

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. 195/341/14, 1290

Date of Issue:- 23.02.2021

ORDER NO. 70/2021-CEX (SZ) /ASRA/MUMBAI DATED 28.01.2021 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 Order-in-Appeal No.50/2014 dtd. 20.08. 2014 passed by the Commissioner Customs & Central Excise (Appeals) Trichirappalli.

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

Respondent:- Commissioner of Customs & Central Excise, Trichy.



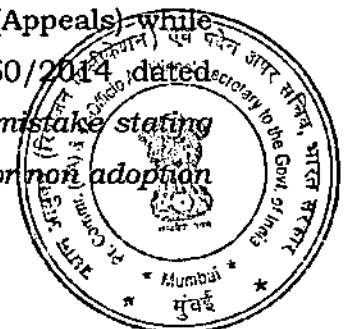
ORDER

This Revision Application has been filed by M/s. Xomox Sanmar Ltd., 88/1/A/1, Vadugapatty Village, Viralimalai, (hereinafter referred to as "the applicant") against Order-in-Appeal No.50/2014 dtd. 20.08. 2014 passed by the Commissioner Customs & Central Excise (Appeals) Trichirappalli.

2. The brief facts of the case is that the applicant, manufacturer of industrial valves of various types and sizes falling under Chapter 84 of the Central Excise Tariff Act, 1985 had cleared final products for export on payment of duty and filed an application for rebate of excise duty of Rs.1,98,937/- paid in terms of Rule 18 of the Central Excise Rules, 2002. The original authority vide Order in Original No. 29/2014 (R) dated 05.05.2014 rejected the rebate claims on the grounds that in ARE-1 Nos. 5480 dated 30.05.2013, 5482 dated 30.05.2013, 5491 dated 31.05.2013 and 5497 dated 31/05.2013 following common discrepancies observed:-

- i) There was no uniform and specific description adopted in invoices, ARE1s, Shipping Bills, Bills of Lading/Air Way Bills (in all 4 ARE-1s);
- ii) Different assessments for valuation of goods were made in invoices and shipping Bills (in all 4 ARE-1s);
- iii) In ARE-1s and Shipping Bill the description of goods is given as "identifiable ready to use machine parts made wholly of carbon steel" whereas in Airway Bill it is given as "Parts wholly made of Stainless Steel" and in invoice some different kind of description given (in ARE-1 No. 5482);
- iv) Flight No. & date in ARE-1 under Part A Certificate by the Customs Officer is different from the flight No & date mentioned in Airway Bill. The Shipping bill No. & date through which the goods were cleared by Customs Authorities are not specified in the Air Way Bill (in ARE-1 No. 5482);
- v) The copy of Air Way Bill for verification of export has not been submitted (in ARE-1 No. 5497).

3. Being aggrieved, the applicant filed an appeal before the Commissioner Customs & Central Excise (Appeals), Trichirappalli. Commissioner (Appeals) while upholding the said Order in Original vide Order in Appeal No.50/2014 dated 20.08.2014 (impugned Order) observed that *"there is admittance of mistake stating that the discrepancy is minor; that there is no adequate explanation for non adoption*



of uniform description of goods in the export documents to treat them as clerical errors”.

The Commissioner (Appeals) further observed that

In this connection, it is seen that in the case of M/s Sanmar Foundries Ltd., an assessee falling under this jurisdiction, the Revisionary Authority, GOI, Ministry of finance vide OrderNo.103-141/14-Cx. DT. 31.03.2014 in disposing off the various revision applications pertaining to this identical issue filed by the assessee, M/s Sanmar Foundries Ltd., has observed as follows:-

“7.10 In respect of revision applicants mentioned at Sl.No.31, 32, 35, 36, 38 and 29, part of rebate claims were rejected for the reasons amongst other reasons that there is mismatch in description of goods between ARE-1, shipping Bill and Bill of Lading. Govt. finds that the applicant is a manufacture-exporter. While preparing AR-1, the applicant was fully aware that goods required to be exported and export documents like shipping bill and bill of lading, etc. are to be filed for export. Under such circumstances, it cannot be justified as to how there can be mismatch of description between excise documents and export documents. Applicant as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation, which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible.”

The aforesaid observations would well apply to the facts of the present case also.

