer's invoice before the original rebate sanctioning authority. The rebate sanctioning authority upon examination of the said documents will decide the rebate claim pertaining to the



impugned ARE-I and invoice pertaining to it afresh after due verification subject to his satisfaction in accordance with law and pass suitable orders.

12. In view of the above, Government sets aside impugned Order-in-Appeal and remands the case back to the original authority for fresh consideration in light of the above observation. Reasonable opportunity of hearing may be given. The applicant is accordingly directed to produce all relevant documents within four weeks of the receipt of this order to the original authority in remand proceedings and extend full cooperation.

13. Revision Application is thus disposed of in above terms.

14. So, ordered.

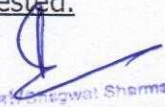


**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

M/s Ind-Metal Extension Pvt. Ltd.  
138-139, Ghazipur  
Near Bharat Petrol Pump  
Delhi – 110 096.

Attested.



(निम्बत शर्मा/Anurag Sherna)  
कक्षाधिक आरक्षक/Assistant Commissioner  
C.B.E.C.-O.S.D. (Revision Application)  
वित्त मंत्रालय (आयकर विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi



**ORDER NO. 67/2016-CX DATED 23.05.2016**

Copy to:

1. Commissioner of Central Excise Customs Raigad Commissionerate, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai- 410 206.
2. Commissioner (Appeals-II), Central Excise 3<sup>rd</sup> floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra, Mumbai-400 051.
3. Deputy Commissioner, Central Excise Rebate, Raigad Office of the Maritime Commissioner of Central Excise, ground floor, Plot No. 1, Sector-17, Khandeshwar, New Mumbai-440 206.
- ✓ 4. Guard File.
5. PA to JS (RA).
6. Spare Copy.

ATTESTED



(B.P. Sharma)

OSD (Revision Application)