

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. 198/05-08/16, 11305

Date of Issue:- 24.02.2024

ORDER NO. 82-85 /2021-CEX (SZ) /ASRA/MUMBAI DATED 16.02.2024 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 Orders-in-Appeal No.51 to 54/2015-TRY (CEX) dated 14.12.2015 passed by the Commissioner of Central Excise & Service Tax (Appeals-II), Trichirappalli ..

Sl. No.	Revision Applications / Order in Appeal No.	Applicant	Respondent
1.	195/05-08/16-RA against OIA No. 51 to 54/2015-TRY (CEX) dated 14.12.2015	Commissioner of Central Excise & Service Tax Tiruchirappalli -620 001	M/s Xomox Sanmar Limited, Viralimalai - 621316



ORDER

These Revision Applications have been filed by the Commissioner of Customs & Central Excise, Tiruchirappalli (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the the Commissioner of Central Excise & Service Tax (Appeals-2) Trichirappalli, shown at column 5 of Table shown below:

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide Order in Original (OIO) No.	OIO set aside vide Order in Appeal (OIA) No.
1	2	3	4	5
1.	198/05-08/2016/RA	9,08,854/-	42/2015-R dated 08.05.2015	Orders-in-Appeal No. 51 to 54/2015-TRY (CEX) dated 14.12. 2015
2.	-- do --	5,61,984/-	43/2015-R dated 08.05.2015	-- do --
3.	-- do --	2,25,259/-	44/2015-R dated 08.05.2015	-- do --
4.	-- do --	18,98,747/-	45/2015-R dated 08.05.2015	-- do --
	Total	35,94,844/		

2. The brief facts of the case are that the respondent, i.e. M/s Xomox Sanmar Ltd. Viralimalai, manufacturers of Industrial Valves falling under Chapter Heading No. 84818030 and 84818090 of the First Schedule to the Central Excise Tariff Act, 1985, had filed rebate claims for amounts shown at column 3 of the Table above under Rule 18 of Central Excise Rules, 2002 being the duty paid on Industrial Valves (Cast / Forged body), Identifiable ready to use MCD Parts made wholly of Carbon steel manufactured through casting process, Valve Accessories exported during 2014.

3. The rebate sanctioning authority rejected all these rebates claims on the following grounds:

3.1 Reasons for rejection of Rebate to the extent of Rs.9,08,,854/- vide Order in Original No. 42/2015-R dated 08.05.2015 (Sr. No. 1 of the Table above):-

- In all ARE-1s, the description of goods is mentioned as Industrial valves (cast /forged body) and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848130. In Shipping Bill the description of goods is mentioned as Industrial valves (cast /forged body) with Central Excise Chapter heading as 84818030. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.



3.2 Reasons for rejection of Rebate to the extent of Rs. 5,61,984/-vide Order in Original No. 43/2015-R dated 08.05.2015 (Sr. No. 2 of the Table above):-

- In all ARE-1s, the description of goods is mentioned as Industrial valves (cast /forged body) and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848130. In Shipping Bill the description of goods is mentioned as Industrial valves (cast /forged body) with Central Excise Chapter heading as 84818030. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.

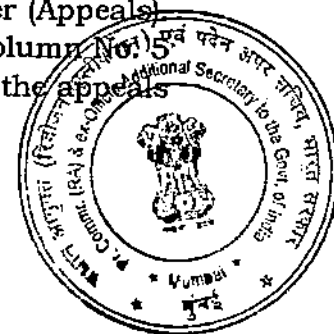
3.3 Reasons for rejection of Rebate to the extent of Rs. 2,25,259/- vide Order in Original No. 44/2015-R dated 08.05.2015 (Sr. No. 3 of the Table above):-

- In all ARE-1s, the description of goods is mentioned as Industrial valves (cast /forged body) and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848130. In Shipping Bill the description of goods is mentioned as Industrial valves (cast /forged body) with Central Excise Chapter heading as 84818030. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.

