



**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. 195/06-09/15 / 2731

Date of Issue:- 12.04.2021

ORDER NO. ¹⁸²⁻¹⁸⁵ /2021-CEX (SZ) /ASRA/MUMBAI DATED 31.3.2021 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.179-182/2014 dtd. 14.10.2014 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

These Revision Applications have 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.179-182/2014 dtd. 14.10.2014 passed by the Commissioner Customs & Central Excise (Appeals) Trichirappalli as detailed below:-

-:TABLE:-

Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide OIO No.	OIO upheld vide OIA No.
1	2	3	4	5
1.	195/06/2015	86,318/-	33/2014-R dtd. 22.05.2014	179-182/2014 dtd. 14.10.2014
2.	195/07/2015	2,03,872/-	34/2014-R dtd. 22.05.2014	---- do ----
3.	195/08/2015	5,03,235/-	36/2014-R dtd. 23.05.2014	---- do ----
4.	195/09/2015	10,95,002/-	35/2014-R dtd. 23.05.2014	---- do ----

2. The brief facts of the case are that the applicant had filed rebate claims on various dates for the amounts shown in column No. 3 of Table above. However, during the scrutiny of the said claim it appeared that the duty was paid out of Cenvat Credit taken for inputs procured from M/s Sanmar Foundries Ltd. Viralimalai and the duty for the input supplied by M/s Sanmar Foundries Ltd. was paid out of Cenvat credits irregularly availed by the vendor (M/s Sanmar Foundries Ltd. Viralimalai) during September 2007 to August 2012 and as the applicant sought rebate for the duty paid on goods manufactured, removed from the factory and exported out of the inputs procured from M/s Sanmar Foundries Ltd. Viralimalai and as the Cenvat credit was irregularly availed, the rebate sanctioning authority vide Orders in Original Nos.74/2013-R dated 01.08.2013, 78/2013-R dated 30.08.2013, 72/2013-R dated 01.08.2013 and 73/2013-R dated 01.08.2013, summarily rejected the claim. Being aggrieved with the aforesaid OIOs the applicant filed appeals to Commissioner (Appeals) Trichy to reconsider the rejected rebate claims. Commissioner (Appeals) Trichy vide Orders in Appeal Nos.15, 16,17,18/2014 all dtd. 18.02.2014 set aside the aforesaid Orders in Original and sent back the matter for fresh reconsideration by the rebate sanctioning authority specifying that it was not open for the rebate sanctioning authority to reject the rebate claims on the same ground again. Accordingly the said rebate claims were reconsidered afresh by the original authority and vide Orders in



Original mentioned at column No. 4 of Table above, rejected the rebate claims on various grounds mentioned below:-

3.1 Reasons for rejection of Rebate to the extent of Rs. 86,318/-vide Order in Original No. 33/2014-R dtd. 22.05.2014 (Sl. No. 1 of the Table above) :-

- In ARE-1s and Shipping Bill and excise invoices, the specific description of goods is not mentioned. In ARE-1, the description of goods is mentioned as "as per our Excise INV Nos." whereas in Excise Invoices specific description of goods are not mentioned and in shipping bill the same is mentioned as "RDY to use M/CD parts made wholly of carbon Steel/Industrial Valves (Cast/Forged).

3.2 Reasons for rejection of Rebate to the extent of Rs. 2,03,872/- vide Order in Original No. 34/2014-R dtd. 22.05.2014 (Sl. No. 2 of the Table above) :-

- In ARE-1s and Shipping Bill and excise invoices, the specific description of goods is not mentioned. In ARE-1, the description of goods is mentioned as "as per our Excise INV Nos." whereas in Excise Invoices specific description of goods are not mentioned and in shipping bill the same is mentioned as "RDY to use M/CD parts made wholly of carbon Steel/Industrial Valves (Cast/Forged).

