

F.No. 198/67/2017-RA
F.No. 198/68/2017-RA
F.No. 198/69/2017-RA
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REGISTERED
SPEED POST



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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.....

Order No. ~~702-707-18-Cx~~ dated ~~24-12-2018~~ of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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-1756 to 1763-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-1764 to 1769-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-1770 to 1771-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-858-17-18 dated 15.09.2017 and NOI-EXCUS-002-APP-859 to 860-17-18 dated 15.09.2017, passed by the Commissioner of Central Excise (Appeals), Noida

Applicant : Commissioner of Central Excise, Noida-II, Greater Noida

Respondent : M/s ANG Automotive Components Pvt Ltd., (M/s ANG Industries Ltd.)

ORDER

Five revision applications No. 198/67/17-RA dated 18.05.18, No. 198/68/17-RA dated 18.05.18, No. 198/69/17-RA dated 18.05.18, No. 198/228/17-RA dated 16.11.17 and No.198/229/17-RA dated 16.11.17 are filed by the Commissioner of Central Excise and Service Tax, Noida-II, against the Orders-in-Appeal Nos. NOI-EXCUS-002-APP-1756 to 1763-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-1764 to 1769-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-1770 to 1771-16-17 dated 29.03.2017, NOI-EXCUS-002-APP-858-17-18 dated 15.09.2017 and NOI-EXCUS-002-APP-859 to 860-17-18 dated 15.09.2017, passed by the Commissioner of Central Excise (Appeals), Noida, whereby the departmental appeals filed against the Orders-in-Original allowing rebate of duty to the respondent, M/s ANG Automotive Component Pvt. Ltd., have been rejected.

2. The revision applications are filed mainly on the grounds that the goods exported by the respondent were cleared after self assessment by classifying the goods under CETH 8201, the same classification was followed by the respondent for long time in ER-1 returns, the invoices and the documents like ARE-1 etc., the goods covered under chapter heading 8201 were absolutely exempted from Central Excise duty in terms of notification No. 12/2012-CE dated 17.03.2012 issued under Section 5A of Central Excise Act, 1944, the exemption from Central Excise duty being absolute in nature the respondent did not have any option to pay duty on the exported goods, consequently rebate of duty could not be granted against the wrongly paid duty on the exported goods but the Commissioner (Appeals) has entirely ignored these factual and legal arguments and has rejected the departmental appeals by changing the classification of the exported good from chapter heading 8201900 to chapter heading no. 8466 even when there were no classification issue in the departmental appeals filed before the Commissioner (Appeals).

3. The personal hearing was fixed on 26.10.2018 and thereafter on 28.11.2018. But no one availed the hearing on these dates from the applicant or the respondent's side. Further no reason for non-availment of the hearing was given and no request for any other date for hearing was also made from which it is implicit that they are not interested in availing the personal hearing. Hence, the revision applications are being decided on the basis of available records and without offering any further hearing.

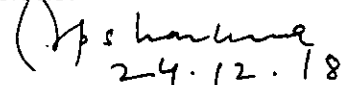
4. The Government has examined the matter and it is found evident from the revision applications and orders of the lower authorities that the classification of the goods was not involved in the rebate claims filed by the respondent before the jurisdictional Assistant / Deputy Commissioner as the respondent themselves had classified the goods under sub-heading 8201 in all the export documents and even in the monthly return ER-1's. Even before exporting the goods in the instant cases the respondent had classified these goods under sub heading 8201 from the beginning. The respondent has also not denied this fact that they had classified the goods under sub heading 8201 only in past. Accepting the same classification the Assistant Commissioner also sanctioned rebate claims to the respondent, but by ignoring the exemption notification No. 12/2012-CE. The department filed the appeals before the Commissioner (Appeals) on the premise that the exported goods were absolutely exempted from payment of duty and the respondent had paid duty unnecessarily because of which the rebate of duty was not admissible. Thus the classification dispute was never involved before the original adjudicating authority or the first appellate authority as it was never raised by the department also in their appeals before the Commissioner (Appeals). In fact the respondent for the first time pleaded before the Commissioner (Appeals) in their reply to the departmental appeals that they had classified the goods under 8201 mistakenly in invoices and ARE-1s and the goods were correctly classifiable under sub-heading 8465. Apparently this argument regarding change of classification of goods was made before the Commissioner (Appeals) to fend off the main basis of the departmental

appeals that the exported goods classifiable under sub heading 8201 were exempted from Central Excise duty under notification no. 12/2012 and change of classification was only used as a escape route. Surprisingly the Commissioner (Appeals) also instantaneously accepted the respondent's above argument and completely evaded the main issue raised in the departmental appeals regarding exemption of exported goods from the Central Excise duty under notification 12/2012 even when classification dispute was not involved in the appeals filed by the department. He has also not discussed in detail the nature of goods and how the change in classification was warranted when it was not an issue either in the O-I-Os or the appeals filed by the department before him. On the basis of above narrated facts, the government is fully convinced that the only issue raised before the Commissioner (Appeals) was that the rebate of duty had been sanctioned wrongly by the Assistant Commissioner because no Central Excise duty was payable in the light of notification 12/2012-CE and the Commissioner (Appeals) has manifestly exceeded his jurisdiction by changing the classification of the exported goods from 8201 to 8465 and that too without extending the opportunity to the departmental authorities to rebut the fresh claim of the respondent that goods were correctly classifiable under 8465. The classification of the goods could not be changed by the Commissioner (Appeals) dealing with the departmental appeal filed before him just to examine the admissibility of rebate of duty in the light of aforesaid exemption notification and the Commissioner (Appeals) should have confined himself to the issue raised in the departmental appeals only. Hence, the government agrees with the applicant that the Commissioner (Appeals) has committed an error by ignoring the main issue regarding non-availability of rebate of duty due to unconditional exemption of duty in respect of the exported goods and by changing the classification of the goods abruptly. Accordingly, the government sets aside the Orders-in-Appeal and remands this matter back to the Commissioner (Appeals) for re-examination of the main issue whether the exported goods classified by the respondent themselves under sub heading 8201 were absolutely exempted under Notification No. 12/2012 CE and whether the rebate of duty could be granted even when they were not required to

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pay any duty of excise. It is further clarified that these issues will be decided after extending due opportunities to both the applicant and the respondent.

5. The revision applications are allowed in terms of above discussions.


24.12.18
(R.P.Sharma)

Additional Secretary to the Government of India

M/s

The Commissioner,
Central Excise, Noida-II,
3rd floor, Wegmans Business Park,
Plot No. 3, Knowledge Park – III,
Greater Noida- 201306
Distt. Gautam Budh Nagar (U.P.)

Order No. 702-707/18-Cx dated 24-12-2018

Copy to:

1. M/s ANG Automotive Component Pvt. Ltd (M/s ANG Industries Ltd.), 19-A, Udyog Vihar, Greater Noida (U.P.)
2. The Commissioner (Appeals), Central Excise and Service Tax, Meerut -II, Noida C-56/42, Renu Tower, Sector-62, Noida-201307 (UP)
3. The Assistant Commissioner, Central Excise, Division-II, 3rd floor, Wegmans Business Park, Knowledge Park-III, Greater Noida-II- 201306
4. PA to AS(RA)
5. Guard File

ATTESTED

(Ashish Tiwari)
Assistant Commissioner