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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. 198/22-27/16-RA / 3470

Date of Issue: 12.08.2022

ORDER NO. 767-772 / 2022-CEX (SZ)/ASRA/MUMBAI
DATED 10.08.2022 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.

Applicant : Pr. Commissioner of CGST, Calicut.

Respondent : M/s Peekay Steel Castings(P) Ltd.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. -
CAL-Excus-000-App-524,525,526,527,528,502 dated
29.02.2016/15.03.2016 passed by the Commissioner
(Appeals-II), Cochin.

ORDER

These Revision Applications have been filed by the Pr. Commissioner of CGST & CX, Calicut Commissionerate (hereinafter referred to as "Applicant") against the Orders-in-Appeal No.-CAL-Excus-000-App-524,525,526,527,528, 502 dated 29.02.2016/15.03.2016 passed by the Commissioner (Appeals-II), Cochin.

2. The brief facts of the case are that M/s Peekay Steel Castings(P) Ltd. (hereinafter referred as "the Respondent") are manufacturers of Alloy steel casting, stainless steel castings, and steel ingots and bars and rods. They filled various rebate claims tabulated as:

Sr. No.	RA No.	OIA	Date of OIA	Rebate Claimed
1	198/22/16-RA	CAL-Excus-000-App-524-15-16	15.03.2016	14,25,722/-
2	198/23/16-RA	CAL-Excus-000-App-525-15-16	15.03.2016	12,48,281/-
3	198/24/16-RA	CAL-Excus-000-App-526-15-16	15.03.2016	6,13,439/-
4	198/25/16-RA	CAL-Excus-000-App-527-15-16	15.03.2016	6,91,152/-
5	198/26/16-RA	CAL-Excus-000-App-528-15-16	15.03.2016	8,35,702/-
6	198/27/16-RA	CAL-Excus-000-App-502-15-16	29.02.2016	27,29,787/-

The lower adjudicating authority sanctioned all the aforesaid claims filed by the respondent under section 11(B) of the Central Excise Act,1944 read with rule 18 of the Central Excise Rules,2002. Aggrieved by the OIOs, the Applicant filed appeal with the Commissioner (Appeals-II), Cochin, who vide Orders-in-Appeal No. CAL-Excus-000-App-524,525,526,527,528,502 dated 29.02.2016/ 15.03.2016 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

- i. that the ARE-1s contained the signature of the Customs officers of the Custom House Cochin. However, the shipping bill indicated that the goods were exported through Nedumbassery Airport, though no seal to

this effect was found on either the Shipping Bill or on the ARE-1. Some of the ARE-1s also held the endorsement by the customs officer that the goods were removed in trucks. Thus, the actual export of the goods at the port of shipment was not clearly discernable on the face of the documents submitted. In the circumstances, it was incumbent upon the Assistant Commissioner who is the rebate sanctioning authority to cause necessary verification to be done and record the same in the orders in original, before sanction of rebate. There is no discussion to this effect in the orders in appeal.

- ii. As per the procedure specified under Notification No.19/2004 CE(NT) dated 06.09.2004 when the goods are exported directly from the factory of manufacture, the Superintendent/Inspector shall after due verification, return the original and duplicate copies of the ARE-1 to the exporter and submit the triplicate copy to the rebate sanctioning authority, mentioned by the exporter. Further, at the port of export, the officer of customs, after allowing export, shall return the original copy of the ARE 1 to the exporter and send the duplicate copy to the rebate sanctioning authority specified by the exporter in the ARE1. The rebate will then be sanctioned by the specified officer, after comparing the duplicate (received from the officer of customs) with the original copy (received from the exporter) and the triplicate copy (received from the Central Excise officer). In this case, there is nothing in the order to show that the proof of export was received at the sanctioning authority's end with a covering letter, or in a tamper proof cover, so as to signify the port of dispatch of goods, and the authenticity of the proof of export. Thus, it was essential that the veracity of the markings made by the customs officers had to be got verified before sanction of the claim. Having not done so, the adjudicating authority has disposed of the rebate claim in a very perfunctory manner which is not correct.
- iii. It is also seen endorsed on the ARE-1s that the respondent intends to claim duty drawback under Customs and Central Excise Duties Drawback Rules 1995.

