

SPEED POST



F. No.198/198/2016-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 14/11/22

Order No. 79/2022-CX dated 14-11-2022 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. CMB-CEX-000-APP-121 to 124-16 dated 20.05.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore.
- Applicant : Pr. Commissioner of CGST & Central Excise, Coimbatore.
- Respondent : M/s. Flowserve India Controls Pvt. Ltd., Coimbatore.

ORDER

A Revision Application No. 198/198/2016-R.A. dated 05.09.2016 has been filed by the Commissioner of Central Excise, Coimbatore, presently, the Principal Commissioner of CGST & Central Excise, Coimbatore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CMB-CEX-000-APP-121 to 124-16 dated 20.05.2016, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original Nos. 392/2015, 393/2015, 394/2015 & 395/2015, all dated 27.07.2015 passed by the Deputy Commissioner of Central Excise, Coimbatore-III Division, in appeals filed by M/s. Flowserve India Controls Pvt. Ltd., Coimbatore (hereinafter referred to as the Respondent).

2. Brief facts of the case are that the Respondents herein filed four rebate claims for Rs. 1,05,29,453/-, Rs.1,49,54,306/-, Rs.1,55,79,546/- & Rs. 1,97,82,798/-, under Rule 18 of the Central Excise Rules, 2002. The original authority, vide the aforesaid Orders-in-Original, disallowed cash rebate of 50% of the claim holding that the goods exported by the Respondents were pumps primarily designed to handle water classified under Chapter heading 84137010 and, hence, were eligible only for 6% duty rebate. The balance 6% was ordered to be re-credited to the CENVAT account of the Respondent as detailed below:

S. No.	Date of filing of rebate claim	Period of Claim	Amount of rebate claimed (in Rs.)	O-I-O & date	Amount of rebate sanctioned in cash (in Rs.)	Amt. ordered to be re-credited in Cenvat account (in Rs.)
1	17.02.14	May,2013	1,05,29,453	395/2015 dt 27.05.15	52,64,726	52,64,727
2	12.03.14	June,2013	1,49,54,306	394/2015 dt 27.05.15	74,67,426	74,86,880
3	31.03.14	July,2013	1,55,79,546	393/2015 dt 27.05.15	77,84,273	77,95,273
4	13.02.14	August,2013	1,97,82,798	392/2015 dt 27.05.15	98,91,398	98,91,400

Aggrieved, the Respondents herein filed appeals before the Commissioner (Appeals) who, on merits, agreed with the contention of the Respondents herein that the goods exported by them were pumps and their parts designed for handling of liquids other than water i.e., chemicals, gases, oils, petrol, hydro-carbons etc. attracting duty @12.36% ad-valorem. With regards to the quantum of rebate payable in cash, Commissioner (Appeals) observed that the Respondents had exported certain quantities of pumps meant for handling of water too, which attracted duty @ 6% ad-valorem during the months of May, 2013 and June, 2013 as indicated below:

S. No	Period of claim	ARE-1 Ref No. & date	Amt. of rebate claimed (in Rs.)	OIO No & date	Amt. of rebate sanctioned (in Rs.)	Amt. ordered to be re-credited in Cenvat acc. (in Rs.)
1	May,2013	62/17.05.13	20,77,874	395/2015 dt 27.07.15	10,38,937	10,38,937
2	June,2013	174/29.06.13	9,04,274	394/2015 dt 27.07.15	4,52,138	4,52,138

Accordingly, Commissioner (Appeals) modified the aforesaid OIOs to the following extent:

S. No.	Order-in-Original & date	Amt. re-credited in Cenvat account by the original authority and ordered to be paid in cash vide the impugned O-I-A (in Rs.)
1	392/2015 dated 27.07.2015	98,91,400
2	393/2015 dated 27.07.2015	77,95,273
3	394/2015 dated 27.07.2015	70,34,742
4	395/2015 dated 27.07.2015	42,25,790

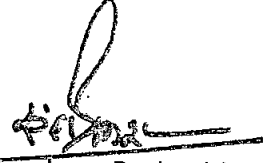
3. Revision Application has been filed, mainly, on the grounds that the appellate authority had relied on brochures of the products exported to decide the sanction of rebate in cash which are not recognized documents under law for verifying the correct description of exported goods; that the rebate sanctioning authority had relied upon the invoice copies and E.R.1 returns to arrive at the conclusion that goods exported were pumps for handling water. Written Reply dated 21.12.2016 has been filed by the Respondents.

4. Personal hearing was fixed on 12.10.2022, 27.10.2022 and 11.11.2022. No one appeared for either side in the hearing fixed on 12.10.2022. In the hearing held, in virtual mode, on 27.10.2022, Ms. Ramya Dakshina Murthy, DC appeared for the Applicant department and requested for a short adjournment, which was consented by Sh. Dayananda K., CA for the Respondent. In the hearing held, in virtual mode, on 11.11.2022, Ms. Ramya Dakshina Murthy, DC appeared for the Applicant and reiterated the contents of the RA. No one appeared for the Respondent nor has any request for adjournment been received. However, Written Submissions have been filed for the Respondents, vide email dated 27.10.2022.

5. The Government has carefully examined the matter. It is observed that the present dispute has arisen due to a dispute in respect of correct classification of the goods exported. It is the contention of the Respondents that the goods exported are rightly classifiable under CETH 84137099, 84137090 and parts under 84139120, attracting duty @12.36%. The department's contention has been that the goods were classifiable under CETH 84137010 attracting duty @6%. It would appear that the Respondents declared the goods as "Centrifugal Pumps", without indicating their end use i.e., whether for pumping of water or other liquids. The original authority has, in this background, dealt with the matter in the following terms: *"Regarding the applicability of correct rate of duty, in view of non-declaration of correct CESTH in the ER1 return/invoices/reply, and in the absence of concrete evidences, I could not arrive at a conclusion about the impugned good's classification"*. Thus, it is evident that the original authority found that a complete declaration was ostensibly not made and, hence, without causing any further inquiry or verification decided to adopt a classification which attracted lower rate of duty. Needless to say that if the original authority was constrained in deciding the correct classification on the basis of declaration made, he should have obtained further information from the Respondents herein and thereafter decided the issue after due examination. The Commissioner (Appeals) has corrected this omission/mistake committed by the original authority and has examined the literature produced to arrive at the correct classification of the goods. The Government is in agreement with the findings recorded by the Commissioner (Appeals) in respect of

the classification of the subject goods. The impugned OIA, therefore, does not merit revision.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Principal Commissioner of CGST, Coimbatore,
No. 6/7, A.T.D. Street, Race Course Road,
Coimbatore-641018

G.O.I. Order No. 79/22-CX dated 14-11-2022

Copy to: -

1. M/s. Flowserve India Controls Pvt. Ltd., Pump Division, 136/3 & 137, Myleripalayam Road, Myleripalayam Post, Othakalmandapam, Coimbatore-641032 .
2. The Commissioner of CGST & Central Excise (Appeals), No. 6/7, A.T.D. Street, Race Course Road, Coimbatore-641018
3. M/s Vishnu Daya & Co. LLP, Chartered accountants, No. 337, Karuna complex, 3rd Floor, Sampige Road, Malleshwaram, Bengaluru-560003
4. PS to AS (RA).
5. Notice Board.
6. ~~Guard File.~~
7. Spare Copy

ATTESTED



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