4. Being aggrieved with the impugned Order of the applicant has filed the present Revision Application on the following grounds :

4.1 They are engaged in the manufacture of industrial valves of various types and sizes falling under Chapter 84 of the Central Excise Tariff Act, 1985. They cleared the goods for export on payment of duty through PLA or by way of debit in the Cenvat account. They satisfied all the substantial conditions such as filing of claim within time limit, payment of duty at the time of removal, unjust enrichment etc.

4.2 Mere difference in the description of goods cannot take away a substantial benefit. Further, the wrong mentioning of the flight number in the shipping bill and bill of lading, difference in value due to exchange rate fluctuation is a condonable error and the same cannot be used to deny the benefit when the substantial requirements such as export, realization of foreign exchange have been met.

4.3 There is no chance for any doubt that the goods manufactured and the goods exported. The observation in the Order in Original that the goods cleared and exported are different is without any material evidence and therefore does not hold good.

4.4. 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. In response to show cause noticed issued in respect of each of the aforesaid Revision Application, the respondent department filed its cross objections vide C.No. IV/16/1152/2014-Review dated 10.12.2014 mainly contending therein as follows:

5.1 The OIA No.50/2014-CE dated 20.08.2014 passed by the Commissioner is based on the observations of the Revisionary Authority in the Revision Order No.103-141/2014-CX dated 31.03.2014 in disposing off the various revision applications pertaining to the identical issue filed by M/s Sanmar Foundries Ltd., Viralimalai. Hence, the contention of the assessee that order of the Commissioner (Appeals) is arbitrary and failed to appreciate various facts and against the settled principles of law is not sustainable.

5.2. The assessee have contended that they cleared the goods for export on payment of duty through PLA or by way or debit in the cenvat Account. But, they could not establish that the goods removed from the factory were exported, due to mismatch of the description of goods between ARE-1 and export documents, viz., Shipping Bill, Bill of Lading, Airway Bill. Further, they have not substantiated the reason for mismatch in the description of goods.

5.3 On scrutiny of the claim at the Divisional Office, the following discrepancies in description of goods adopted by the assessee in Excise documents viz., invoice and ARE-1 and Export documents, viz., shipping bill and bill of lading / Air Way Bill were noticed.

TABLE

ARE-1 No.	Description Given in			
	Excise Invoice	ARE-1	Shipping Bill	Bill of Lading/ Air Way Bill
5480/13-14 dt. 30.05.2013	1"067 SCB/MONEL WRENCH SPV	Industrial Valve (Cast/forged body)	Industrial Valve (Cast/forged body)	4" 067WCB/ CF8M WREN 10001WC8M- M639
5482/13-14 dt. 30.05.2013	1" 037 ASTM A216 WCB BODY M/C	Identifiable ready to use M/CD parts made wholly of carbon steel manufactured through casing process	Identifiable ready to use M/CD parts made wholly of carbon steel manufactured through casing process	Part wholly made of stainless steel
5491/13-14 dt. 31.05.2013	3/4" 067FS CF8M/CF8M GPTFE T- WRENCH SPV	Industrial Valve (Cast/forged body)	Industrial Valve (Cast/forged body)	Plug valve
5497/13-14 dt. 31.05.2013	3" 037 AX WCB/CF8M BARE STEM SPV	Industrial Valve (Cast/forged body)	Industrial Valve (Cast/forged body)	(relevant AWB was not produced for verification for confirmation of export)

From the above, it is evident that the assessee did not adopt uniform description of goods in Excise & Export documents. The correlation of these



documents could not be established as it was doubtful whether the same goods suffered duty were duly exported.

5.4 The conditions are prescribed for filing of rebate claim under Rule 18 of Central Excise Rules, 2002. The fulfilment of pre-conditions only does not make the assessee to be eligible for rebate claim. They are bound to produce the documents to the satisfaction of the Rebate Sanctioning Authority that factum of export is not in doubt. They have not submitted the documents to prove that the goods removed from the factory and exported are same. When the details furnished in the documents are contradictory to each other, the Adjudicating Authority has rejected the rebate claim, which is confirmed by the Appellate Authority. Hence, the contention of the assessee that mere difference in the description of goods cannot take away a substantial benefit is also not sustainable.

5.5 Commissioner (A) in OIA No.50/2014 dated 20.08.2014 has observed that in the grounds of appeal, the appellants have not made any reference to certain specific discrepancies of variation in the description of goods between ARE-1, Shipping Bill, AWB in respect of ARE-1 5482/13-14, non-production of copy of AWB for ARE-1 No.5497/13-14 and different assessment for valuation adopted. From the above observation of the Commissioner (A), it is seen that the assessee have included additional points in the present Revision Application, which were not put forth before the Commissioner (Appeals).

