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**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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005**

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F NO. 195/310/14-RA / 3188

Date of Issue: 20.06.2021

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ORDER NO. 211 /2021-CX (SZ) /ASRA/MUMBAI 07.06.2021 DATED  
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 Swastik Engineering

Respondent : Commissioner of Central Excise, Bangalore.

Subject : Revision Application filed under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. 344-349/2014  
dated 30.05.2014 passed by the Commissioner of Central  
Excise (Appeals-I), Bangalore.

## ORDER

This Revision Application is filed by M/s Swastik Engineering, Shed No. 6, Boralingappa Garden, Muddappa Industrial Estate, Peenya SSI, Bangalore – 560 058 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. 344-349/2014 dated 30.05.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. The brief facts of the case are that the Applicant had filed 06 rebate claims claiming the rebate of excise duty paid on goods exported on payment of duty under Rule 18 of Central Excise Rules, 2002.

(i) The said rebate claims after due verification and issue of Show Cause Notices were rejected by the original adjudicating authority. The details are given below:

Sr.No.	File No.	Original-in-Original No. & date	Rebate Amount rejected (Rs.)
1	C.No. V/SE/18/162/2010 E-1	77/2011(R) dt 30.3.2011	40,858
2	C.No. V/SE/18/189/2010 E-1	78/2011(R) dt 30.3.2011	1,91,847
3	C.No. V/SE/18/188/2010 E-1	79/2011(R) dt 30.3.2011	62,368
4	C.No. V/SE/18/190/2010 E-1	80/2011(R) dt 30.3.2011	11,978
5	C.No. V/SE/18/192/2010 E-1	81/2011(R) dt 30.3.2011	3,57,526
6	C.No. V/SE/18/163/2010 E-1	82/2011(R) dt 30.3.2011	1,37,810

(ii) Aggrieved by the above said Orders, the Applicant preferred appeals before the Commissioner of Central Excise (Appeals-1), Bangalore. The Commissioner(Appeals) vide Order-in-Appeal Nos. 307, 308, 309, 310, 311 and 312/2012-CE dated 12.10.2012 allowed the appeal filed by the Applicant and set aside the said Orders-in-Original with consequential relief except the appeal filed in respect of Order-in-Original No.80/2011(R) dated 30.3.2011 which was rejected.

Sr. No.	OIO No. & date	Rebate Amount rejected (Rs.)	Orders-in-Appeal No. & dt.	Amount (Rs) allowed with consequential relief	Amount (Rs) rejected
1	77/2011(R) dt 30.3.2011	40,858	307, 308, 309, 310, 311 and 312/2012-CE dated 12.10.2012	40,858	-
2	78/2011(R) dt 30.3.2011	1,91,847		1,91,847	-
3	79/2011(R) dt 30.3.2011	62,368		62,368	-
4	80/2011(R) dt 30.3.2011	11,978		-	11,978
5	81/2011(R) dt 30.3.2011	3,57,526		3,57,526	-
6	82/2011(R) dt 30.3.2011	1,37,810		1,37,810	-

(iii) Pursuant to the above said Orders-in-Appeal, the Applicant had filed a rebate claim 20.10.2012 for Rs.7,90,409/- as a consequential relief. The said rebate claims had already been verified by the jurisdictional Range Officer and the claims was taken up for consideration and sanction of rebate.

(iv) In another matter involving confirmed arrears the details of which are as under:-

Sl.No.	OIO No. & dt	Amount (Rs.)		
		Duty	Interest	Penalty
1	39/2012/MKR/ADC/BGH dt 28.9.12	30,38,654	As Applicable	8,00,000
2	40/2012/MKR/ADC/BGH dt 28.9.12	22,40,916	As Applicable	6,00,000
3	41/2012/MKR/ADC/BGH dt 28.9.12	17,75,810	As Applicable	5,00,000
4	42/2012/MKR/ADC/BGH dt 28.9.12	18,82,880	As Applicable	5,00,000