3.4 Reasons for rejection of Rebate to the extent of Rs. 18,98,747/-vide Order in Original No. 45/2015-R dated 08.05.2015 (Sr. No. 4 of the Table above):-

- In ARE-1, the description of goods is mentioned as Industrial valves (cast /forged body) and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848130. In Shipping Bill the description of goods is mentioned as Industrial valves (cast /forged body) with Central Excise Chapter heading as 84818030. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.
- In 6 ARE-1s, the description of goods is mentioned as "Istble ready to use MCD Parts made wholly of Carbon steel Mfd thro' casting process" and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848130. In Shipping Bill the description of goods is mentioned as "Istble ready to use MCD Parts made wholly of Carbon steel manufactured through casting process" with Central Excise Chapter heading as 84819090. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.
- In ARE-1, the description of goods is mentioned as "Valve Accessories" and as per our Excise Invoice. But in Excise Invoice specific description of goods is not mentioned and Central Excise Chapter head is given as 848199. In Shipping Bill the description of goods is mentioned as "Valve Accessories" with Central Excise Chapter heading as 84819090. In Bill of Lading, the description of goods is given as Industrial Valves & valve components. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.

4. Being aggrieved with the said orders, rejecting rebate claims for the reasons mentioned above, the respondent filed the appeals before Commissioner (Appeals). However, Commissioner (Appeals) vide Orders in Appeal mentioned at column No. 5 of Table at para 1 supra, set aside these Orders in Original and allowed the appeals filed by the respondent.



5. Being aggrieved, the applicant department filed present revision applications against the impugned Orders in Appeal mainly on the following common grounds: -

5.1 The order of Commissioner (Appeals) dated 14.12.2015 appears to be not legal and proper as the appellate authority failed to consider the following points :-

a. In the 4 ARE 1 s Nos. 1409,1412 and 1415 , the description of goods is mentioned as Industrial valve(cast/forged body) which is classifiable under CETH 84818030, whereas in the Excise invoice relevant to the ARE 1Nos. 1409, 1412 and 1415 the description of goods is not mentioned and only chapter No.848180 was mentioned. The word valve is not mentioned in the Excise invoice. In the excise invoice relating to ARE 1 Nos. 1413 and 1416 the description is mentioned as Gate Valve/Globe valve classifying the same in 848130, whereas in the ARE 1 Nos.1413 and 1416 the description of goods is mentioned as Industrial Valve (cast/forged body). CETH 84818030 deals with Industrial valve excluding pressure-reducing valves, and thermostatically controlled valves, whereas 848130 deals with check valves. The function of the two valves are different and the goods classified as Industrial valve by the assessee in the ARE 1s cannot be classified by themselves in the Excise invoice under CETH 848130 which deals with separate type of valve (Order in Original No. 42/2015 dated 08.05.2015).

b. In the ARE1 s Nos. 1459, 1461 and 1467 , the description of goods is mentioned as Industrial valve(cast/forged body) which is classifiable under CETH 84818030, whereas in the Excise invoice relevant to the ARE 1 s the description of goods is mentioned as Gate valve/Globe Valve and chapter No.848130 was mentioned. In the excise invoice relating to ARE 1 s the description is mentioned as Gate Valve/Globe valve classifying the same in 848130, whereas in the ARE 1 s the description is mentioned as Industrial Valve (cast/forged body). CETH 84818030 deals with Industrial valve excluding pressure-reducing valves, and thermostatically controlled valves, whereas 848130 deals with check valves. The function of the two valves are different and the goods classified as Industrial valve by the assessee in the ARE 1 s cannot be classified by themselves in the Excise invoice under CETH 848130 which deals with another type of valve (Order in Original No. 43/2015 dated 08.05.2015).

c. In the ARE1 Nos. 1419 the description of goods is mentioned as Industrial valve(cast/forged body) which is classifiable under CETH 84818030, whereas in the Excise invoice relevant to the ARE 1 the description of goods is mentioned as Gate valve/Globe Valve and chapter No.848130 was mentioned. CETH 84818030 deals with Industrial valve excluding pressure-reducing valves, and thermostatically controlled valves, whereas 848130 deals with check valves. The function of the two valves are different and the goods classified as Industrial valve by the assessee in the ARE 1s cannot be classified by themselves in the Excise invoice under CETH 848130 which deals with another type of valve (Order in Original No. 44/2015 dated 08.05.2015).