- iv. The Commissioner (Appeals) vide the subject Order-In-Appeal dismissed the appeal filed by the department observing that settled position of law is that once the fact of export and payment of duty on the export goods are proved, claim for rebate of duty is rightful. Actually, these are general principles governing the eligibility of rebate. The appellate authority, however, does not seem to have specifically and meticulously examined the records available before it vis-a-vis the grounds of appeal filed by the department. Nor it affirmatively held on the basis of the records available before it that the actual export had taken place. On confirming the receipt of a valid proof of export only, the claimant becomes eligible for rebate.
 - v. The Commissioner (Appeals) rejected the appeal mainly on the reason that 'once the fact of export and payment of duty on the export goods are proved, claim for rebate of duty is rightful; that right for rebate is not obliterated on account of procedural lapses on the part of the departmental officers'. However, there is no discussion or finding in the Order-in Appeal on the grounds on which the department has gone for appeal. There is no speaking order whether the allegations in review order were examined.
 - vi. whether the Orders of the Commissioner (Appeals-II), Cochin is legal and proper and prayed to set aside the orders in appeal or pass such other order as deemed fit.
4. Personal hearing in the matter was fixed on 21.06.2022, Shri M.P. Nazir, Consultant appeared online on behalf of the Respondent for the hearing and reiterated their earlier submission. He submitted that original as well as appellate authority allowed their claim. He contended that minor procedural lapses cannot take away their substantial benefit of rebate when there is no dispute on export of duty paid goods. He requested to dismiss the applications filed by 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, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds that the issue to be decided in the instant case is whether rebate claims filed by the respondent has been correctly sanctioned under rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004CE (NT) dated 6.9.2004.

7. With regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported. The second is that the goods are duty paid. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were duty paid.

8. With respect to the Applicant's contention that the original authority did not examine and recorded some of the essential facts required for sanctioning the rebate claim, Government notes that it has been categorically observed in the OIOs that the range superintendent has verified the rebate claims and found all the claims in order. The duty payment for the said exports is not in dispute. In order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods, which have been fulfilled in the instant case. Besides, the Department had not observed any adverse findings that proves the mistake on the part of the respondent. Therefore, rebate claims to the respondent can not be rejected on mere speculations arisen due to the fact that original authority had failed in recording some points in their orders in original.

9. As far as the Respondent's eligibility to claim duty drawback on the same shipping bills is concerned, the same has been elaborately discussed in the OIAs passed by the appellate authority before concluding that the respondent is eligible for rebate of Central Excise duty paid on inputs used in the manufacture of export goods, even in case where customs duty component is claimed as drawback. Applicant has not been able to counter the points

made by the appellate authority. Department's contention seeking to reject the rebate claim without sufficient reason is incorrect and not legal.

10. In view of above discussions, Government holds that both the mandatory conditions that goods have been exported and the duty paid character of the goods are fulfilled. Therefore, Government upholds the Orders-in-Appeal No.-CAL-Excus-000-App-524,525,526,527,528,502 dated 29.02.2016/ 15.03.2016 passed by the Commissioner (Appeals-II), Cochin. Thus, adjudicating authority is directed to disburse the rebate claim within 8 weeks of the receipt of the said order, if not already disbursed.

11. The Revision applications are disposed off on the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 767-772/2022-CEX (SZ) /ASRA/Mumbai Dated 10.8.2022

To,

M/s. Peekay Steel Castings(P) Ltd.
Nallalam, Modern Bazar, Kozhikode, Calicut-673027.

Copy to:

1. The Commissioner(Appeals-II), C.R. Building, I.S. Press Road, Cochin-18.
2. The Principal Commissioner CGST & CX, C.R. Building Mananchira, Calicut-673001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.