Against the above Orders-in-Original, the Applicant had preferred an appeal before the Commissioner of Central Excise (Appeals-1), Bangalore. The Commissioner(Appeals) vide Stay Order Nos.21, 22, 23 & 24/2012-CE dated 11.01.2013 ordered for pre-deposit of the following amounts and to report compliance by 25.01.2013 failing which the appeals are liable to be dismissed for non-compliance:-

Sl.No.	OIO No. & dt	OIA No. & dt	Amount of pre-deposit (Rs)
1	39/2012/MKR/ADC/BGH dt 28.9.12	21, 22, 23 & 24/2012-CE dated 11.01.2013	19,00,000
2	40/2012/MKR/ADC/BGH dt 28.9.12		14,00,000
3	41/2012/MKR/ADC/BGH dt 28.9.12		11,50,000
4	42/2012/MKR/ADC/BGH dt 28.9.12		12,00,000

- (v) It was observed that the Applicant had not made the said pre-deposit and in pursuant to CBEC's Circular No.967/01/2013-CX dated 01.01.2013, the Applicant was issued Recovery Certificate Nos.30/2013 and 32/2013 both dated 09.01.2013 to pay up the dues within seven days.
- (vi) The Department vide letter C.No. WSE/18/95/2012 E-1 dated 17.01.2013, informed the Applicant that the rebate claim amount will be appropriated towards the arrears pending recovery in terms of the provisions contained in Section 11 of Central Excise Act, 1944. The Applicant vide their letter dated 21.01.2013, stated that they have challenged the orders passed by the Commissioner (Appeals) by filing separate appeals along with stay applications in CESTAT, Bangalore and when the stay applications are still pending disposal in the Hon'ble CESTAT if still insisted them to pay the dues, they are ready to reverse an amount equivalent to the rebate amount to be sanctioned in their Cenvat account.
- (vii) As per CBEC's Circular No\_967/01/2013-CX dated 01.01.2013, in case of appeal filed with stay application against an Order-in-Original before the Commissioner (Appeals), recovery to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the conditions of stay, if any specified whichever is earlier. In the instant case, the stay applications of the Applicant had been disposed by way of ordering pre-deposit of certain amounts and to report compliance by 25.01.2013 and the Applicant had not complied with the said order of the Commissioner (Appeals).
- (viii) The Deputy Commissioner of Central Excise, E-I Division, Bangalore vide Order-in-Original No. 10/2013 dated 31.01.2013 sanctioned the rebate of Rs. 7,22,647/- in cash and Rs. 67,762/- was allowed as re-credit under Cenvat Credit Rules, 2004 and Order deduction of the said

amount of Rs. 7,22,647/- and Rs. 67,762/- towards the sum payable by the Applicant.

- (ix) Being aggrieved, the Applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Bangalore. The Commissioner(Appeals) vide Orders-in-Appeal. No. 344-349/2014 dated 30.05.2014 rejected their appeals.

3. Aggrieved, the Applicant has filed the current Revision Application on the following grounds:

- (i) The impugned order passed by the learned Commissioner (Appeals) upholding the order of the Deputy Commissioner is totally unjust hence liable to be set aside as unsustainable.
- (ii) The Applicant had filed six separate rebate claims for total amount of Rs 8,02,387/- which came to be rejected by the original authority vide Orders-in-Original No 77, 78, 79, 80, 81 & 82/2011 all dated 30.03.2011 on the grounds that the process undertaken did not amount to 'manufacture' within the meaning of Section 2(f) of Central Excise Act. Aggrieved by the orders, they preferred appeals before the Commissioner (Appeals) who allowed all the appeals except for rejection of Rs 11,978/- covered vide Order-in-Original No 77-82/2011 (R) dated 30.03.2011. In other words the Applicants were eligible for rebate totaling to Rs 7,90,409/- as per appellate authority.
- (iii) In remand proceedings, the original authority had held that the Applicant had fulfilled the necessary conditions laid down in Rule 18 of CER inasmuch as they had exported goods and realized foreign exchange. On the same ground, rebate of Rs 7,22,647/- was sanctioned in cash and Rs 67,762/- by way of Cenvat credit.
- (iv) The aforementioned amounts, however, were ordered to be adjusted towards arrears covered vide Stay Order Nos. 21 to 24/2012-CE dated

11.01.2013 issued by the Commissioner (Appeals), wherein an amount of Rs. 56,50,000/- had been ordered to be pre-deposited in respect of separate appeals filed by the Applicant.

