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

F.No.196/11/ST/15-RA 17352

Date of Issue: 22/12/2021

ORDER NO. 23/2021-CX (WZ)/ASRA/MUMBAI DATED 21/12/2021  
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. Pranav Enterprises.

Respondent: Commissioner of Central Excise, Pune-III.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. PUN-SVTAX-000-APP-  
0052-14-15 dated 09.03.2015 passed by the Commissioner of Service Tax  
(Appeals), Pune.

## ORDER

This Revision Application is filed by the M/s. Pranav Enterprises located at Grampanchayat Ghar No.12, Pune-Bangalore Road, Sasewadi, Taluka-Bhor, Pune-412205 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-SVTAX-000-APP-0052-14-15 dated 09.03.2015 passed by the Commissioner of Service Tax (Appeals), Pune.

2. Brief facts of the case are that the Applicant was holding Central Excise registration for the manufacture of Taps, Cocks and Valves. They had filed a rebate claim with Assistant Commissioner, Central Excise, Pune-IX Division on 27.02.2014 under Rule 18 of the Central Excise Rules, 2002 for rebate of excise duty amounting to Rs.1,01,558/- paid on goods exported by them during the month of September 2013 through a merchant exporter M/s. Sequoia Energy and Environment Pvt. Ltd.

2.1 The rebate sanctioning authority observed that the Applicant had not filed the self attested copy of the Shipping Bill as required under Chapter 8 of Central Excise Manual of Supplementary Instructions, 2005; that subsequently, on 07.05.2014, the Applicant submitted the said copy of Shipping Bill though without self-attestation; that from the said copy of the Shipping Bill the FOB value and PMV could not be ascertained and thus the claim could not be verified. Therefore, the rebate sanctioning authority rejected the claim vide Order-in-Original No. P-IX/R-67A/CEX/2014-15 dated 20.04.2014. Aggrieved, the Applicant filed an appeal. However, the Commissioner (Appeals) vide Order-in-Appeal No. PUN-SVTAX-000-APP-0052-14-15 dated 09.03.2015 upheld the order of rebate sanctioning authority.

3. Accordingly, the Applicant filed the impugned Revision Application mainly on the following grounds:

- a) It has been stated in para 16 of the Order-in-Appeal that "*as no duty had been paid by M/s Expert Engineering Enterprises, the CENVAT Credit taken on invoices dated 28.09.2013 by the Appellant was inadmissible to them.*" In this regard it is respectfully submitted that as per existing law duty is payable on monthly/quarterly basis and hence no Entry No. is required to be mentioned at the time of issue of invoice. If duty payment was doubtful the Commissioner (Appeals) could have very well referred the matter to concerned authorities instead of making wild allegation.
- b) It has been further stated in para 16 of the Order-in-Appeal that "*Further, even if duty had been paid by M/s. Expert Engineering Enterprises, even then the taking of CENVAT Credit by the Appellant on the said goods was invalid as the same was taken by wrongly showing them as inputs. Even though they were finished goods and the Appellant had simply done trading of goods and had not done any manufacturing*". This shows that the finding and observations have been made on all sorts of probabilities. It is to submit that the issue before 1<sup>st</sup> Appellate authority was admissibility of Rebate claim and not that of irregular availment of CENVAT Credit. The lower authorities have never issued any demand to appellants on the issue of irregular availment of CENVAT Credit.
- c) In the para 17 of the Order-in-Appeal the Commissioner (Appeals) has narrated as to how the goods were originally planned to be procured under CT1 by the Merchant Exporter from Belgaum factory. If there was an agreement with buyer that goods will be procured duty free and if manufacturer has supplied on payment of Excise duty it does not in any way harm the interest as the said amount is not recovered from the Merchant Exporter. The payment of duty can be verified from the documents maintained by the appellants. The documents required for rebate claim and for submission of proof of export against CT-1 are same. It cannot be the case that Merchant Exporter has submitted proof of export by declaring the

clearance under CT-1 and manufacturer has claimed rebate on same goods. If verification was carried out by the appellate authority truth could have been revealed. As regards the observation regarding the value addition appellant submits that while calculating the margins the incidence of duty rebate was taken into consideration and there is no loss suffered on this count. Nevertheless profit/loss alone cannot prove the genuinity or otherwise of the transaction.