3.3 Reasons for rejection of Rebate to the extent of Rs. 5,03,235/- vide Order in Original No. 36/2014-R dtd. 23.05.2014 (Sl. No. 3 of the Table above) :-

- In ARE-1s and Shipping Bill and excise invoices, the specific description of goods is not mentioned. In ARE-1, the description of goods is mentioned as "as per our Excise INV Nos." whereas in Excise Invoices specific description of goods are not mentioned and in shipping bill the same is mentioned as "RDY to use M/CD parts made wholly of carbon Steel/Industrial Valves (Cast/Forged) (in all 4 ARE-1s);
- In shipping bill date of ARE-1 is found modified without proper signature of the Customs Officer. (in ARE-1 No. 0420/12-13).

3.4 Reasons for rejection of Rebate to the extent of Rs.10,95,002/-vide Order in Original No. 35/2014-R dtd. 23.05.2014 (Sl. No. 4 of the Table above) :-

- In ARE-1s and Shipping Bill and excise invoices, the specific description of goods is not mentioned. In ARE-1, the description of goods is mentioned as "as per our Excise INV Nos." whereas in Excise Invoices specific description of goods are not mentioned and in shipping bill the same is mentioned as "RDY to use M/CD parts made wholly of carbon Steel/Industrial Valves (Cast/Forged) (in all 7 ARE-1s);
- There is a huge difference of net weight in ARE-1 and Shipping Bill and this raises doubt about the factum of the goods exported (in ARE-1 0429/12-13).
- In ARE-1, the Net weight, Gross weight, No. of Packages have been modified without signature by the authorized person. The name and designation stamp of the authorized signatory is not affixed. The shipping bill copy is not legible for verification (in ARE-1 Nos. 0431/12-13 and 0435/12-13),
- In shipping Bill, the ARE-4 date is mentioned as 30.07.2012 whereas the actual date of ARE-1 is 31.07.2012 (in ARE-1 No.0441/12-13 and 0442/12-13).

4. 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.179 to 182/2014



dated 14.10.2014 (impugned Order) observed that *'The Revisionary Authority, GOI, Ministry of Finance vide Order No. 103-141/14-CX dated 31.03.2014 in disposing off the various revision applications pertaining to mismatch of description of goods in the case of 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."

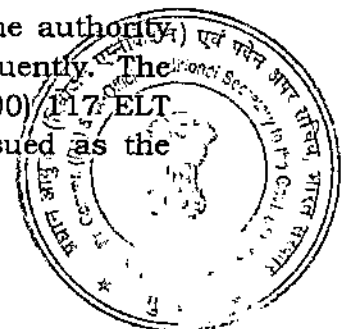
08. In fact the aforesaid observations are squarely applicable to the facts of the case also. Non furnishing of specific description of goods cannot be treated as a procedural lapse and accordingly the case laws relied on by the appellants are also not relevant here. As noted in Para 4 above, apart from the general discrepancy relating to discrepancy of goods, there were certain specific discrepancies relating variation in the weight etc. found in A.No.98/ 2014 (CE)(R). There are no explanations found in the Grounds of Appeal for the said discrepancies pointed out as the grounds are only against the discrepancy regarding 'description of goods' only. In the absence of any explanation, the reasons for denial of rebate is sustainable without interference

5. Being aggrieved with the impugned Order of the applicant has filed the Revision Applications mainly on the following common grounds :

5.1 The Commissioner (Appeals) failed to appreciate that when the rebate was rejected initially vide OIO No.74/2013 the only question raised was the credit passed by the vendor is not genuine and an offence case has been booked by the department.

5.2 The Commissioner (Appeals) failed to appreciate that they filed an appeal and Appellate Authority has given a clear finding in Order in Appeal No. 15 to 18 of 2014 dated 18.02.2014 that merely an offence case is booked against the vendor the credit availed by them should not be disturbed especially in the absence of any proceedings against them for irregular availment of credit.

5.3 The Commissioner (Appeals) failed to appreciate that once the Order in Original has been passed rejecting the rebate on specific grounds, the authority became functus officio and he cannot raise new grounds subsequently. The Tribunal in the case of Modi Paints and Varnish Works Vs. CCE (2000) 17 ELT 711 held that no addendum to the adjudication order could be issued as the Adjudicating Authority became functus officio after passing the order.



