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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. 195/171/15-RA / 6018 Date of Issue: 14/10/2021

ORDER NO. 357/2021-CX (WZ) /ASRA/MUMBAI DATED 12/10/2021 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 CENTRAL EXCISE ACT,1944.

Applicants : M/s Anchor Engineering Corporation

Respondents : Commissioner of Central Excise(Appeals), Mumbai-II

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal No. CD/136/RGD/2015 passed by the Commissioner of Central Excise(Appeals), Mumbai-II.



ORDER

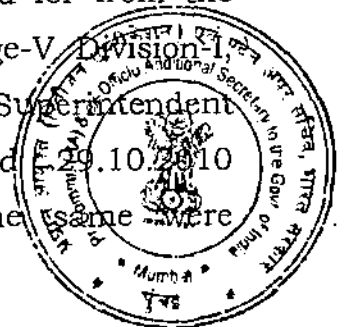
The two Revision Applications have been filed by M/s Anchor Engineering Corporation, PAP, R-305, 3rd floor, TTC Industrial Area, MIDC Rabale, Navi Mumbai 400 701(hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/136/RGD/2015 passed by the Commissioner of Central Excise(Appeals), Mumbai-II.

2. The case in brief is that the Applicant had exported the goods and filed the 05 rebate claims amounting to Rs. 2,93,252/-before the Maritime Commissioner, Central Excise, Raigad Commissionerate.

(i) The said rebate claims were sanctioned in parts by the Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 1279 dated 16.11.2010 for Rs. 1,99,722/- and vide letter No. V/15-Reb/Rgd/09/2453 dated 25.11.2010 for Rs. 98,530/- under Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act. The details as given below:

Sr.No.	RC No & dt	ARE-1 No & dt	Amt of duty paid (Rs)	OIO No. & date
1	25191 dt 12.1.10	25 dt 25.11.09	33,370	1279 dated
2	30658 dt 9.3.10	26 dt 25.11.09	36,256	16.11.2010
3	30659 dt 9.3.10	27 dt 02.12.09	28,904	sanctioned
	total		98,530	
4	25189 dt 12.1.10	20 dt 12.10.09	1,13,398	V/15-
5	25190 dt 12.1.10	24 dt 15.11.09	86,324	Reb/Rgd/09/24
	Total		1,99,722	53 dated
				25.11.2010
				sanctioned
	Grand total		2,98,252	

(ii) Subsequent to grant of rebate, the department came across with certain deficiencies including detection of few fraud cases involving stringent verification of duty paying documents particularly from the jurisdictional Range Superintendent. Accordingly, DPC letters were called for from the jurisdictional Range Superintendent, Central Excise, Range-V, Division-1, Nagpur Commissionerate. In response to this, the Range Superintendent vide letter No. C.Ex/RV/Verifications/2010/1207 dated 19.10.2010 submitted the original DPC Verification letters and the same were



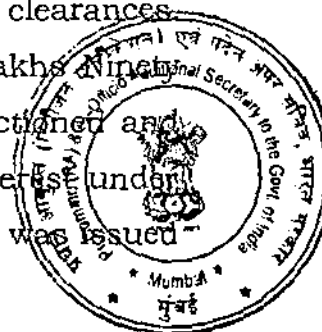
confirmed/cross verified on telephone and the Range Superintendent in turn confirmed the correctness of the DPC and accordingly the rebate claims were sanctioned. Whereas during the scrutiny of other claims and on confirmation/cross verification on telephone, it was noticed that the following DPC letter which were submitted by Superintendent, Central Excise, Range-V, Nagpur, were not matching with those available in their office records.

- (a) C.No. C.EX/RV/Verification/2010/1256 dated 25.11.2010;
- (b) C.No. C.EX/RV/Verification/2010/1257 dated 25.11.2010;
- (c) C.No. C.EX/RV/Verification/2010/1258 dated 25.11.2010;
- (d) C.No. C.EX /RV/Verification/2010/1259 dated 25.11.2010.

On comparing with the above DPC reports with the office record copies of these letters, it was observed that certain crucial observations / remarks which are available in the Range Office copy are missing in the DPC verification reports. The Range Superintendent has appended a note in their office records copy as under :-

"The party has defaulted the payment of duty for the month of October, 2009 payable by 5th November, 2009 beyond the period of 30 days and therefore a Show Cause Notice bearing C.No. 72/82/(83)15-128/2010/Adj/C/26780 dated 03.01.2010 has been issued by the Commissioner of Customs & Central Excise, Nagpur demanding duty for the period from October, 2009 to July, 2010 not paid through PLA/ Cash as provided under provisions of sub-rule 3A of Rule 8 of Central Excise Rules, 2002. The Show Cause is pending for adjudicating."