- d) The Commissioner (Appeals) has baselessly concluded that the goods procured were finished goods and not inputs. In this regard we submit that we had given the detailed submission on activities done by the Applicant to Commissioner (Appeals). In this Export order, the client had asked for supply of Globe Valve, Needle Valve, Check Valve & Gate Valve of various sizes ranging from half inch to four inches. Accordingly we had asked our Belgaum based Supplier M/s. Expert Engineering Enterprises to supply, sub-assemble alongwith some loose parts of Valves. This was a verbal Purchase Order. Accordingly, it had supplied these assemblies/Parts under cover of packing list alongwith excise invoice. After the receipt of these Parts/Sub-assemblies, it had gone through the process of Inspection, Assembly, Painting and packing before its Export Clearance. Applicant submits that for the purpose of export the definition of manufacture is wide enough to include these activities under its ambit.
- e) In the para 18 of the impugned order the Commissioner (Appeals) has narrated as to how the documents are forged. Applicant respectfully submits that the allegation of the fabrication of documents is baseless. The duty payment could have been easily verified with the ER-3 quarterly return submitted online and copy of which was submitted. If there was any doubt the Appellate authority could have got the factual position verified from the Department. It should be appraised that the applicant are SSI unit having no expertise and no knowledge of laws. The delay in submission has happened due to reluctance of Merchant Exporter in submitting the relevant

documents to appellants and due to this delay the rebate claim has been rejected. The Commissioner (Appeals) has tried to colour it as fraudulent claim. The Merchant Exporter, fearing the loss of business, tried to impose the clearance under CT-I which negates the disclosure of the foreign buyer's name.

- f) In the para 19 of the impugned order the Commissioner (Appeals) has narrated as to how the Exports receipt have not been realized. In this regard we enclose herewith BRC certificate (Exhibit No.8) and as regards the difference in addressed mentioned in P.O. and actual address it is to submit that the difference does not lead to prove the genuinity or otherwise of the transaction.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal.

4. Personal hearing in the case was fixed for 02.09.2021. Shri Khaleel Sayed, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He stated that original authority has rejected their claim only on the ground that original shipping bill was not submitted, though they had submitted. The Commissioner (Appeals) had gone into new grounds which were not part of SCN. He requested to allow the claim as export of duty paid goods is not in dispute.

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

6. Government observes from the impugned Order-in-Original that the rebate claim was rejected on the following ground:

The applicant had not submitted self attested copy of Shipping bill, required to be filed in terms of Instruction No. 8.3(iv) of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions, 2005,

alongwith the rebate claim filed on 27.02.2014. Subsequently, on 07.05.2014, the applicant submitted an incomplete copy of Shipping bill which was not self-attested. Further, from said Shipping bill FOB value and PMV could not be ascertained and therefore the rebate claim could not be verified.

7. Government observes that the applicant had submitted the shipping bill number 7769808 dated 01.10.2013 with the rebate sanctioning authority on 07.05.2014. The said shipping bill depicts FOB value as INR 27,71,918.50. As regards ascertaining Present Market Value (PMV) of the export goods, the same can be ascertained from market value of identical goods manufactured by the claimant in India. If that is not possible then the valuation of such goods has to be done with the aid of Section 4 of the Central Excise Act, 1944, read with Central Excise Valuation (determination of price of excisable goods) Rules, 2000.

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. PUN-SVTAX-000-APP-0052-14-15 dated 09.03.2015 passed by the Commissioner of Service Tax (Appeals), Pune and remands the case back to original adjudicating authority for deciding the case on merits and pass appropriate orders. Applicant should be given opportunity before deciding the matter.

9. The Revision Application is disposed of on the above terms.

*Shrawan*  
21/12/21  
(SHRAWAN KUMAR)

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

ORDER No.

23 / 2021-CX (WZ)/ASRA/Mumbai DATED 21.12.2021

To,  
M/s. Pranav Enterprises,  
Flat No.13, Building No.3, Tara Residency,  
Plot No.8, S.No.20/2, Opp. Karvenagar Ward Office,  
Kothrud, Pune - 411 038.

Copy to:

1. Commissioner of Central GST & Customs,  
Pune-II Commissionerate,  
GST Bhavan, ICE House, 1<sup>st</sup> Floor,  
41/A, Sassoon Road, Pune - 411 001.
2. ~~Sr. P.S. to AS (RA), Mumbai~~
3. Guard file
4. Notice Board.