5.4. In the instant case, the adjudicating authority denied the rebate on the ground that the description in ARE-1 excise invoice and shipping bill are not matching. In terms of Section 35A of the Central Excise Act the Commissioner of Central Excise (Appeals) while disposing the appeal can pass an order confirming, modifying or annulling the decision or order appealed against. In the instant case, the Commissioner of Central Excise (Appeals) allowed the appeal with a clear finding that for the reasons stated in the Order in Original No.74/2013, the rebate should not be denied. Once the issue is settled, it is not possible for the adjudicating authority to raise new grounds for rejecting the claim.

5.5 They are engaged in the manufacture of Industrial Valves and spares falling under Chapter 84 of the First Schedule to 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 have satisfied all the substantial conditions such as filing of claim within time limit, payment of duty at the time of removal, unjust enrichment etc.

5.6 The Commissioner of Central Excise (Appeals) failed to appreciate that as and when there is no dispute on the fact that the goods have been exported, the rejection on the ground that there is a difference in the description of goods is not sustainable. There is no dispute with reference to the value of goods referred to ARE-1 and there is also no dispute on the fact that they have realized the value shown in ARE-1.

5.7 The Commissioner (Appeals) erred in denying the rebate by giving a finding that Specific description of goods is not mentioned. The following makes it clear that the Orders in Original is not sustainable:

- a. They are engaged in the Manufacturing of Industrial Valves made of Castings and Forgings
- b. As per the export and import policy and to claim Export benefit the Appellant has to give description of the goods in the relevant documents.
- c. Ready to use Machined Parts made wholly of Carbon Steel-Industrial Valves-Cast/Forged is the description of the goods. The same has to be incorporated in the shipping Bill to claim export benefit.
- d. Due to insufficiency of space in the shipping bill, the description was compressed and printed as "RDY to use M/CD parts made wholly of carbon steel/industrial valves (cast/forged).
- e. Due to insufficiency of space in ARE-1 the SAP system is designed to print as Industrial valves as per Invoice No....." and corresponding invoice numbers have been mentioned on top right side of the ARE-1.
- f. The details of number of cases, quantity, values, address, destination and mode of dispatch are duly matched with invoice and shipping bill. The above documents were duly accepted by customs and they have been exporting their products since 1990.



5.8 The rebate claims cannot be denied simply on the ground of procedural lapses and substantial benefits cannot be denied on mere procedural lapses. The rebate claim cannot be rejected without considering the factum of export with other corroborative evidence. They have received foreign exchange and the Bank realization certificate clearly indicates the Invoice number shipping bill reference etc. This makes abundantly clear that the goods mentioned in the invoice have been exported.

5.9 The mismatch in description is due to Chapter reference of the Customs Tariff Act. They 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.

6. In response to show cause noticed issued in respect of each of the aforesaid Revision Application, the respondent department filed its cross objections vide letters C. No. IV/16/1304/1305/1306/1318/2013-Review all dated 31.03.2015 mainly contending therein as follows:

6.1 On verification of the claim afresh at the divisional office level, the following discrepancies were noticed:

i) In ARE-1 No.0451/12-13 dt.16.08.2012 (RA No. 195/06/15), 0483/12-13 dt.29.11.2012 (RA No. 195/07/15), and in all ARE-1s (RA No. 195/08/15 & RA No. 195/09/15) relevant shipping bill and excise invoice, the specific description of goods was not mentioned. In all ARE-1s, the description of goods was mentioned as "as per our Excise INV. Nos." whereas in Excise Invoices specific description of goods are not mentioned and in shipping bill the same was mentioned as "RDY to use M/CD parts made wholly of carbon Steel/industrial valves (Cast/Forged)".

ii) In all shipping bills, the customs invoice no. and date was referred. But the copies of customs invoices were not submitted for verifications.

iii) All pages of shipping bills were not self-attested.

iv) In Excise invoice the particulars like ARE-1 No. & date, BED, Ed. Cess & SHE cess are found missing (RA No. 195/08/15 & RA No. 195/09/15).

6.2 The discrepancies in description of goods between ARE-1, Shipping bills and Invoices were not explained / clarified by M/s. Xomox Sanmar Ltd., Viralimalai. Uniform description of goods should be adopted in all the documents submitted for rebate claims viz. Invoices, ARE-1s, Shipping bills and Bills of Lading. Any discrepancies in the description of goods among these documents would lead to doubt about the factum of goods removed from factory and its final export.

