

REGISTERED SPEED POST AD



**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. 195/38-44/2016-RA / 1595

Date of Issue: 03-05-2022

ORDER NO. 362-368 /2022-CX(SZ)/ASRA/MUMBAI DATED 27/04/2022
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 Stanadyne Amalgamations Pvt. Ltd.
96, Thiruvallur Ponnammalle Road,
Aranvoyal Village,
Thiruvallur - 602 025

Respondent : Commissioner of Central Excise, Chennai-I

Subject : Revision Application filed under Section 35EE of the Central Excise
Act, 1944 against Order-in-Appeal No. 263-269/2015 dated
21.12.2015 passed by the Commissioner of Central
Excise(Appeals-I), Chennai.

ORDER

This revision application has been filed by M/s Stanadyne Amalgamations Pvt. Ltd., 96, Thiruvallur Ponnammalle Road, Aranvoyal Village, Thiruvallur - 602 025(hereinafter referred to as "the applicant") against Order-in-Appeal No. 263-269/2015 dated 21.12.2015 passed by the Commissioner of Central Excise(Appeals-I), Chennai.

2.1 The applicant is a manufacturer of pumps and parts of pumps falling under Chapter 84 of the CETA, 1985. The said goods were cleared on payment of duty for export and the applicant had filed rebate claims in respect of various ARE-1s spanning the period from September, 2013 to January, 2014. SCN's were issued to the applicant proposing the reject the rebate claims for the reason that the CENVAT credit out which the payment of duty on export was utilised was subject matter of dispute in SCN No. 44/2014 dated 07.05.2014. It was alleged that debits made out of such ineligible CENVAT credit cannot be sanctioned as rebate. After following due process, the Deputy Commissioner of Central Excise, Division-V, Chennai-II sanctioned rebate amounting to Rs. 71,53,712/- out of the total claim of Rs. 1,55,56,720/- and rejected an amount of Rs. 84,03,008/- vide the orders detailed in the table below on the finding that the said amount of duty had been paid out of ineligible credit as alleged in the notices.

Sr. No.	OIO No. & Date	Rebate claimed (Rs.)	Rebate sanctioned (Rs.)	Rebate rejected (Rs.)
1	498/2014(RT) dated 14.10.2014	9,64,200/-	4,76,025/-	4,88,175/-
2	499/2014(RT) dated 14.10.2014	49,20,468/-	19,97,019/-	29,23,449/-
3	503/2014(RT) dated 14.10.2014	34,02,289/-	28,88,417/-	5,13,872/-
4	527/2014(RT) dated 14.10.2014	12,09,176/-	Nil	12,09,176/-
5	536/2014(RT) dated 14.10.2014	19,35,159/-	13,43,045/-	5,92,114/-

6	538/2014(RT) 14.10.2014	dated	21,67,515/-	Nil	21,67,515/-
7	539/2014(RT) 14.10.2014	dated	9,57,913/-	4,49,206/-	5,08,707/-
TOTAL			1,55,56,720/-	71,53,712/-	84,03,008/-

2.2 Aggrieved by the seven OIO's, the applicant filed appeals before the Commissioner(Appeals). Commissioner(Appeals) found that CENVAT credit to the tune of Rs. 5,62,78,588/- had been challenged through the SCN dated 07.05.2014 which had been confirmed vide OIO No. 45/2014 dated 30.09.2014 by the jurisdictional Commissioner of Central Excise. The applicant had paid duty on the exported goods out of the accumulated CENVAT credit which in turn was part of a dispute in another proceeding. He averred that when a dispute had arisen about the eligibility of the CENVAT credit out of which duty had been debited on exported goods, it was not open to the Deputy Commissioner to sanction rebate of such duty. He opined that the foremost criteria for consideration of such rebate would be with regard to the correctness of duty payment and held that sanction of the rebate would jeopardise the revenue interest. The Commissioner(Appeals) therefore upheld the portion of the OIOs rejecting the rebate claims to the extent of Rs. 84,03,008/- and rejected the appeals filed by the applicant vide his OIA No. 263 to 269/2015 dated 21.12.2015.

