

**SPEED POST**



**F. No. 195/03/2019—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...25/8/21.....

Order No. 210 /2021-CX dated 24-8-2021 of the Government of India, passed by Shri 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. 125/SLG-CGST/2018 dated 30.10.2018 passed by Commissioner of CGST & Central Excise (Appeals), Siliguri Commissionerate, Kolkata.

Applicant: M/s Garden Reach Shipbuilders & Engineers Limited,  
Kolkata.

Respondent: Commissioner of CGST, Kolkata-South, Kolkata.

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**ORDER**

A Revision Application No. 195/03/2019-R.A. dated 22.03.2019 has been filed by M/s Garden Reach Shipbuilders & Engineers Limited, (hereinafter referred to as the Applicants) against the Order-in-Appeal No. 125/SLG-CGST/2018 dated 30.10.2018 and Corrigendum dated 01.01.2019, passed by Commissioner of CGST & Central Excise (Appeals), Kolkata, wherein the appeal filed by the Applicants herein against Order-in-Original No. R/08/CE/Rebate/GRD/KOL-V/2016-17 dated 15.12.2016 passed by the Assistant Commissioner, Central Excise, Garden Reach Division, Kolkata-V, has been rejected whereas the appeal filed by the Respondent department has been allowed.

2. The brief facts leading to the present proceedings are that the Applicants were engaged in the manufacture of excisable goods, namely, Warship, falling under CETH 89061000. The warship was exported to Mauritius under the cover of ARE-2 No. 01/2014-2015 dated 06.02.2015 and Shipping Bill No. 007946 dated 30.12.2014 under Nil rate of duty. The Applicants submitted an application for sanction of rebate of Rs.

3,34,00,692.35 for the inputs used in the manufacture of the exported Warship. The original authority, vide the order-in-original dated 15.12.2016, allowed the rebate claim of Rs. 2,89,41,567/- and disallowed the claim of Rs. 44,59,125/- on various grounds. Further, an amount of Rs. 1,06,53,955/- was ordered to be recovered on account of arrear of interest from the sanctioned amount of Rs. 2,89,41,567/-. The interest liability got transferred to the Applicants from M/s Central Inland water Transport Corporation Ltd. (CIWTCL) as certain movable and immovable assets and properties of an independent Unit of CIWTCL were purchased by the Applicants, vide agreement dated 03.07.2006. As a result, an amount of Rs. 1,82,87,612/- was paid to the Applicants. Both, the Applicants and the Respondents, filed appeals before the Commissioner (Appeals) against the said order-in-original. The Commissioner (Appeals) allowed the appeal of the Respondent department and rejected the appeal of the Applicant, thereby ordering recovery of the disbursed amount. Aggrieved, the Applicants have filed the instant revision application, mainly, on the ground that a rebate of Rs. 3,15,61,997.35 [Rs. 3,34,00,692.35 minus (Rs. 15,91,911/- + Rs. 1,07,865/- + Rs. 1,38,919/-)] ought to be sanctioned to them as the rejection of the amount of Rs. 26,20,429 was erroneous as they had paid this amount

as duty to their suppliers, Ordnance Factory, Medak, who, had paid the same as per Challans forwarded by the AC of Sadasivapet Division, Hyderabad, despite being an exempted unit under Notn. No. 62/1995-CE dated 16.03.1995 as this exemption was not applicable to the supplies made to the Applicants. Non filing of ER-1 Returns or any lapse on the part of their suppliers cannot be tied to them resulting in rejection of the rebate claim. As regards the interest liability of Rs.1,06,53,955/- sought to be recovered from them, it is submitted that no such liability got transferred while taking over of M/s CIWTCL and the recovery is not justified in these circumstances.

3. Personal hearing was held on 18.08.2021, in virtual mode. Sh. Satya Prem Majumdar, Advocate, appeared for the Applicants and reiterated the contents of the revision application as well as the written submissions dated 17.08.2021. None appeared for the Respondents and no request for adjournment has been also received. Hence, the matter is being taken up for disposal on the basis of records available.


4. The Government has carefully examined the matter. The Applicants are a public sector company under administrative control of Ministry of Defence. It has been admitted by the Applicants that "*contingent liabilities*

*towards excise duty were specifically agreed to be on account of CIWTCL”.*

In pursuance thereof, the Applicants had paid the duty outstanding on account of CIWTCL. Thus, the Applicant cannot escape the interest liability pertaining to the arrears of the same duty which was paid by them on account of CIWTCL. As such, the orders of the lower authorities, on this account, are justified. As regards the rejection of rebate claim of Rs. 26,20,429.97, it is observed that the CRN-91GUN was received as an input from Ordnance Factory, Medak. The payment of the excise duty is supported by some Challans. But upon verification it was found by the original authority that the subject input was exempt from payment of duty and that it could not be established that the said payments were made against the subject inputs. Further, ER-1 returns have also not been filed. Hence, the order of the original authority on this count cannot be faulted. The Applicants have placed on record, a letter dated 06.02.2015 from the Assistant Commissioner, Garden Reach Division, vide which the Applicants have been accorded the permission for *“smooth sailing of the Warship to Mauritius under the benefit of rebate under the said notification subject to fulfilment of Procedure and conditions specified therein”*. Thus, the reasons for rejection of rebate claim put forward by the Commissioner (Appeals),

i.e., non-fulfilment of the conditions of notification no. 21/2004-CE(NT) dated 06.09.2004 cannot be sustained in the light of the aforesaid letter dated 06.02.2015 of the Assistant Commissioner.

6. In view of the foregoing, the impugned Order-in-Appeal is set aside and Order-in-Original dated 15.12.2016 is restored. The revision application is partially allowed in above terms.

  
(Sandeep Prakash)

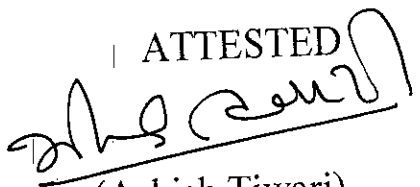
Additional Secretary to the Government of India

M/s. Garden Reach Shipbuilders & Engineers Ltd.,  
43/46, Garden Reach Road, Kolkata-700024.

G.O.I. Order No. 210 /21-CX dated 24-8-2021

Copy to:-

1. Commissioner of CGST, Kolkata South, 2<sup>nd</sup> Floor, GST Bhavan, 180, Shantipally, R.B. Connector, Kolkata – 700 107.
2. Commissioner of CGST & Central Excise (Appeals), Kolkata, C.R. Building, Hakimpara, Siliguri, Darjeeling – 734 001 (West Bengal).
3. Sh. Satyaprem Majumdar, Advocate, 11, Old Post Office Street, 2<sup>nd</sup> Floor, Kolkata – 700 001.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED  
  
(Ashish Tiwari)  
Assistant Commissioner (R.A.)