

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F.No. 198/02-06/17 | 1301

Date of Issue:- 24.02.2021

ORDER NO. 86-90 /2021-CEX (SZ) /ASRA/MUMBAI DATED {6.02.2021} 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 Orders-in-Appeal No.51 to 55/2016-TRY (CEX) dated 14.09.2016 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli.

Sl. No.	Revision Applications / Order in Appeal No.	Applicant	Respondent
1.	195/02-06/17-RA against OIA No. 51 to 55/2016-TRY (CEX) dated 14.09.2016	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 Central Excise & Service Tax, Tiruchirappalli (hereinafter referred to as the "applicant") against Orders-in-Appeal passed by the the Commissioner of Central Excise (Appeals-II), Trichirappalli shown at column 5 of Table shown below:

-:TABLE:-

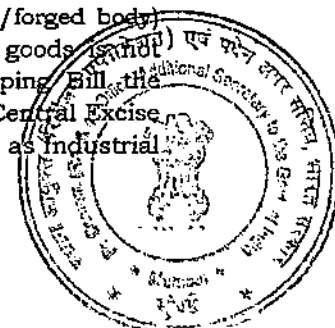
Sl.No.	Revision Application No.	Rebate claim Amount rejected/ disallowed (Rs.)	Rejected vide Order in Original (OIO) No.	OIO set aside vide Order in Appeal (OIA) No.
1	2	3	4	5
1.	198/02-06/2017/RA	52,18,650/-	72/2015-R dated 11.08.2015	Orders-in-Appeal No. 51 to 55 / 2016-TRY (CEX) dated 14.09.2016
2.	-- do --	7,18,327/-	73/2015-R dated 11.08.2015	-- do --
3.	-- do --	2,70,804/-	95/2015-R dated 16.09.2015	-- do --
4.	-- do --	6,38,841/-	96/2015-R dated 21.09.2015	-- do --
5.	-- do --	10,91,373/-	109/2015 dated 26.10.2015	-- do --
	<b>Total</b>	<b>79,37,995/-</b>		

2. The brief facts of the case are that the respondent, i.e. M/s Xomox Sanmar Ltd. Viralimalai, manufacturers of Industrial Valves of various types and sizes 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 "Identifiable ready to use MCD Parts made wholly of Carbon steel manufactured through casting process", "Valve Accessories" and "Industrial Valves (Cast / Forged body)", 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. 52,18,650/- vide Order in Original No. 72/2015-R dated 11.08.2015 (Sr. No. 1 of the Table above):-

- In 12 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 mentioned and Central Excise Chapter head is given as 848180. 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





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. 2,70,804/- vide Order in Original No. 95/2015-R dated 16.09.2015 (Sr. No. 3 of the Table above):-

- In 7 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 848180. 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 1 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 1 ARE-1, the description of goods is mentioned as "I"ble 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 848180. In Shipping Bill the description of goods is mentioned as "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. 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. 6,38,841/-vide Order in Original No. 96/2015-R dated 21.09.2015 (Sr. No. 4 of the Table above):-

- In 7 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 848180. 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 2 ARE-1s, the description of goods is mentioned as "I"ble 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 "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. There is no correlation in description of goods and Central Excise Chapter heads between the Excise documents and Export documents.
- In 3 ARE-1s, 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 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 1 ARE-1, the description of goods is mentioned as "I<sup>ble</sup> 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 848180. In Shipping Bill the description of goods is mentioned as "I<sup>ble</sup> 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.

**3.5 Reasons for rejection of Rebate to the extent of Rs. 10,91,373/-vide Order in Original No. 109/2015-R dated 26.10.2015 (Sr. No. 5 of the Table above):-**

- In 5 ARE-1s, the description of goods is mentioned as "I<sup>ble</sup> 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 "I<sup>ble</sup> 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 10 ARE-1s, 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 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 8 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.

4. Being aggrieved with the said orders, rejecting rebate claims for the reasons mentioned above, the respondent filed the appeals before Commissioner (Appeals). 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 14.09.2016 appears to be not legal and proper as the appellate authority failed to consider the following points:-

(a) In all the ARE-1s and export documents based on which the export incentives are claimed by the assessee, many discrepancies with reference to the description of goods with wrong classification, vessel name, flight details, gross weight net weight, etc., were wrongly declared.



(b) The rebate claims are being an export incentive scheme and the Notification provides for filling of rebate claims by the exporter/claimant which envisages proving that the goods declared in the ARE1s were indeed exported and the onus is not on the department for granting, presumptively.

(c) The decision of the Revisionary Authority, in the case of M/s.Electro Steel Casting Ltd., as reported in 2015(321) ELT150 (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.

(d) The decision of the Revisionary Authority, in the case of M/s.Ran's Pharma Corporation, as reported in 2014(314) ELT953 (GOI) is also not applicable as in the case the goods were procured from a different manufacturer. In the above 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, Ahmadabad were one and the same. In the issue on hand the goods were manufactured and cleared by the assessee and hence the decision it not applicable to the present case.