6.3 M/s. Xomox Sanmar Ltd., Viralimalai produced the customs invoices referred in Shipping Bills for verification of export of goods. All pages of shipping bill were attested by M/s. Xomox Sanmar Ltd., Viralimalai. In Excise invoice the particulars like ARE-1 No. & date, BED, Ed. Cess & SHE cess are appended by them (RA No. 195/08/15).



6.4 M/s. Xomox Sanmar Ltd., Viralimalai did not produce the customs invoices referred in Shipping Bills for verification of export of goods. All pages of shipping bill were not attested by M/s. Xomox Sanmar Ltd., Viralimalai. In Excise invoice the particulars like ARE-1 No. & date, BED, Ed. Cess & SHE cess are found missing (RA No. 195/09/15).

Common cross objections

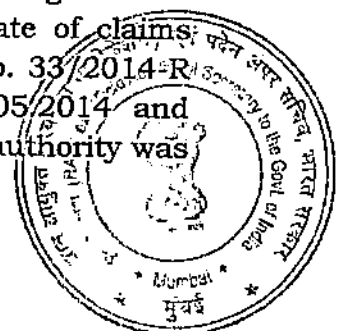
6.5 The variance in the description of goods in the Excise and Export documents did not confirm that the very goods manufactured, removed and suffered duty were not exported. The correlation of description of goods between the excise and export documents did not get established and the factum of export of duty paid goods raised was doubtful. Sanction of rebate involves expenditure of Govt. exchequer. Therefore, the sanction of rebate requires careful examination of the documents to confirm the duty paid nature and export of goods. Rebate cannot be sanctioned on assumptions and presumptions on the duty paid nature and exports of goods.

6.6 M/s. Xomox Sanmar Ltd., Viralimalai has been submitting numerous rebate claims till date with a lot of discrepancies in description of goods. In spite of repeated reminders, they were indifferent in submission of documents for rebate claims. They did not take any fruitful efforts to rectify the recurring mistakes. Repeated mistakes of similar nature can not considered as procedural lapse.

6.7 It is also brought to the light that while reviewing the revision applications filed by M/s Sanmar Foundries Ltd., Viraliamali, the Revisionary Authority, GOI, Ministry of finance vide DrderNo.103-141/14-Cx. DT. 31.03.2014 in para 7.10 has observed,

"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 can not 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."

6.8 The aforesaid observations would well apply to the facts of the present case also. Though there were many instances of denial of rebate claims filed by them, the said discrepancy continued to persist and they were well aware of this fact and manner of filing rebate claim with discrepancies free. Their main contention that the mistake is only a procedural lapse is not found acceptable in the light of the aforesaid observations of the Revisionary Authority. Hence the rebate of claims involved in the above 4 cases were rejected by this office vide OIO No. 33/2014-R dtd. 22.05.2014, 34/2014-R dtd. 22.05.2014, 36/2014-R dtd.23.05.2014 and 35/2014-R dtd. 23.05.2014. The decision of the original adjudicating authority was



upheld by the Appellate Authority viz. Commissioner (Appeals), Trichy in OIA no.179-182/2014 dt. 14.10.2014.

In view of the observations of the Commissioner (A) in OIA No.179-182/2014 dated 14.10.2014 and Revisionary Authority in Revision Order No.103-141/14 dated 31.03.2014, the revision applications deserve to be rejected.

7. Personal hearing in this case was held on 05.03.2021 through video conferencing and Ms. Sharanya Vijay. K., Advocate , Shri M Shanmuga Sundaram, appeared online for hearing on behalf of the applicant. They submitted that for minor defects their substantive claim cannot be denied when there is no dispute on export of duty paid goods.

8. In their written submissions dated 25.02.2021 the applicant submitted as under:-

8.1 In 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.

8.2 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.