5.6 Regarding variation of flight No. & date between ARE-1 and Air Way bill in respect of ARE-1 No.5482/13-14, the assessee have not made any attempts either to produce the amended copy of AWB from the Issuing Authority or to get ARE-1 corrected by the concerned Customs Officials. Regarding non-production of AWB in respect of ARE-1 No.5497/13-14, the Adjudicating Authority at the time of PH has given two days' time to produce the self-attested copy of AWB. But, the assessee failed to produce the self-attested copy of AWB, which resulted in the rejection of rebate.

5.7 As per 4.1 of Chapter 8 of CBEC Manual, the goods shall be assessed to duty in the same manner as the goods for home consumption. But the claimant has adopted USD 53.85 for arriving the assessable value in Invoice and ARE-1 instead of USD 54.35 as per Notification- No.54/20-13- CUS (NT) dated 17.05.2013. Hence, the assessable value arrived at by the claimant was wrong and payment of duty was not correct. Hence, this was also one of the reasons for rejection of rebate claim.

5.8 As the grounds of appeal before the Commissioner (Appeals) was against the rejection of rebate claim for the discrepancy of mismatch of description of goods, Commissioner (Appeals) has rejected the appeal applying the observations of Revision Authority in the Revision Order No.103-141/14-CX dated 31.03.2014 that *"In respect of revision applications mentioned at Sl.No.31,32,35,36,38 & 29, part of the rebate claims were rejected for the reasons amongst other reasons that there is mismatch in description of goods between ARE-1, Shipping Bill and Bill of Lading. Government finds that the applicant is a manufacturer exporter. While preparing ARE-1, the applicant was fully aware that goods required to be exported and export documents like shipping bill and bill of lading, etc. are to be filed for export."*



such circumstances, it cannot be justified as to how there can be mismatch of description between excise documents and export documents. Applicant as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation, which they failed to do. Under such circumstances, the rebate claims are rightly held inadmissible'.

5.9 Further, Commissioner (Appeals) has observed that the discrepancy noticed in the subject appeal cannot be merely brushed aside without any justifiable reasoning. Accordingly, the other case laws cited by the appellants holding that procedural infractions can be condoned are also not relevant here. The discrepancy that "uniform & specific description of goods is not adopted in various export documents" is common to all ARE-1s, there is no reason to interfere with OIO.

5.10 The case laws quoted by the assessee are pertaining to the period prior to the Revision Order No.103-141/14 dated 31.03.2014 and the very same issue in the present revision application has been decided by the Revisionary Authority vide Revision order No.103-141/14 dated 31.03.2014. Hence, the observations made in the Revision Order would squarely apply to the facts of the present case also.

In view of the above the respondent prayed that Revision Applications filed by M/s Xomax Sanmar Ltd., Viralimalai has no merit and the same may be rejected.

6. 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 Xomax Sanmar Ltd.

7. In their written submissions dated 21.12.2020 the applicant submitted as under:-

7.1 The reason for denial of the rebate by the lower authority and the first appellate authority and the explanation from the company and the reasons for eligibility are all captured in a tabular column format and the said statement forms part of Annexure-1. In all the cases, it is pertinent to note that the goods have been actually exported; goods have left the country and the foreign exchange has also been realised. There is no dispute on any of these aspects.

7.2 The reasons given for denial of rebate are minor and technical in nature. 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. in the ARE-1 as compared to the shipping documents. (For example: while recognizing that the discrepancy is minor the rejection is made on the ground that there is no adequate explanation for non-adoption of uniform description of goods. There is no dispute on the fact that the goods were exported.

7.3 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 remains locked up.

7.4 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 2012-13 and 2013-14 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.

8. The applicant vide Annexure-1 to written submissions dated 21.12.2020 has submitted ARE-1 wise explanation which is as follows:-

8.1 ARE-1 No. 5480/13-14 :-

1. In all the documents, the goods description mentioned as "Industrial Valves (Cast/Forged Body)" uniformly as major classification, in addition in the invoice the exact material code is mentioned for customer purpose, the same was mentioned in the shipping bill.
2. In all the documents, amount in FC (USD) is same only, but the INR will vary based on the CNR published every fortnightly between invoicing date and shipping bill generation date.