d. In the ARE1 Nos. 1192, the description of goods is mentioned as Industrial valve(cast/forged body) which is classifiable under CETH 84818030, whereas in the Excise invoice relevant to the ARE 1 s the description of goods is mentioned as



Gate valve and chapter No.848130 was mentioned. The Industrial valve and Check valve are different commodities and fall under separate heading in CETH in 84818030 and 84813000. So there is mismatch in the description of goods between excise invoice and ARE 1. In ARE 1 No.1195 the description is mentioned as Valve Accessories, whereas in the excise invoice the description is mentioned as gasket, packing f/stem mentioning classification as 848199. In the Shipping Bill relevant to the ARE 1 No.1195, the description "identifiable ready to use M/CD parts made wholly of carbon steel manufactured through casting process," is mentioned. If the goods cleared are parts then classification 84819090 must be mentioned. There is no tariff entry as 848199 in the CETH. In the ARE1 No.s 1193, 1204, 1205,1207,1210 and 1211 the description is mentioned as "identifiable ready to use M/CD parts made wholly of carbon steel manufactured through casting process,". But in the excise relevant to ARE 1 No.1193 the description is mentioned as Gate Valve and classification is mentioned as 848130. In the excise invoice relevant to ARE 1 No.1204 and 1205 the description is mentioned as Gate Valve/globe valve and classification No.848180 is mentioned. In the excise invoice relevant to ARE1 No.1207 the description check valve/gate valve is mentioned and the classification is mentioned as 848130. In the excise invoice relevant to ARE 1 No.1210 and 1211 the description is mentioned as Gate Valve and classification is mentioned as 848180. The description in the excise invoice in these ARE 1s is valves which are classifiable under 84813000 or 84818030. But the ARE 1s the description of goods cleared is mentioned as parts. There is substantial difference between valves and parts of valves and hence they are classified under two different headings under chapter heading No.8481. The function of industrial valve, check valve and parts of valve are different and by mentioning different headings/description in ARE 1 as/S.B. and Excise invoices may lead to lot of confusion leading to the presumptions that the goods cleared from the factory and exported were different (Order in Original No. 445/2015 dated 08.05.2015).

5.2 Rebate claims by the exporter, the claimant has to prove that the goods mentioned in the ARE-1s were actually exported and the onus is not on the department.

5.3 The decision of the Hon'ble GOI in the case of M/s Electro Steel Casting Ltd. reported in 2015(321) ELT 150(GOI) not applicable to the facts and circumstances of the case as in the instant case goods were not cleared under physical supervision of Central Excise Authorities. Export was done by the assessee and no physical supervision was done by the Central Excise Authorities. The decision of the Hon'ble GOI in the case of M/s Ran's Pharma Corporation reported in 2014(314) ELT 953(GOI) is also not applicable as in the case the goods were procured from a different manufacturer. In the said decision the issue in dispute was that the goods cleared from the manufacturer's premises and the goods that were exported by the merchant-exporter from the Air Cargo Complex, Ahmedabad were one and the same. In the issue on hand the goods were manufactured and cleared by the assessee and hence the decision is not applicable to the present case.

5.4 In Bhavangar University Vs. Palitana Sugar Mills Pvt. Ltd. (2003) 288 ITR 111 the Hon'ble Apex Court held "It is well settled that a little difference



additional facts may make a lot of difference in the precedential value of a decision". The Hon'ble Supreme Court in the case of CCE Bangalore Vs. Srikumar Agencies 2008(232)ELT 577(SC) held that Court decision not statute - Reliance thereon without discussion of facts - Decisions not to be relied upon without discussing similarity of facts - Judgments of courts not to be construed as statutes - Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases - Disposal of cases by blindly placing reliance on a decision not proper". As the facts of the case referred by the appellate authority is different from the present dispute, the decision rendered therein are not applicable.