(e) In the case of Bhavnagar university vs. Politana Sugar Mills Pvt Ltd., as reported in (2003) 2 SSC 111, the Hon'ble Apex Court has held that "It is well settled that a little difference in facts or 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 statue- Reliance thereon without discussion of facts- Decision not to be relied upon without discussing similarity of facts- Judgements 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 are different from the present dispute, the decisions rendered therein are not squarely applicable to the case on hand.

(f) The Revisionary authority, CBEC, New Delhi in their order No.103-141/14 CX. Dated 31.3.2014 in respect of appeal of M/s Sanmar Foundries, Viralimalai, against the order of rebate sanctioning authority rejecting rebate claims in respect of ARE1s 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 landing, 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 document 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 claim are rightly held inadmissible."*



The above said decision of the Government of India mutandis mutatis applicable to the instant case on hand under 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 while deciding the issue.

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

(g) The rebate of duty is an export incentive scheme extended to the manufacturers and all safeguards and conditions mentioned in the Notifications are to be scrupulously complied with for sanction of rebate, Further, the 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 cannot mention one description in excise invoice and another description in shipping Bill, when both the documents are prepared by them.

(i) 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-is cannot conclusively prove that the goods cleared from 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.

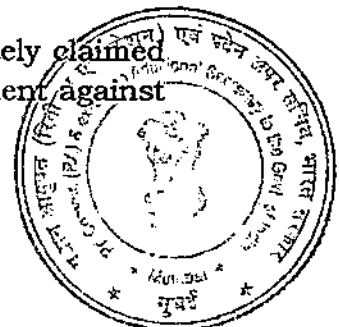
6.4 The objective of excise rebate under Rule 18 is to ensure that only the goods are exported and the taxes are not exported. Even though there is no requirement for receipt of convertible foreign exchange in Rule 18 this receipt has also been demonstrated. They have already produced all relevant documents 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 (GOI) & Electro Steel Casting Ltd (2015) 321 ELT 150 (GOI) 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 5 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 Department argued that even though the appellants have filed the said 5 rebate claims in time and there is no bar under unjust enrichment act, there are discrepancies noticed in the tariff heading adopted in excise documents and export 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, had suffered excise duties, were removed from the factory under ARE-1s and were duly cleared after requisite Customs checks, through shipping bills and finally exported as evidenced through the bill of lading. Whereas it is seen from the records that the appellants has clearly mentioned the export invoice number and excise invoice number and date, value of the goods and description in both the Shipping Bill as well as in the ARE-1 which are matching and help to establish the correlation between the excise documents and export documents. I also find that the value in USD is matching in the four crucial documents viz export invoice, excise invoice, ARE-1 and Shipping Bill. 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. Further the description between Excise invoice and Export invoice is matching to establish correlation as seen from the Annexure enclosed. The only minor variation noticed is the six digit chapter heading was mentioned in the excise invoices whereas eight digit chapter heading was mentioned in shipping bills. No description of goods mentioned in all ARE-1s instead the description mentioned was " as per out excise invoice". Even if any minor procedure*



*lapses is noticed in the excise as well as export documents this cannot take away the beneficial provisions, as long as there is substantial compliance.*

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. As regards the contention of the applicant [para 5.1(a) supra] that vessel name, flight details, gross weight net weight, etc., were wrongly declared Government observes that these discrepancies were observed by the Original Authority in ARE-1s 1531 and 1532 both dated 25.08.2015 which were duly corrected by the respondent. On being satisfied, the Original authority at Para 16 A of Order in Original No. 73/2015 dated 11.08.2015 confirmed that there is no dispute regarding vessel name and date of sailing in these ARE-1s. Similarly at para 16 B of Order in Original No. 73/2015 dated 11.08.2015, the Original authority observed that as amended by the Airway Bill (AWB) issuing authorities, the shipping bill No. and flight No. are included in the corrected AWB No. NMAA40002418 dated 02.09.2014 and so the omissions are made good now, hence there is no dispute regarding omissions of shipping bills No. & Flight No. in Air Way Bill. As these deficiencies were in fact rectified to the satisfaction of the Original authority, there can be no dispute about this.

12. Government further observes that the "I"ble ready to use MCD Parts made wholly of Carbon steel Mfd thro' casting process" as well as valve accessories are classified under independent chapter subheadings by their function/description



and being parts of the Industrial valve. Therefore, even if such manufactured goods may have been cleared from the factory in the basic form under chapter sub heading 84818030 as Industrial Valves/ components of valves, rebate cannot be denied only on the grounds of wrong mentioning of chapter subheading if it is otherwise established that the same goods cleared the factory have in fact been exported. 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.

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. Moreover, the basic ingredient of co-relatability as discussed supra have been duly examined by the Appellate authority in the instant cases. 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. The original authority, i.e. Assistant Commissioner, Central Excise -II Division, Trichy at para 15/16 of all the four Orders in Original mentioned at column no. 4 of Table at para 1 supra has also observed as under:-

*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 55 / 2016-TRY



(CEX) dated 14.09.2016 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*  
16/02/21  
(SHRAWAN KUMAR)

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

86-90  
ORDER No. /2021-CEX (SZ) /ASRA/Mumbai Dated (16-02-2021).

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  
Viralimalai- 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



