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SPEED POST



F.Nos. 195/610/2011-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....

10/7/13

ORDER NO. 877/13-Cx DATED 10.07.2013 OF THE GOVERNMENT OF INDIA,  
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA,  
UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Order in Revision Application filed under Section 35  
EE of the Central Excise Act, 1944 against the  
orders-in-appeal No. 88(47) 2011 dated 04.05.2011  
passed by Commissioner Central Excise (Appeals)  
Aurangabad

APPLICANT : M/s Verroc Engineering Pvt. Ltd., Aurangabad

RESPONDENT : Commissioner of Central Excise & Customs,  
Aurangabad

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## **ORDER**

This revision application is filed by M/s Verroc Engineering Pvt. Ltd., E-4, MIDC, Waluj, Aurangabad against the order-in-appeal No. 88(47) 2011 dated 04.05.2011 passed by Commissioner Central Excise (Appeals) Aurangabad with respect to order-in-original No. 328/RBT/2010-11 dated 11.02.2011 passed by DCCE Aurangabad-II Division.

2. Brief facts of the case are that the applicant of motor vehicle parts falling under chapter 87 of Schedule of Central Excise Tariff Act, 1985. The applicants purchased goods viz. spare parts of three wheelers, Wiper Motor/ Hood complete etc. from various units such as M/s Shalimar Rexene India Ltd., Sanaswadi and M/s Varroc Engineering Private Limited Chakan, Pune and exported the said goods under Letter of Understanding. Afterwards the applicant filed claim of rebate of duty paid on the said goods by the suppliers. After verification of documents, the Assistant Commissioner, Central Excise and Customs, Aurangabad-II Division sanctioned the rebate of Rs.3,28,440/- vide OIO No. 228/RBT/2005 dated 19.10.2005.

2.1 Being aggrieved, the department preferred an appeal against the said OIO and the Commissioner (Appeals) decided the appeal vide order-in-appeal no. AKD (23) 22/2007 dated 13.02.2007, wherein it was held that *'the assesses was entitled to rebate under Rule 18 of Central Excise Rules 2002 either as duty paid on goods themselves or as duty paid on the inputs gone into manufacture of the export goods; that therefore he need not go into question of whether there was actually any manufacturing activity or not.'* As regards to departmental stand that the goods were exported under ARE-1 instead of under ARE-2, it was held that it was a purely procedural matter without any revenue implications. On these grounds, the Commissioner (Appeals) dismissed the departmental appeal and upheld the order-in-original.

2.2 Being further aggrieved, the department filed a revision application mainly on the grounds that the Commissioner (Appeals) has ignored the fact that the Assistant Commissioner, Central Excise and Customs, Aurangabad-II Division, had sanctioned

rebate of input stage credit on the exported goods. The condition for claiming input stage rebate is that the input should go in the final product. However, in the instant case, no manufacturing process had been carried out and the said goods were not used in any manufacturing process. In other words, they had exported bought out goods, which cannot be treated as inputs. Further, it was also noticed that the assesses should have exported the goods on ARE-2 as per the provisions of notification no. 21/2004-CE(NT) dated 06.09.2004. However, they had exported the goods on the strength of ARE-1. Thus, the assesses did not follow the provisions of notification no. 21/2004-CE(NT) dated 06.09.2004 and Rule 18 of the Central Excise Rules, 2002. Therefore the rebate claimed by the assesses on account of input stage credit was not admissible.

2.3 The Government of India, Ministry of Finance (Department of Revenue) vide order no.791/10-Cx dated 15.04.2010 issued under F.No. 195/52/07-RA-Cx by the Joint Secretary, Revision Application, observed that the said items appear to have been exported by the assesses as a merchant exporter and not as a manufacturer exporter. On the perusal of documents, it could not be ascertained whether any procedure as prescribed under the notification / rules for the merchant exporter was followed by the assesses and how they have paid duty on the exported goods whether it was equal to the duty paid by the actual manufacturer (from where the assesses have purchased the goods) or not. The Government remanded the case back to the original adjudicating authority to decide the case afresh after giving proper opportunity of hearing to the assesses.

2.4 The Deputy Commissioner, Central Excise and Customs, Aurangabad-II Division vide OIO No. 328/RBT/2010-11 dated 11.02.2011 held that the applicants had failed to follow the prescribed procedure and as such they are not entitled for rebate under Rule 18 of the Central Excise Rules 2004 read with notification issued thereunder. The respondent rejected the rebate claim for Rs.3,28,440/- in respect of ARE-1 No.33/18.07.2005 under section 11B of the Central Excise Act 1944. Since the rebate claim was already sanctioned to the applicants, the Deputy Commissioner ordered for

recovery of the same under section 11 A of the Central Excise Act 1944. Recovery of interest of the erroneous refund under the provisions of section 11 AB of the Central Excise Act 1944 was also ordered vide said OIO dated 11.02.2011.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The applicants are registered with Central Excise department having Central Excise Registration No. AAACV2420JXM003 and not trader. The applicants exported the goods after checking / testing and repacking to make the products marketable in foreign markets for export.