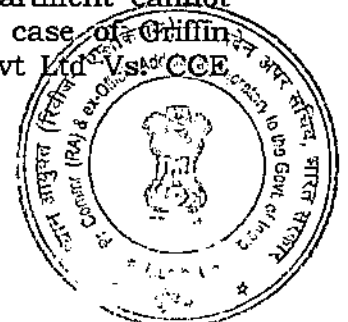
(iii) Goods have been exported and export proceeds have been received and relevant BRC's are available.

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

8.3 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.

8.4 It submitted that 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.

8.5 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 applicant 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.



8.6 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, the applicant is rightly eligible for the refund. Also, the relevant documents were endorsed by the proper officer of customs.

8.7 The decision of the Hon'ble GOI in Ran's Pharma Corporation case (2014) 314 ELT 953 (GOI) & Electro Steel Casting Ltd (2015) 321 ELT 150 (GOI) is squarely applicable to the applicant's 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.

8.8 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.

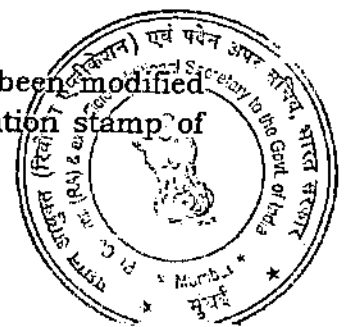
The period of dispute is 2012-13 and 2013-14 and even though the excise duty has been paid on exports, they have not received the excise rebate under Rule 18 and given the fact that even the excise regime is no longer in existence, it is prayed that Revision Applications may be allowed.

9. The respondent department also vide letter dated 05.03.2021 submitted following para wise comments in respect of impugned Order in Appeal.

a) In ARE-1, shipping bill and excise invoices the specific description of goods is not mentioned. In ARE1, the description of goods is mentioned as "as per out Excise Invoice Nos' whereas in invoice specific description of goods is not mentioned and in Shipping Bill the same is mentioned as "RDY to use M/CD parts made wholly of carbon steel/industrial valves (cast/forged)".

b) There is huge difference of net weight in ARE-1 and Shipping Bill and this raises doubt about the factum of goods exported

c) In ARE-1, the Net weight, Gross Weight, Nos. of packages have been modified without signature by the authorized person. The name and designation stamp of



the authorized signatory is not affixed. The Shipping Bill is not legible for verification.

d) In ARE-1, the Net Weight, Gross Weight, Nos of packages have been modified by the authorized person. The name and designation stamp of the authorized signatory is not affixed

e) In Shipping Bill, the ARE4 date is mentioned as 30.07.2012 whereas the actual date of ARE1 is 31.07.2012

f) In Shipping Bill, the ARE4 date is mentioned as 30.07.2012 whereas the actual date of ARE1 is 31.07.2012

g) In Shipping Bill, the date of ARE1 is found modified without proper signature of the customs officer.

The discrepancies mentioned in Para b) to g) are commonly found in all the cases.

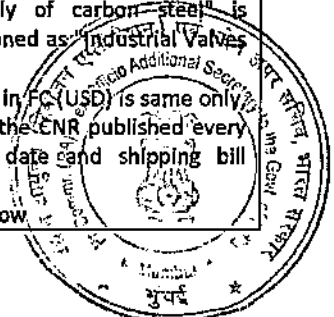
The Assessee has to apply due diligence and care in preparation of proper documentation and this is a regular phenomenon and cannot be condoned for a regular manufacturer Exporter who is having decades of Experience in the field,

Therefore the Appeal may please be rejected on the above grounds.

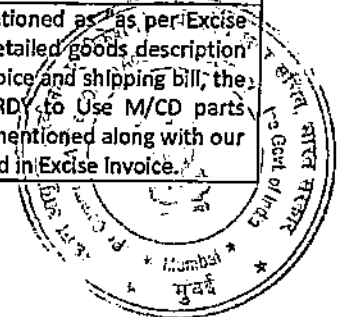
10. Government has carefully gone through the relevant case records and perused the impugned Order-in-original and Order-in-appeal cross objections filed by the department as well as written submissions dated 25.02.2021 filed by the applicant and parawise comments dated 05.03.2021 filed by the respondent department.