From the aforesaid para, it was noticed that the jurisdictional Range Superintendent has sent one report to Maritime office, but has kept a different report as office copy. Thus, the adverse remarks report was retained as office copy whereas a clear report was communicated to this office. From the above, it appeared that the excisable goods exported under the above ARE-Is have not suffered any Central Excise duty while clearing from the manufacturer's premises. Therefore, no rebate under Rule 18 of Central Excise Rules, 2002 can be sanctioned against such clearances. Therefore, the rebate amount of Rs.2,98,252/- (Rupees Two Lakhs Ninety Eight Thousand Two Hundred Fifty Two only) erroneously sanctioned and paid to them was recoverable from the Applicant along with interest under Section 11A of Central. Excise Rules, 1944. Hence the Applicant was issued

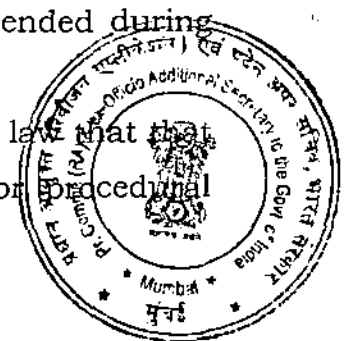


Show Cause Notice F.No. V/15-G.IV/Reb/Rgd./Anchor Engg/ 10-11/ 5128 dated 27.06.2011.

- (iv) The adjudicating authority, Additional Commissioner, Central Excise, Raigad vide Order-in-Original No. Raigad/ADC/29C(SJ)/13-14 dated 30/08/2013 confirmed the demand of Rs 2,98,252/- along with interest and also imposed penalty of Rs.5000/-on the Applicant under Rule 27 of Central Excise Rules 2002.
- (v) Being aggrieved, the Applicant preferred an appeal before the Commissioner of Central Excise (Appeals) Mumbai-II. The Commissioner(Appeals) vide Order in Appeal No. CD/136/RGD/2015 dated 08.01.2015 rejected the appeal.

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

- (i) In the instant case there is absolutely no dispute as to-
- (a) that the goods have been exported;
- (b) that the said correct Central excise duty has been discharged by the manufacturer of the goods exported;
- (c) that the convertible foreign exchange has been earned.
- (ii) On perusal of the observations and findings in Para 5 of the impugned order, it would be seen that the Order passed by the Commissioner of Central Excise Nagpur, setting aside the notice issued to the manufacturer of the disputed products and has held the payment made there under is in accordance with the law. Therefore, the order of the Commissioner is ignored which is against the principles of judicious discipline and hence the Order in Appeal under review is illegal and not tenable in law and needs to be set aside with consequential reliefs forth with.
- (iii) The Applicant being a merchant exporter could only claim rebate of duty paid by the "manufacturers" on the final products and such benefit was available only under Notification No. 19/2004-CE(NT) as amended during the relevant period.
- (iv) The Commissioner ought to have appreciated that it is settled law that that substantial benefit of rebate claim should not be denied for procedural lapses.



(v) The Applicant prayed that they rebate claims of Rs. 2,98,252/- may be held to be correctly as allowed by the original authority and with consequential reliefs and the Order-in-Appeal be set aside.

4. Personal hearing was fixed on 12.08.2021 and 20.08.2021. On 20.08.2021, Shri Anil Balanci, Advocate and Shri Subhash Kulkarni, Consultant both appeared online on behalf of the applicant and reiterated their earlier submission. They submitted that Order-in-Original and Order-in-Appeal have incorrectly concluded that exported goods were not duty paid. They have evidence to establish duty paid nature of goods.

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. On perusal of the records. Government observes that Applicant, merchant exporter had exported the goods and filed the 05 rebate claims amounting to Rs. 2,93,252/- which was sanctioned in parts by the Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 1279 dated 16.11.2010 (for Rs. 1,99,722/-) and vide letter No. V/15-Reb/Rgd/09/2453 dated 25.11.2010 (for Rs. 98,530/-). Subsequent to grant of rebate, the department came across with certain deficiencies including verification of duty paying documents particularly from the jurisdictional Range Superintendent, hence the Applicant was issued Show Cause Notice dated 27.06.2011 proposing to recover the amount of rebate sanctioned along with interest and penalty. The adjudicating authority, Additional Commissioner, Central Excise, Raigad vide Order-in-Original No. Raigad/ADC/29C(SJ)/13-14 dated 30.08.2013 confirmed the demand of Rs 2,98,252/- along with interest and also imposed penalty of Rs.5000/-on the Applicant under Rule 27 of Central Excise Rules 2002. Being aggrieved, the Applicant preferred an appeal and the Commissioner(Appeals) vide Order-in-Appeal No. CD/136/RGD/2015 dated 08.01.2015 rejected the appeal.