5.5 The Revisionary authority, CBEC, New Delhi in their order No.103-141/14 CX. Dated 31.3.2014 in respect of appeal by M/s Sanmar Foundries, Viralimalai against the order of rebate sanctioning authority rejecting rebate claims in respect of ARE1 s where description of goods varies between excise documents and export documents held that

" while preparing ARE 1, the applicant was fully aware that the 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. Applicants as a beneficiary of export scheme was expected to apply very basic due diligence of preparing proper documentation which he failed to do. Under such circumstances, the rebate claims are rightly held inadmissible."

The abovesaid decision of the Government squarely applicable to the case on dispute and the decision of the revisionary authority dated 31.3.2014 is of recent one and the same should have been considered by the appellate authority.

5.6 The receipt of foreign exchange is only corroborative evidence and receipt of the foreign exchange does not in any way prove the goods cleared from the factory and exported are one and the same.

5.7 The rebate is a beneficial scheme to the manufacturers and all safeguards and conditions mentioned in the Notifications are to be complied with for sanction of rebate. Further Central Excise Rules 2002 prescribes the details to be available in the Excise invoice and ARE 1s. The description of goods in both must be the same. The shipping bills are filed by the assessee and at the time of preparation of the same they must aware of the description of goods. Assessee can not mention one description in excise invoice and another description in Shipping Bill, when both the documents are prepared by them. The consignment was not opened for physical examination as evident by the remarks in the shipping bills, endorsement by the Customs officers in the ARE-1s cannot conclusively prove that the goods cleared from the factory and exported were one and the same.

6. Personal hearing in this case was held on 08.01.2021 through video conferencing and Ms. Sharanya Vijay. K, Advocate duly appointed by the respondent company appeared online for hearing. She re-iterated their written



submissions dated 06.01.2021 and stated that Commissioner (Appeals) has rightly allowed their benefit of rebate as minor errors cannot take away their substantive claim when duty payment, export and all other documentation is in order. Nobody from the applicant department appeared for the personal hearing. In their written submissions dated 06.01.2021 the respondent company submitted as under:-

6.1 All the cases 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.

6.2 The Commissioner (Appeals) had gone into all aspects and has clearly recorded the finding that the rebate has to be allowed since;

(i) Value of goods and description in Shipping Bill and ARE-1 match.

(ii) Value in USD matches across all documents in export invoice, excise invoice, ARE-1 and Shipping Bill.

(iii) Goods have been exported and export proceeds have been received and relevant BRC's are available.

(iv) Even if there is any minor procedural lapses in the documents, that cannot take away the beneficial provisions.

6.3 The alleged defects are only minor and technical in nature. The fact that goods have been exported is never in dispute in respect of these matters.

6.4 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. They have already produced all relevant documents establishing the genuineness of the transaction and the same stands well accepted by the Commissioner (Appeals) vide its order. Moreover, the adjudicating authority while passing the Order-in-Original has made a clear observation to the effect that the respondent has exported its goods. That being the case, the department cannot approbate and reprobate as laid down by the Tribunal in the case of Griffin Laboratories Ltd Vs. CC (1989) 41 ELT 613 & Laxindco Steel Pvt Ltd Vs. CCE (2008) 10 STR 527.

6.5 They have satisfied all the conditions specified under the Notification No.24/2011 dated 05.02.2011 issued under Rule 18 which deals with the rebate of duty on export of goods and the same remains undisputed. That being the case, they are rightly eligible for the refund. Also, the relevant documents were endorsed by the proper officer of Customs. The decision of the Hon'ble GOI in Ran's Pharma Corporation case (2014) 314 ELT 953 (G01) & Electro Steel Casting Ltd (2015) 321 ELT 150 (G01) is squarely applicable to their case as the operative portion of the said decision reiterates the well settled position of law that rebate cannot be denied for minor procedural infractions.

6.6 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 and given below:-



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 excise duty has been duly paid and rebate was legitimately claimed in accordance with law. Therefore, the application filed by the department against the Order of the Commissioner (Appeals) may be dismissed.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-original and orders-in-appeal as well as written submissions dated 06.01.2021 filed by the respondent. As the issue involved in these 4 Revision Applications are similar, they are taken up together and are disposed off vide this common order.