Remarks :- Acknowledged copy of Customers-ARE, Shipping Bill, BL, invoice copy enclosed.

8.2 ARE-1 No. 5482/13-14 :-

1. In all the documents, the goods description mentioned as "Ready to Use M/C/D parts made whole of Carbon Steel" uniformly as major classification, in addition in the invoice the exact material code is mentioned for customer purpose, the same



was mentioned in the shipping bill, but in Air Way bill, it is mentioned as "Parts wholly made of Stainless Steel"

2. In all the documents, amount in FC (USD) is same only, but the INR will vary based on the CNR published every fortnightly between invoicing date and shipping bill generation date.

Remarks:- Acknowledged copy of Customers-ARE, Shipping Bill, BL, invoice copy enclosed.

8.3 ARE-1 No.5491/13-14 :-

1. Shipping bill no. not mentioned in the Airway bill, however commercial invoice no. is mentioned.

2. In all the documents, amount in FC (USD) is same only but the INR will vary based on the CNR published every fortnightly between invoicing date and shipping bill generation date.

Remarks :- Acknowledged copy of Customers-ARE, Shipping Bill, BL, invoice copy enclosed.

8.4 ARE-1 No. 5497/13-14 :-

1. In all the documents, the goods description mentioned as "Industrial Valves (Cast/Forged Body)" uniformly as major classification, in addition in the invoice the exact material code is mentioned for customer purpose, the same was mentioned in the shipping bill, but in Air Way bill, nothing is mentioned about the material.

2. In all the documents, amount in FC (USD) is same only, but the INR will vary based on the CNR published every fortnightly between invoicing date and shipping bill generation date.

3. Air Way Bill copy is attached now.

Remarks :- Acknowledged copy of Customers-ARE, Shipping Bill, BL, invoice copy enclosed.

9. Government has carefully gone through the relevant case records and perused the impugned Order-in-original and Order-in-appeal cross objections filed by the department as well as written submissions dated 21.12.2020 filed by the applicant.

10. From the perusal of product literature as well as Export data in respect Industrial Valves / Major Valve Body Materials, compositions and Applications available on internet, it is observed that what the applicant has mentioned in Excise invoices is the material code of the products whose description is shown on export documents. Therefore, the explanation submitted by the applicant at para 8 supra, in this regard is acceptable. The material code appearing on Excise invoices



(para 5.3 supra refers) is also appearing on the commercial / export invoices along with description of goods. Hence, it is evident that the goods shown in excise documents and export documents are one and the same. Moreover, the goods mentioned in the ARE-1 were exported vide said shipping bill Nos. as certified by the Customs and ARE-1 No. is also mentioned on said shipping bills. Government notes that Customs have certified in the relevant shipping bills the export of said goods and also mentioned the relevant ARE-1 Nos. in the shipping bill. So it cannot be said that these shipping bills do not relate to the ARE-1 in question. As regards difference in ARE-1 & export invoice value in respect of all the 4 ARE-1s, the applicant has said that amount in FC (USD) is same only, but the INR will vary based on the CNR published every fortnightly between invoicing date and shipping bill generation date. The reason is acceptable subject to verification of its correctness. The applicant has also submitted copy of Airway Bill No.6181211315 pertaining to ARE-1 No. 5497 dated 31.05.2013.

11. In many of its previous Revision Orders, Government has observed 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 many cases of rebate specifically, GOI has viewed 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. The core aspect of fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned".



12. Government observes that in the instant case the applicant has submitted the copies of the relevant documents to justify its claim that the goods cleared from the factory have in fact been exported and therefore the substantive fact of export having been made is not in doubt. However, verification of the documents produced by the applicant is required to be carried out by the adjudicating authority.

13. In view of the above discussion and findings Government sets aside Order-in-Appeal No.50/2014 dtd. 20.08. 2014 passed by the Commissioner Customs & Central Excise (Appeals) Trichirappalli 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/BRCs evidencing export of the said goods to the concerned authorities. 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.

14. Revision Application is disposed off in the above terms.

Shrawan
28/01/21
(SHRAWAN KUMAR)

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

ORDER No. 70/2021-CEX (SZ) /ASRA/Mumbai Dated 28-01-2021

To,
M/s. Xomox Sanmar Limited,
No.88/1A/1, Vadugapatty Village
Viralimalai- 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.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