4.2 The Commissioner (Appeals) has rejected the appeal solely on the grounds that, no evidence was brought on records to establish that the bought out items have undergone nay manufacturing process or Central Excise duty on goods was paid by the applicants and applicants have not followed the procedure for claiming the rebate of "bought out items". The Commissioner (Appeal) has not considered the fact that exported goods were duty paid and applicants have not taken the Cenvat credit of same. It is settled law that export rebates cannot be denied procedural lapses.

4.3 The Commissioner (Appeals) has not considered the case laws relied upon by the applicants. The Commissioner (Appeals) has not considered the fact that, there is no dispute that the goods exported by the applicants are duty paid; the goods are received by the applicants and were tested / checked and repacked in export worthy packing before exports. The appeal has been rejected purely on the basis of procedural lapses. The fact that while sanctioning claim initially by then Assistant Commissioner, all these facts were verified and the claim was sanctioned are also not considered by the Commissioner (Appeals).

4.4 In view of above applicant requested to set aside the impugned order-in-appeal and allow rebate claim.

5. Personal hearing scheduled in this case on 26.06.2013 was attended by Shri Mathdev RV Nagnath, DGM on behalf of the applicant who reiterated the grounds of revision application. Shri Chuna Ram ACCE attended hearing on behalf of department who reiterated the findings in impugned order-in-appeal.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that this case was remanded vide GOI order NO.791/10-Cx dated 15.04.2010 to the original authority with the direction process the rebate claim filed by applicant as merchant exporter. The original authority and appellate authority has disallowed the said rebate claim on the ground that applicant has not followed the procedure to export the goods as merchant exporter.

8. Applicant has procured the goods from manufacturers under valid duty paying documents on payment of duty and exported the same on the strength of ARE-1 form. Since the goods are not manufactured by applicant so, he has exported the goods in the capacity of merchant exporter. The original authority as well as appellate authority has not pointed out as to what procedure has not been followed. It is quite clear that procedure as prescribed under Not. No. 21/04-CE(NT) dated 06.09.2004 was not followed and the said goods were not used in the manufacture of exported goods so the input rebate claim was held inadmissible. In this case, initially ACCE had sanctioned the input rebate claim of Rs.3,28,440/- vide order-in-original No. 228/RBT/2005 dated 19.10.2005 after verifying the documents with reference to payment of duty and export of goods. In the said order, it has been categorically held that impugned duty paid goods were exported out of India vide ARE-I 33/18.07.2005, SB No. 607725 dated 20.07.2005 and Bill of Lading No. BOM/COP/190237. It was also noticed in the said order-in-original that the Customs Officer Mumbai had certified that goods have been exported. In view of this categorical finding that duty paid goods

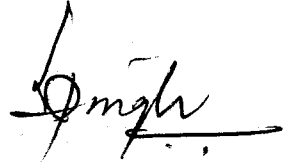
have been exported, the rebate claim cannot be denied. In this case, the department has not disputed the export of duty paid goods. The procedural lapses are not specifically pointed out by original authority. However, it is a settled legal position that substantial benefit of rebate cannot be denied for minor procedural lapses which are condonable.

9. In view of this position, Government holds that rebate claim is admissible to the applicant under Rule 18 of Central Excise Rules 2002 read with Not. No. 19/04-CE(NT) dated 06.09.2004. The impugned order-in-appeal is therefore set aside and revision application is allowed with consequential relief.

10. The revision application thus succeeds in terms of above.

11. So ordered.

M/s Verroc Engineering Pvt. Ltd.,  
E-4, MIDC, Waluj,  
Aurangabad



(D.P. Singh)

Joint Secretary (Revision Application)

A.H.A.

(समस्त शाही/Bhagwat Sharma)  
सहायक आयुक्ता (Assistant Commissioner)  
E B C - O S D (Revision Application)  
सचिवालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt. of India  
दिल्ली / New Delhi

**Order No.877/13-Cx dated 10.07.2013**

Copy to:

1. Commissioner of Customs & Central Excise, N-5, Town Centre, CIDCO, Aurangabad – 431003
2. Commissioner of Customs & Central Excise (Appeals), N-5, Town Centre, CIDCO, Aurangabad – 431003
3. The Deputy Commissioner of Central Excise & Customs, Division-II Aurangabad, N-5, Town Centre, CIDCO, Aurangabad – 431003

4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)  
OSD(Revision Application)