7.1 The findings of the Additional Commissioner, Central Excise, Raigad in the Order-in-Original dated 30.08.2013 is reproduced below:

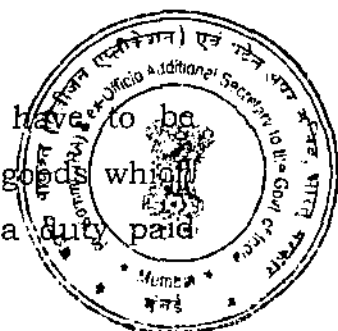


"13. I have carefully gone through the case records and written submissions by the claimant. The said rebate claims were sanctioned vide Order-in-Original No. 1279 dated 16-11-2010 (for Rs. 11,99,722) and vide letter No.V /15-Reb/Rgd/09/2453 dated 25-11-2010 (for Rs.98,530/-) under Notification No.19/2304 dated 06-2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944 by the Deputy Commissioner(Rebate). The impugned Show Cause Notice was issued to the claimant for recovery of erroneously sanctioned rebate claims of Rs.2,98,252/- based on the ground that M/s Munis Forge Limited, the manufacturer, has defaulted the payment of duty for the month of October, 2009 payable by 5th November, 2009 beyond the period of 30 days and, therefore, a Show Cause Notice bearing C.No. 72/82/(83)15-128/2010/Adj/C/26780 dated 03.01.2010 had been issued by the Commissioner of Customs & Central Excise, Nagpur demanding duty for the period from October, 2009 to July, 2010 not paid through PLA/Cash as provided under the provisions of sub-rule 3A of Rule 8 of Central Excise Rules, 2002. It, therefore, appeared that the excisable goods exported under the said ARE-1s by the claimant have not suffered any Central Excise duty while clearing from the manufacturer's premises. Therefore, no rebate under Rule 18 of Central Excise Rules, 2002 can be sanctioned against such clearances.

13.1 The Commissioner of Central Excise & Customs, Nagpur vide Order-in-Original No. 16/C.EX/2011-12/C dated 28.12,2011 (para. 38) has observed that the manufacturer is found liable to penalty under Rule 25 of Central Excise Rules, 2002. The clearances made by the manufacturer during the period of default were not in accordance with the provisions of Rule 8(3A), therefore, the clearances made during the period deemed to have been made without payment of duty (i.e. to the extent of Rs. 1,48,87,372/-). Accordingly, the manufacturer is liable for imposition of penalty equal to the amount of duty involved in 'such clearances. The Commissioner dropped the demand of Central Excise duty of Rs. 1,48 87,372/- raised in the show cause notice dated 3.1.2010 under Section 11A of the Central Excise Act, 1944 as the amount of duty stands already paid and dispute in manner of payment not falling within purview of Section 11A of the Act. The Commissioner also ordered recovery of interest under Section 11AB of the Central Excise Act, 1944 on default payment made for the month of October, 2009 till the date of actual payment of duty.. The Commissioner has also ordered appropriation of the amount of interest already paid by the manufacturer and further imposed a penalty of Rs. 1,48 87,372/- on the manufacturer under Rule 25 of Central Excise Rules, 2002 for contravention of provisions of Rule 4, 8(1), 8(3) & 8(3A) of the Central Excise Rules, 2002."

7.2 Above order clearly records appropriation of duty, thus bringing out the fact that duty was paid by the manufacturer subsequently. Once duty on goods has been paid and appropriated in the Order-in-Original, the goods cannot be said to be non-duty paid.

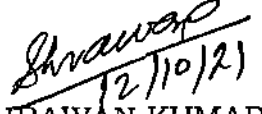
8. Government notes that the two main requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid



character. Government finds that in the current case, it is evident that the goods exported and rebate of which has been sanctioned by the Deputy Commissioner (Rebate), Central Excise, Raigad vide Order/letter dated 16.11.2010 and 25.11.2010 did not suffer incidence of duty and hence the rebate sanctioned to the claimant was demanded back. However, once Order-in-Original dated 28.12.2011 was passed appropriating the duty paid in relation to such goods, duty paid nature of goods can no longer be doubted. Once duty has been discharged on export goods and the fact of export not being in dispute, rebate becomes eligible to the Applicant.

9. In view of above, Government sets aside the impugned Order-in-Appeal No. CD/136/RGD/2015 passed by the Commissioner of Central Excise(Appeals), Mumbai-II.

10. The revision application is allowed on above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 357/2021-CX (WZ) /ASRA/Mumbai Dated 12.10.2021

To,
M/s Anchor Engineering Corporation,
PAP, R-305, 3rd floor,
TTC Industrial Area,
MIDC Rabale,
Navi Mumbai 400 701.

Copy to :

1. The Commissioner of GST & CX, Belapur Commissionerte, 1st floor, CGO Complex, Sector 10, CBD Belapur, Navi Mumbai 400 61
2. P.S. to AS (RA), Mumbai.
3. Guard file.
4. Spare copy