- (v) The Central Government has been to compensate exporters of goods/ service by of cash incentives in the form rebate/drawback etc. In the present case, they had been held as entitled to cash once the question of rebate and eligibility was decided in their favour an amount of Rs 7,22,647/- was sanctioned in cash, the appropriation of the said amount towards arrears is totally unjust and unconscionable inasmuch as the Applicant had been denied their rightful benefit bestowed by the Government The appropriation of the cash rebate towards the arrears in spite of the Applicant's fervent prayer (as recorded in Para 7 of the impugned order) that they were prepared to deposit an equivalent amount from their Cenvat account demonstrates that the Deputy Commissioner was somehow determined to deny the benefit of cash refund. The recovery of the rebate sanctioned to them towards arrears defeats the benign intention of the government to encourage exporters by way of incentives and sops.
- (vi) Consequent to the issuance of the Stay Order Nos. 21 to 24/2012-CE dated 11.01.2013, the appellate authority has passed Final Order No 94-97/2013-CE dated 11.03.2013 dismissing the appeals for non-compliance. The Applicant had challenged the said orders in the Hon'ble Cestat.
- (vii) The Hon'ble Cestat, Bangalore vide Final Order No. 21622/2014 dated 02.09.2014 have set aside the order and remanded the case to the appellate authority without ordering any pre-deposit. This means that no arrears are lying against the Applicant and hence they are entitled to rebate in cash.

(viii) The Applicant prayed order for refund in cash keeping in view the avowed intent of the government that goods and services alone and not taxes are exported.

4. Personal hearing in this case was fixed for 14.05.2018, 17.10.2019 and 25.02.2020. On 25.02.2020, Shri Pyaduumna G.H., Advocate appeared on behalf of the Applicant. They submitted written submission and submitted that the ground of rejection was the process does not amount to manufacture. The Order-in-Appeal allowed and appropriated against another demand which was stayed by the Cestat which was in the Applicant's favour. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 02.02.2021 and 16.02.2021. Shri Nagendra Murthy M, Advocate appeared online on behalf of the Applicant. He submitted that rebate sanction in four claims was adjusted against pre-deposit order relating to pending demand which has been stayed by CESTAT. Stay order is part of written submission. He requested to allow rebate claims.

5. The Applicant submitted their additional written submissions on the following grounds:

- (i) The Applicant had exported goods under the claim of rebate and had realized the payments from their buyer in convertible currency.
- (ii) The Deputy Commissioner had sanctioned the rebate claim after satisfying himself about the correctness of the claim filed by the Applicants.
- (iii) When the rebate had been sanction in case, the department was not justified in adjusting the said amount sanctioned towards an amount ordered to be pre-deposited by the Commissioner(Appeals) in respect of some other appeals.
- (iii) In any case, the Hon'ble Cestat, Bangalore vide Final Order No. 21622/2014 dated 02.09.2014 had set aside the Commissioner

(Appeals) Final Order No 94-97/2013-CE dated 11.03.2013, and remanded the case to the appellate authority without ordering any pre-deposit. This means that no arrears are lying against the Applicant and hence they are entitled to rebate in cash.

(iv) The Applicant submitted that the order of the lower authorities adjusting the rebate amount sanctioned in cash against the arrears of different cases are totally unsustainable and liable to be set aside with consequential relief.