11. The applicant vide Annexure-1 to written submissions dated 25.02.2021 has submitted ARE-1 wise explanation which is reproduced below:-

Revision Application No.	ARE-1 No.	Amount of Rebate involved (Rs.)	Explanation of the applicant
195/06/2015	451/12-13	86,318/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice.
195/07/2015	0483/12-13	2,03,872/-	1. In ARE1, goods description mentioned as "as per Excise Invoice", but in excise invoice it is mentioned the material code as description, in commercial invoice and shipping bill, in addition to the material code which is mentioned in the excise invoice, the major classification of "RDY to Use M/CD parts made wholly of carbon steel" is mentioned, in AWB, it is mentioned as "Industrial Valves & valve components." 2. In all the documents, amount in FC (USD) is same only but the INR will vary based on the ENR published every fortnightly between Invoicing date and shipping bill generation date. 3. Air Way Bill copy is attached now.



195/08/2015	0413 & 0415 12/13	3,00,676/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice.
195/08/2015	0418/12-13	52,220/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "Industrial Valves (Cast/Forged Body)" is mentioned alongwith our detailed description as mentioned in Excise invoice.
195/08/2015	0420/12-13	150,338/-	1. In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "Industrial Valves (Cast/Forged Body)" is mentioned alongwith our detailed description as mentioned in Excise invoice. 2. In Shipping Bill, no modification of ARE-1 date is found and the shipping Bill is properly signed by the Customs officer.
195/09/2015	0429/12-13	2,30,814/-	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 2. Weight is notional only, the valves were exported in Nos. and billing on customer, realization from the customer was also nos. only
195/09/2015	0430/12-13	115,407/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice.
195/09/2015	0431/12-13	1,55,303/-	1. In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice. 2. The corrections were made in the ARE-1 before filing shipping bill and signed by the authorized signatory with seal, quantities in shipping bill and ARE1 are matching, legible copy of shipping bill is attached
195/09/2015	0435/12-13	1,57,027/-	1. In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice. 2. The corrections were made in the ARE-1 before filing shipping bill and signed by the authorized signatory with seal, quantities in shipping bill and ARE1 are matching, legible copy of shipping bill is attached
195/09/2015	0436/12-13	1,36,959/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice.
195/09/2015	0441/12-13	77,855/-	In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned, in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned along with our detailed description as mentioned in Excise Invoice.



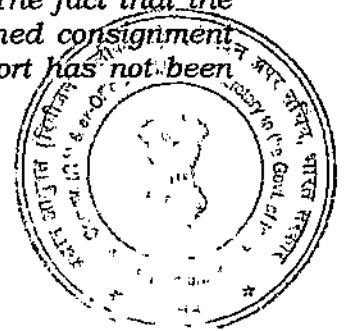
			2.The date of ARE-1 is correct, the date of ARE-1 was entered as 30.07.2012 by mistake, it is only a typographical error.
195/09/2015	0442/12-13	2,21,637/-	1.In ARE1, goods description mentioned as "as per Excise Invoice", in the excise invoice detailed goods description is mentioned , in commercial invoice and shipping bill, the major classification of goods "RDY to Use M/CD parts made wholly of carbon steel" is mentioned alongwith our detailed description as mentioned in Excise invoice. 2.The date in ARE-1 is correct, the date of ARE-1 was entered as 30.07.2012 by mistake, it is only a typographical error.

The applicant has also enclosed copies of ARE-1s, Shipping Bills, Bill of Lading, Invoice etc. in support of its above explanation.

12. Government from the explanation tendered by the applicant supra as well as from the copies of the relevant export documents (ARE-1s, Export Invoice, Shipping Bills, Airway Bills/Bill of Lading) annexed to Annexure-I (of submission dated 25.02.2021) observes that there is justification in its claim that the goods cleared from the factory have been exported. However, no verification of the documents produced by the applicant has been caused by the Commissioner (Appeals) as observed from the impugned Order. The rejection of the rebate claims is solely upheld on account of the Revisionary Authority's Order no.103-141/14-CX dated 31.03.2014 which the lower authorities have construed as a 'binding precedent' without giving any credence to the applicant's claims/submissions which is not appropriate in the interest of justice.

