

SPEED POST



F.No. 198/32/2018-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue...13/5/21

Order No. 99/2021-CX dated 12-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NOI-EXCUS-002-APP-1823-17-18 dated 14.03.2018 passed by the Commissioner (Appeals), Customs & CGST, Noida.

Applicants : Commissioner of CGST & Central Excise, Gautam Budh Nagar, Greater Noida.

Respondent : M/s AGTEC Industries Ltd., Greater Noida.

ORDER

A revision application no. 198/32/2018-RA dated 02.07.2018 has been filed by the Commissioner of CGST & Central Excise, Gautam Budh Nagar, against Order-in-Appeal No. NOI-EXCUS-002-APP-1823-17-18 dated 14.03.2018, passed by the Commissioner (Appeals), Customs & CGST, Noida, wherein the appeal of the respondent, M/s. AGTEC Industries Ltd., filed against Order-in-Original No. 249/AC/D-I/GBN/17-18 dated 20.12.2017 has been allowed.

2. Briefly stated, the respondent, M/s. AGTEC Industries Pvt. Ltd. (formerly known as M/s. ANG Automotive Components Pvt. Ltd.) are engaged in the manufacture of "Timber Wedge, Log Splitter and other tools". The said goods were exported on payment of duty under claim of rebate, in terms of Rule 18 of Central Excise Rules, 2002, and the respondent filed 06 rebate claims, totally amounting to Rs. 23,11,552/. The goods exported were shown to be classified under CETH 84669200 and the applicable duty under this tariff heading was paid and rebate claimed thereon. The original authority rejected the claims on the ground that the respondent had classified the same goods under CETH 8201/8436 in their ER-1 returns which was not disputed by the department also. Since the goods falling under CETH 8201/8436 were exempted from payment of duty under Notification no. 12/2021-CE dated 13.03.2012, no duty was payable on the subject goods and, thus, rebate was not admissible in this case. The contention that the classification, under CETH 8201/8436, on the invoices/ARE-1s was clerical mistake, also did not find favour with the original authority. Aggrieved, the respondents filed an appeal before the Commissioner (Appeals) who allowed their appeals on the ground that the issue has already been decided by the earlier Commissioner (Appeals) in favour of the respondent and this case also had to be subsumed in the earlier order.

3. The present revision application has been filed, mainly, on the ground that the respondent had been working under self-removal procedure and had self-assessed the subject goods under CETH 8201

in ER-1 Returns which, the department, at no point of time, had disputed and the Commissioner (Appeals) had erred by creating a new dispute of classification of goods. The goods were being classified under CETH 8201 by the respondent in their ER-1 returns and consequently were exempted from duty under notification no. 12/2012-CE dated 17.03.2012 and hence no rebate was admissible to them in this case.

3. Personal hearing in the matter was fixed on 16.03.2021, 05.04.2021, 26.04.2021 and 10.05.2021. Sh. Sanjay Bharti, Superintendent, appeared for the applicant department on 16.03.2021 and supported the revision application. None appeared for the respondent and no request for adjournment has been received. Since sufficient opportunity has been granted to the respondent for personal hearing, the matter is taken up for decision on the basis of records available.

4.1 The Government has examined the matter. The respondent had classified the exported goods under CETH 8201/8436 in their ER-1 returns and other documents, and the department had also not disputed this classification. Further, the respondent was operating under self-removal procedure and the assessment of goods and duty payable was also done by themselves. Hon'ble Supreme Court has, in the case of ITC Ltd. vs CCE, Kolkata {2019 (368) ELT 216 (SC)}, held that "*the claim for refund cannot be entertained under the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would be within the ken of Section 27 to set aside the order of self-assessment and re-assess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act*". Thus, in case, the respondent were of the opinion that self-assessment made by them was not in order, they should have got the same modified in accordance with law, which does not appear to have been done.

4.2 Further, as observed above, Commissioner (Appeals) has decided the appeal in favour of the respondent herein solely by following the Order-in-Appeal No. NOI-EXCUS-002-APP-1764 to 1769-16-17 dated 29.03.2017 passed by his predecessor. The Government finds that the aforesaid Order-in-Appeal dated 29.03.2017 has been set aside, vide GOI order no. 702-707/18-CX dated 24.12.2018. Thus, the very basis of the impugned Order-in-Appeal is removed.

4.3 In view of the above, the impugned order of the Commissioner (Appeals) cannot be sustained.

5. The impugned Order-in-Appeal is, accordingly, set aside and the revision application is allowed.


 (Sandeep Prakash)

Additional Secretary to the Government of India


Commissioner, CGST & Central Excise, Gautam Budh Nagar,
 3rd Floor, Wegmans Business Park, Plot No-3,
 Knowledge Park-III, Distt.-Gautam Budh Nagar,
 Greater Noida -201 306 (U.P.).

G.O.I. Order No. 99/21-CX dated 12-5-2021

Copy to: -

1. M/s. AGTEC Industries Ltd., 19, Udyog Vihar, Greater Noida- (U.P.)
 2. The Commissioner (Appeals), Customs & CGST, Noida, C-56/42, Renu Tower, Sector-62, Noida.
 3. The Assistant Commissioner, CGST Division-I, 3rd Floor, Wegmans Business Park, Knowledge Park-II, Greater Noida-201 306.
 4. P.S. to A.S. (Revision Application).
 5. Guard File.
- ✓ G. Spare Copy.

ATTESTED


 13/5/21
 Subul. (CA)