8. Government notes that in all the above cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the ground that there was difference in Tariff Heading (CETH)/description of the exported goods appearing on Excise Invoices / ARE-1s and on Shipping Bill / Bill of Lading and hence it could not be established that the same goods which were manufactured and cleared by the applicant were ultimately exported.

9. Commissioner (Appeals) while allowing the appeals filed by the respondent company observed as under :-

05. "In the instant cases, the adjudicating authority argued that even though the appellants have filed the said 4 rebate claims in time and there is no bar under unjust enrichment act, there is a discrepancies noticed in the duty paid documents produced by the appellants for their claims. Further there is no correlation in description of goods between Excise documents and Export documents, mentioning different description of goods in Excise invoices, ARE 1s, Shipping bills and bills of lading for same goods raises doubt whether the goods invoiced, suffered excise duties, removed from the factory under AREs were duly cleared customs checks through shipping bills and finally exported through bill of lading. Whereas it is seen from the records that the appellants



has clearly mentioned the invoice number and date, value of the goods and other descriptions in the Shipping Bill as well as in the ARE-1. The export invoice appended to the Shipping Bill gives details of the corresponding excise invoice. Further the ARE-1 s gives details of corresponding excise invoice and these ARE1s are endorsed by the Customs officer mentioning the corresponding shipping bill under which the goods have been exported. Particular like value in USD in Excise invoice and export invoice are tallying, description in Excise invoice and export invoice are matching. Further the appellant has exported their goods and received their export proceeds and relevant BRCs towards realization on the said export proceeds. On verification of said BRCs with other related documents, it is clearly established that the appellant has exported their goods and received their export proceeds in time. The only minor variation noticed in the said excise invoices are that the description as well as the chapter heading were not mentioned in the said excise invoices only and in other documents the description as well as the chapter heading was mentioned. Even if any minor procedure lapses noticed in the excise as well as export documents which cannot take away the beneficial provisions”.

10. Government observes that the respondent, M/s Xomox Sanmar Ltd. Viralimalai, are manufacturers of Industrial Valves of various types and size falling under Chapter Heading No. 84818030 and 84818090 of the First Schedule to the Central Excise Tariff Act, 1985. Government observes that HSN Notes under Chapter Heading 84.81 categorically indicate that taps, cocks, valves etc. remain in this heading even if specialized for use on a particular machine or apparatus or on a vehicle or air craft. The Notes also indicate that certain valves like safety valves, control cocks, pressure reducing valves etc. remain only under Heading 84.81. As understood in common parlance an industrial valve is a mechanical device that controls the flow and pressure of fluid within a system or process and it controls flow & pressure. The check valve prevents backflow in the piping system. A gate valve is the most common type of valve in any process plant. It is a linear motion valve used to start or stop fluid flow. Globe valve is used to stop, start, and regulate the fluid flow. Globe Valves are used in the systems where flow control is required and leak tightness is also necessary. It is thus evident that all these valves are different types of Industrial valves and hence fall under broad heading 8481.

11. From the Annexure-I to Order in Original No. 45/2015 it is seen that in respect of 6 ARE-1's Excise Invoice specific description of goods is not given but chapter heading is given as 848180/848130. However in Shipping Bill the description is "I"ble ready to use MCD Parts made wholly of Carbon steel manufactured through casting process with Central Excise Chapter heading as 84819090. In Bill of Lading the description of goods is given as Industrial Valves &



valve components. From the related Tariff items appearing in First Schedule to the Central Excise Tariff Act, 1985 it is observed that heading 848180 applies to "Other appliances" whereas 84813000 is for Check (non return) valve.

12. Be that as it may, although the check valves, gate valves and globe valves can be classified under independent chapter subheadings by their function/description, they could also find use as components in the larger assembly of an industrial valve having a more complex function. Therefore, even if the manufactured goods may have been cleared from the factory in the basic form as check valves, gate valves and globe valves, the importer/purchaser could have procured these valves as parts for an industrial valve. In such circumstances, the check valves, gate valves and globe valves could be classifiable as manufactured items by their function/description and as parts by their utility in the functioning of a sophisticated industrial valve. In this view the classification of the same exported goods as manufactured goods and simultaneously as parts is plausible.