13. As regards reliance placed by the Commissioner (Appeals) on GOI Order No. 103-141/14-CX dated 31.03.2014, Government observes that there are many GOI orders subsequent to Order dated 31.03.2014 referred above, wherein it is held that if on the basis of collateral evidences, the correlation stands established between export documents and excise documents, export of duty paid goods may be treated as completed. In RE : Gimpex Pvt. Ltd. [2020(372)E.L.T.745(G.O.I.) while rejecting the Revision Application filed by the Department, GOI in its Order No. 102/2019-CX dated 18.10.2019 observed as under:-

There is a procedural lapse on the part of the respondent, since CETH on shipping bill has been mentioned wrongly due to oversight. The applicant has not challenged the Bank Realisation Certificate mentioning details relating to invoice no. and date, description of goods, customs authenticated shipping bill, bill of lading and FOB value realized in Foreign Exchange. The fact that the customs preventive officer has certified the export of impugned consignment and remittance has also been received against the said export has not been contested.



Reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of Zandu Chemicals Ltd. v. Union of India wherein the court has held that interpretation of statutes, procedural requirement are capable of substantial compliance, and cannot be held to be mandatory 2015 (315) E.L.T. 520 (Bom.). Further, Government, in the case of Agio Pharmaceuticals Ltd. has held substantial condition of Rule 18 of Central Excise Rules, 2002 are complied with, therefore rebate cannot be denied for minor procedural infraction 2014 (312) E.L.T. 854 (G.O.I).

14. The respondent department has also mentioned in its submissions dated 05.03.2021 that *"past experience in handling similar cases remanded by REVISION Authority show that the Assessee approach this Division with the same documents which were produced before the Original Authorities and no new evidence is let in. Therefore, taking any decision different from the one already taken will be difficult. Further the Assessee is avoiding the Amendment of documents which is available under Customs Act, therefore, the plea of the Assessee is not tenable and deserves to be dismissed.*

15. Government observes that the various rebate claims filed by the applicant for the subsequent periods were also rejected on similar grounds by the Adjudicating authority. However, on appeal being filed against the same, Commissioner Central Excise (Appeals-II) Trichirappalli vide Orders in appeal No.51 to 54/2015-TRY(CEX) dated 14.12.2015, 51 to 55/2016-TRY (CEX) dated 14.09.2016 and 58 to 62/2016-TRY (CEX) dated 20.09.2016 allowed the appeal of the applicant. The Commissioner (Appeals) in these orders arrived at a conclusion that correlation between the description in Excise and Export documents in these cases is established. It is not the case that the applicant had produced amended documents before Commissioner (Appeals) for verification. The Commissioner (Appeals) also observed in the said Orders that the *"Department has not put forth any documentary evidences to prove that the said goods have not been exported by the appellant and no export proceeds were received. In the absence of any such evidences and the subsequent Orders of the Revisionary Authority reaffirming the principle of correlatability, the appellants are eligible for the rebate as mentioned in the said orders"*. Government has upheld these Orders in Appeal vide its Orders No. 82-85/2021-CEX(SZ)/ASRA/Mumbai dated 16.02.2021, 86-90/2021-CEX(SZ)/ASRA/Mumbai dated 24.02.2021 and 98-102/2021-CEX(SZ)/ASRA/Mumbai dated 26.02.2021 and has rejected the Revision Applications filed by the department.

16. There is no investigation carried out by the department to find out the reason/motive of the respondent in showing different CETH in Excise and Customs documents. If at all there is a possibility of applicant availing of higher duty

drawback and higher benefits from DGFT, by showing different descriptions / chapter headings, the same needs to be unearthed. A mere possibility cannot clothe the department 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 applicant's submissions cannot be brushed aside.

17. In view of the above discussion and findings Government sets aside Order-in-Appeal No.179-182/2014 dtd. 14.10.2014 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 4 weeks from the receipt of this order.

18. Revision Applications are disposed off in the above terms.

Shrawan
31/03/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

182-185
ORDER No. /2021-CEX-(SZ) /ASRA/Mumbai Dated 31-3-2021

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

Asokan
31/03/2021
अधीक्षक

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