

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. 195/20-21/WZ/2019-RA /6438

Date of Issue: 04.09.2023

ORDER NO. 346 /2023-CX (WZ)/ASRA/MUMBAI DATED 29.08.2023 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.

Subject : - Revision Application filed under Section 35EE of the Central  
Excise Act, 1944 against Order-in-Appeal No. BHV-Excus-000-  
App-257-258-2018-19 dated 04.09.2018 passed by the  
Commissioner (Appeals)Rajkot.

Applicant : M/s. Alang Auto & General Engg. Co. Pvt. Ltd.

Respondent: Pr. Commissioner of CGST & CX, Bhavnagar

**ORDER**

The Revision application is filed by M/s. Alang Auto & General Engg. Co. Pvt. Ltd. (hereinafter referred to as 'applicant') against the Order-in-Appeal No. BHV-Excus-000-App-257-258-2018-19 dated 04.09.2018 passed by the Commissioner (Appeals)Rajkot.

2. The facts of the case are that Applicant had filed following rebate claims :

Sr. No.	OIA	OIO	Rebate Amount in dispute(Rs.)
1	BHV-Excus-000-App-257-	10/Ac/Rural/Bvr/Pb/Rebate/17-18 dated 16.06.2017	1,40,279/-
2	258-2018-19	11/Ac/Rural/Bvr/Pb/Rebate/17-18 dated 16.06.2017	24,004/-

Rebate claims filed were decided by the lower adjudicating authority holding that FOB value of the goods exported is less than the assessable value of the goods and ordering rebate in cash should be restricted to the FOB value of exported goods and ordered for credit of excess amount in Consumer Welfare Fund under Section 12 of the Central Excise Act, 1944, relying on the Order passed by J.S (RA), GOI, New Delhi in the case of Mis. Luxmi Sagar Trade link P Ltd reported as 2014 (311) ELT 958 (GOI). Being aggrieved with the impugned orders, the applicant preferred appeals on the grounds that FOB value has no nexus with the transaction value, that they relied upon CBEC Circular No. 203/37/96-CX dated 26.04.1996 and Circular No. 510/06/2000-CX dated 3.2.2000 to say that CBEC has clarified that rebate sanctioning authority should not examine the correctness of assessment; that order for credit of rebate sanction to Consumer Welfare fund was also made in violation of the principles of nature justice as no show cause notice was issued to them. Appellate Authority vide the impugned OIA rejected the Appeals filed by the Applicant and upheld the OIOs.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:

- i. order for credit of rebate sanction to Consumer Welfare fund was also made in violation of the principles of nature justice as no show cause notice was issued to them.
- ii. they relied upon CBEC Circular No. 203/37/96-CX dated 26.04.1996 and Circular No. 510/06/2000-CX dated 3.2.2000 to say that CBEC has clarified

that rebate sanctioning authority should not examine the correctness of assessment

- iii. The Applicant also rely on on the order No. 1305-1313/CX dated 10.10.2013 and submit that it was held by the Revisionary Authority that rebate of whole of duty paid on all excisable goods will be granted and the whole duty of excise would mean the duty payable under the provisions of the Act. Hence, the applicant submit that they paid the excise duty to the manufacturer on the transaction value determined under Section 4 of the Act and mentioned in the invoices. Therefore, as per CBEC's circular No. 510/06/2000-CX dated 3/2/2000 and as held in the order cited supra, the appellant is liable to refund the entire duty of excise as the same was paid on the value determined under Section 4 of the Act. The Assistant Commissioner has mis-interpreted the above order cited supra and credited the sanctioned amount of Rs. Rs.1,40,279/- to the Consumer Welfare Fund. But the above said order itself ordered that rebate of whole of duty paid on all excisable goods will be granted and the whole duty of excise would mean the duty payable under the provisions of the Act. Therefore, the sanctioned amount of Rs. 1,40,279/- should be paid to them.
- iv. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing in this case was fixed for 18.04.2023, Shri Sarju Mehta,CA appeared on behalf of the Applicant and submitted that he is fine with sanction of rebate on FOB value. However, he further submitted that extra duty paid over FOB value should have been returned back to them in the manner it was paid. He contended that Comm(A) has wrongly credit the same to consumer Welfare Fund. He requested to allow the Application.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. Government observes that the issue to be decided in the present case is whether the extra duty paid over FOB value be returned to the Applicant in the manner it was paid considering it to be a voluntary deposit.

7. Government finds that the Applicant has not contested the fact regarding the restriction of their rebate. Their sole contention is that the additional duty they

paid beyond the FOB value should be refunded to them in the manner it was paid, rather than being credited to the consumer welfare fund. Government finds that any amount paid that was not originally required as duty is to be treated voluntary deposit with the Government and same cannot be retained without any authority of law. The said amount is required to be refunded in the manner it was paid as held by Hon'ble High Court of Rajasthan in the case of C.C.E. v. Suncity Alloys reported at 2007 (218) E.L.T. 174 (Raj. H.C.). Hon'ble High Court of Punjab & Haryana vide order, dated 11-9-2008 in the case of M/s. Nahar Industrial Enterprises Ltd. v. UOI reported as 2009 (235) E.L.T. 22 (P & H) has also held that refund in case of higher duty paid on export product which was not payable, is not admissible and refund of excess paid duty/amount in Cenvat credit is appropriate. However, in the instant case, Government finds that the goods were cleared for export on payment of duty through Cenvat Credit of the Manufacturer. Further, it's important to highlight that the ongoing application for revision has been filed by the merchant exporter, with the duty having been settled by debiting the manufacturer's cenvat credit account. As a result, given that the applicant being a merchant exporter, they are not eligible for re-credit since any excess duty payment made must be reimbursed in the same manner in which it was originally paid.

8. In view of above position, Government finds no infirmity with the impugned OIA and thus upholds Order-in-Appeal No. BHV-Excus-000-App-257-258-2018-19 dated 04.09.2018 passed by the Commissioner (Appeals)Rajkot.

9. Revision application is/are disposed off on the above terms.

*Shrawan*  
29/8/23  
(SHRAWAN KUMAR)

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

ORDER No. 346 /2023-CX (WZ) /ASRA/Mumbai Dated 29.08.2023

To,

1. M/s. Alang Auto & General Engg. Co. Pvt. Ltd., CM-458, 'Rukmani Kunj' Near Virani School Kaliyabid, Bhavnagar- 364002.
2. The Pr. Commissioner of CGST, Bhavnagar, 'Siddhisadan' Bldg., Plot No. 67-76, B-1, Narayan Bhai Upadhyay Marg, Kalubha Road, Bhavnagar-364001.

Copy to:

1. Commissioner of Central Excise (Appeals), Rajkot.
2. M/s. SSM & Co. Chartered Accountants, 211/212, Centre Point, Rupani Road, Ghogha Circle, Bhavnagar-364001.
3. Sr P.S. to AS (RA), Mumbai.
4. Guard file.

