

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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/10 & 10A/17-RA/2545

Date of issue: 14/12/2022

1193-
ORDER NO. 1194/2022-CX (WZ)/ASRA/MUMBAI DATED 09/12/2022
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.

Applicant : M/s. Metro Exporters Pvt. Ltd.

Respondent: Commissioner, CGST & CX, Mumbai Central

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal passed by the
Commissioner, CGST & CX (Appeals-III), Mumbai.

ORDER

Two Revision Applications have been filed by M/s. Metro Exporters Pvt. Ltd., Kakad Chambers, 132, Dr. Annie Besant Road, Worli, Mumbai - 400018 (here-in-after referred to as 'the Applicant') against following Orders-in-Appeal (OIA) passed by the Commissioner, CGST & CX (Appeals-III), Mumbai:-

RA No.	OIA No./date	OIO No./date	Amount involved (in Rs.)
195/10/17-RA	PK/58/MC/2017 dated 22.08.17	Refund/KS/103/2015 dated 22.07.15	32,804/-
198/10A/17-RA	PK/61/MC/2017 dated 22.08.17	Refund/KS/42/2014 dated 31.03.15	1,03,573/-

2.1 The brief facts of the case are that the applicant, a merchant exporter, had filed rebate claims under Notification No. 41/2012-ST dated 29.06.2012 for Service Tax paid on the services namely Port Service, Custom House Agent, Technical Testing and Analysis Services, Banking and Other Financial Services and Transportation of Goods by Road Services, used in relation to the goods exported by them. The rebate sanctioning authority rejected the rebate claims on the ground of non-compliance of condition 1(c) of the said Notification.

2.2 The rebate claim for Rs. 32,804/- for the period Jul-14 to Sep-14 was rejected vide OIO No. Refund/KS/103/2015 dated 22.07.2015. Aggrieved, the applicant filed an appeal with the Commissioner (Appeals) which was rejected vide OIA No. PK/58/MC/2017 dated 22.08.2017.

2.3 On the same grounds, the rebate sanctioning authority rejected the rebate claim of Rs. 2,39,402/- for the period Apr-13 to Mar-14. The appeal filed by the applicant in this regard was partially allowed by the Appellate authority, viz. while an amount of Rs.1,35,829 was allowed, the appeal for remaining amount of Rs.1,03,573/- pertaining to the period Jan-14 to Mar-14 was rejected vide OIA No. PK/61/MC/2017 dated 22.08.2017.

3. Being aggrieved, the applicant has filed the current Revision Applications on the following grounds:

- (i) The learned Commissioner failed to appreciate that the refund claimed is less than what is available as per procedure specified in Para 2 of the Notification No 41/2012-ST.
- (ii) The learned Commissioner failed to appreciate that the refund cannot be denied on the ground that there was a procedural lapse.
- (iii) The learned Commissioner ought to have appreciated that condition mentioned in 1(c) is not at all applicable to the facts of the case because the Appellant has not claimed any refund as per procedure 2, hence the only option left with the Appellant is to claim the refund as per procedure specified in Para 3.

4. Personal hearing in this case was held on 20.10.2022 and was attended by Shri Ajay Telisara, CA, on behalf of the applicant. He submitted that the applicant is claiming lesser amount of rebate. He submitted that at least lesser amount should have been sanctioned to them. He requested to allow their applications.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government notes that the issue to be decided in this case is whether a rebate claim filed under Notification No. 41/2012-ST dated 29.06.2012 can be denied for non-fulfillment of condition 1(c) of the Notification viz. the difference between the amount of rebate under the procedure specified under Paragraph 2 and Paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2.

7. Government observes that the applicant, a merchant exporter had exported various goods such as Pharmaceutical/Engineering/Organic Chemical/Plastic/Food products between the period Apr-13 to Sep-14. They had filed rebate claims under Notification No. 41/2012-ST dated 29.06.2012 for rebate of Service Tax paid on specified services such as 'Port Service', 'Custom House Agent service', 'Banking and Other Financial service' etc.

used for export of the goods. The claims were rejected by the rebate sanctioning authority on the ground that the difference between the rebate specified in paragraph 2. and paragraph 3 under Notification No. 41/2012-ST dated 29.06.2012 is less than 20% of the rebate available under the procedure specified in paragraph 2. Therefore, the Applicant was not entitled to claim the rebate under Paragraph 3 of the said Notification.

8.1 Government finds that the Revision Applications in Service Tax matters are filed before the Government of India as per the provisions of Section 35EE of the Central Excise Act, 1944 (made applicable to service tax matters by Section 83 of the Finance Act, 1994) read with Section 86 of the Finance Act, 1994 and the same is reproduced below:.

SECTION 86. Appeals to Appellate Tribunal. —

(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.

Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944):

Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012 (23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944)." (1A)."

8.2 Government observes that the sub-section (1) of Section 86 of the Finance Act, 1994 stipulates that an appeal against an order of Commissioner of Central Excise (Appeals) is to be filed before the Appellate

Tribunal except in those cases where the order is relating to grant of rebate of service tax on 'input services/rebate of duty paid on inputs' used in providing an output service which has been exported. Such orders of the Appellate Authority are to be dealt in accordance with the provisions of Section 35EE of the Central Excise Act, 1944. Government finds that in the instant case, the rebate claimed is of Service Tax paid on input services used for export of goods and not services and therefore the matter remains under the jurisdiction of the Appellate Tribunal for appeal against the impugned two Orders-in-Appeal. Therefore, the revision applications filed by the Applicant are not maintainable under Section 35EE of the Central Excise Act, 1944.

9. In view of the above discussions, the two revision applications filed by the applicant are dismissed as non-maintainable due to lack of jurisdiction.


(SHRAWAN KUMAR)

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

ORDER No. 1193/2022-CX (WZ)/ASRA/Mumbai dated 09.12.2022

To, 1194
M/s. Metro Exporters Pvt. Ltd.,
Kakad Chambers,
132, Dr. Annie Besant Road,
Worli, Mumbai - 400 018.

Copy to:

1. Commissioner of CGST & CX,
Mumbai Central,
GST Bhavan, 115, M.K.Road,
Churchgate, Mumbai - 400 020.
- ~~2. Sr. P.S. to AS (RA), Mumbai~~
- ~~3. Guard file~~
4. Notice Board.