13. In RE: Neptunus Power Plant Services Pvt. Ltd.(reported in 2015 (321) E.L.T. 160(G.O.I) in order to examine the issue of corelatibility, Government made sample analysis of the exports covered vide some of the shipping bills and observed that

(iii) Government finds that in Shipping Bill No. 8083985, dated 19-3-2012, there is cross reference at ARE-1s No. 16 & 17 both dated 19-3-2012 and vice-versa. The above mentioned ARE-1s find mention of relevant duty paying invoice No. 815, dated 31-1-2012 and 955, dated 23-2-2012 issued by M/s. Shree Saibaba Ispat (I) Pvt. Ltd., Bhavnagar and M/s Arya Ship Breaking Corporation, Mumbai respectively. Further, description, weight and quantities exactly tally with regard to description mentioned in respective ARE-1s and other export documents including Shipping Bill and export invoices. Since, exported products i.e. the scraps of propeller are less in quantity and each quantity is very high in weight ranging from 500 kgs-5000 kgs, such tallying of marking cannot be brushed aside. As such there are sufficient, corroboratory evidences that goods covered vide impugned excise documents have actually been exported vide impugned export documents. Further, endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s also conclusive support the same observation.

14. The Commissioner (Appeals) in para 5 of impugned Order, on applying aforesaid criteria has arrived at his findings (reproduced at para 9 supra) that sufficient corroborative evidence has been found to correlate exported goods with goods cleared under Excise documents. Undoubtedly the observation recorded by the Commissioner (Appeals) based on verification of documents, in the impugned



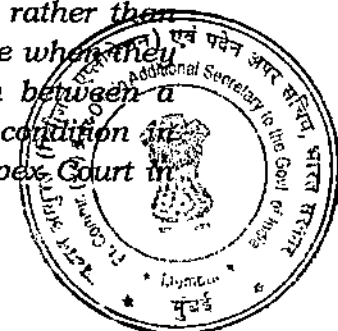
order that there is substantial corroborative evidence to correlate the export goods with the goods cleared from the factory under excise invoices is irrefutable.

15. Government also observes that there is no investigation from the department to find out the reason/motive of the respondent behind showing different CETH in Excise and Customs documents and therefore, there is nothing on record to show that by his acts of omission and commission the respondent has availed some other inadmissible export benefits simultaneously, so as to outrightly negate claim of rebate. In the instant cases except for mismatch in CETH / Description, there is nothing to show that the goods which left the factory were not exported. In the absence of any evidence adduced by the Department to suggest that the goods exported were not the same goods and not duty paid, the respondent's submissions cannot be brushed aside. Moreover, the basic ingredient of co-relatability as discussed supra have been duly examined by the Appellate authority in the instant cases to arrive at a conclusion that the substantive fact of export having been made is not in doubt. The original authority, i.e. Assistant Commissioner, Central Excise -II Division, Trichy at para 14 of all the four Orders in Original mentioned at column no. 4 of Table at para 1 supra has also observed as under:-

14. *It is further verified from the Original and duplicate copies of the ARE-1 that particulars given in the Part-B by the Customs Officer for the proof of export tally with the relevant Shipping Bills and Bills of Lading.*

16. 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 or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met other procedural deviations can be condoned".

17. In view of discussion in foregoing paras, Government does not find any reason to interfere with or modify the Orders-in-Appeal No.51 to 54/2015-TRY (CEX) dated 14.12.2015 passed by the Commissioner of Central Excise & Service Tax (Appeals-II) Trichirappalli and upholds the same.

18. The revision applications are rejected being devoid of merits.

Shrawan Kumar
16/02/2021

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ⁸²⁻⁸⁵ /2021-CEX (SZ) /ASRA/Mumbai Dated (6.02.2021)

To,

The Commissioner of CGST & CX, Tiruchirapalli (Trichy),
No.1, Williams Road,
Cantonment, Tiruchirapalli 620 001

Copy to:

1. M/s. Xomox Sanmar Limited, No.88/1A/1, Vadugapatty Village Viralimalalai- 621316
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