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

7. On perusal of the records, Government observes that the Applicant had been granted rebate claims vide Order-in-Original No. 10/2013(R) dated 31.01.2013 totaling to amount of Rs. 7,22,647/- in cash and Rs. 67,762/- allowed as re-credit under Cenvat credit under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002. Based on the Board's Circular No. 967/1/2013-CX dated 01.01.2013 in case of appeal filed with stay application against an Order-in-Original before the Commissioner(Appeals) recovery to be initiated 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition in accordance with the condition of stay, if any specified whichever is earlier, the adjudicating authority appropriated against respective pending arrears as the Applicant had not complied with the Order passed by the Commissioner(Appeals) and hence the same is pending as Government dues and the same is required to be deducted towards outstanding dues.

8.1 Government observes that in another matter involving confirmed arrears, the Applicant had preferred an appeal before the Commissioner of Central Excise (Appeals-1), Bangalore. The Commissioner(Appeals) vide Stay Order Nos.21, 22, 23 & 24/2012-CE dated 11.01.2013 ordered for



pre-deposit of the following amounts and to report compliance by 25.01.2013 failing which the appeals are liable to be dismissed for non-compliance. Consequent to the issuance of the Stay Order dated 11.01.2013, the appellate authority had passed Final Order No. 94-97/2013-CE dt. 11.03.2013 dismissing the appeals for non-compliance. The details are as given below:-

Sl. No.	OIO No. & dt	OIA No. & dt	Amount of pre-deposit (Rs)	OIA Final Order No & dt
1	39/2012/MKR/ADC/BGH dt 28.9.12	21, 22, 23 & 24/2012-CE dated 11.01.2013	19,00,000	94-97/2013-CE dt. 11.03.2013
2	40/2012/MKR/ADC/BGH dt 28.9.12		14,00,000	
3	41/2012/MKR/ADC/BGH dt 28.9.12		11,50,000	
4	42/2012/MKR/ADC/BGH dt 28.9.12		12,00,000	

- 8.2 It was observed that the Applicant had not made the said pre-deposit and in pursuant to CBEC's Circular No.967/01/2013-CX dated 01.01.2013, the Applicant was issued Recovery Certificate Nos.30/2013 and 32/2013 both dated 09.01.2013 to pay up the dues within seven days. The Department vide letter C.No.WSE/18/95/2012 E-1 dated 17.01.2013, informed the Applicant that the rebate claim amount will be appropriated towards the arrears pending recovery in terms of the provisions contained in Section 11 of Central Excise Act, 1944.
- 8.3 Government finds that the Applicant had challenged the appellate authority Final Order No. 94-97/2013-CE dt. 11.03.2013 in the Cestat. The Hon'ble Cestat, Bangalore vide Final Order No. 21622/2014 dated 02.09.2014 set aside the order and remanded the case to the appellate authority without ordering any pre-deposit.

*".....In this case also, the appeals have been rejected by the Commissioner (Appeals) since the appellants did not deposit the amount as per the Stay Order. In view of the fact that this Tribunal had earlier remanded the matter with a direction to hear the matter and decide on merits without insisting on any pre-deposit, in this case also following the precedent decision, we consider it appropriate that the matter should be remanded at this stage itself. Accordingly the impugned order is set aside and the*

*matter is remanded to the Commissioner (Appeals) with a direction to decide the issue on merits without insisting on any pre-deposit."*

9. In respect of the above four confirmed demand of duty on which the sanctioned rebate claims amount totaling to Rs.7,90,409/- was appropriated, Government finds that the case is Res-Judicata and are in favour of the Applicant. Hence the appropriation made by the adjudicating authority and confirmed by the Commissioner(Appeals) becomes null and inoperative.

10. In view of the above, Government therefore proceeds to modify the Order-in-Appeal No. 344-349/2014 dated 30.05.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore and holds that the rebate sanctioning authority shall refund the rebate sanctioned.

11. The Revision Application is allowed on above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 211/2021-CX (SZ) /ASRA/Mumbai Dated 07.06.2021

To,  
M/s Swastik Engineering,  
Shed No. 6, Boralingappa Garden,  
Muddappa Industrial Estate,  
Peenya SSI,  
Bangalore - 560 058.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Bangalore (North West), BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru - 560 051
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
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