3. The applicant has filed revision application against OIA No. 263 to 269/2015 dated 21.12.2015. It was submitted that SCN had been issued and demand for the alleged ineligible credit had been confirmed. The applicant stated that they had filed appeal before Tribunal against the demand confirmed. The interest of the revenue was therefore well protected and therefore there was no need to reject the rebate claims as well. They stated that if they succeed in appeal before the Tribunal against the rejection of CENVAT credit availed on inputs lying at the time of de-bonding, they would be eligible to avail credit of the same and if not the applicant would reverse the credit as per the order of the Tribunal. The applicant contended that in such a situation, any rejection of rebate claim for alleged

availment of ineligible credit would cause undue hardship to them since there was no connection between the action taken for recovery of ineligible credit availed at the time of de-bonding and adjustment of rebate claims towards those dues. Therefore the act of the Department in denying the rebate claims on these grounds would amount to double jeopardy and is not sustainable in law. The applicant submitted that the order of the Commissioner(Appeals) rejecting the rebate claims were not sustainable and should be set aside with consequential relief.

4. The applicant was granted an opportunity for personal hearing on 13.10.2021. Shri M. Karthikeyan, Consultant and Shri R. Janakiraman, CFO appeared online on behalf of the applicant and reiterated their earlier submissions. They further submitted that the Hon'ble Madras High Court had allowed the CENVAT credit disputed by the Department. They promised to mail a copy of the order and requested that the rebate be allowed.

5. Government has carefully gone through the relevant case records, the submissions filed by the applicant and perused the impugned OIA and OIOs. The issue involved in the present revision applications is whether the applicant would be eligible for rebate claims filed for refund of duty paid by utilising CENVAT credit which had been disputed by the Department as being ineligible credits.

6.1 It is observed that the dispute regarding the applicants eligibility for CENVAT credits had an independent trajectory; separate from the proceedings for sanction of rebate. The fact of denial of CENVAT credits by holding them as ineligible was the basis of the case for rejection of the rebates impugned in these proceedings. The disputed CENVAT credits had initially been proposed to be denied by issue of SCN and these demands had subsequently been confirmed by the adjudicating authority. The matter had been carried in appeal before the CESTAT. The CESTAT took up the case of the applicant and another assessee; viz. M/s AVO Carbon (India) Pvt. Ltd. Both appeals involved the common issue of eligibility of CENVAT credit on imported capital goods, raw materials and indigenous raw materials at the

time of de-bonding of a 100% EOU. The appeal filed by the applicant in these proceedings was dismissed by the CESTAT vide its Final Order No. 40274-40275/2017 dated 14.02.2017. The CESTAT Order was challenged by the applicant before the Hon'ble Madras High Court. The Hon'ble Madras High Court in its judgment dated 06.08.2019 held that the CESTAT had erred in denying the benefit of CENVAT credit and therefore allowed the appeals filed by the applicant. The High Court also set aside the orders of the lower authorities.

6.2 By virtue of the setting aside of the demands by the Hon'ble Madras High Court, the Department's case for denying the CENVAT credits has concluded. The denial of the rebate claims in the present case is entirely based upon the denial of CENVAT credit utilised for payment of duty on the exported goods. No other defects have been pointed out by the rebate sanctioning authority and the lower appellate authority. The lower authorities have rejected the rebate claims solely by holding that the duty payment on the exported goods by utilising ineligible CENVAT credits was not in order. Therefore, once the CENVAT credits have been held to be legitimate by the Hon'ble Madras High Court, the rebate can no longer be withheld. Incidentally, Government has allowed revision applications filed by M/s AVO Carbon India Pvt. Ltd. vide R.A. No. 195/62-70/2016-RA who were appellant/petitioner in CMA No. 3023/2017 before the Hon'ble Madras High Court alongwith the present applicant.

7. Government respectfully follows the judgment of the Hon'ble Madras High Court in CMA Nos 2280 & 3023 of 2017 and CMP Nos 12222 & 18168 of 2017 decided on 06.08.2019. The impugned OIA is set aside and the revision applications filed by the applicant are allowed with consequential relief.


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

ORDER No. ~~362-368~~ /27/04/2022-CX(SZ) /ASRA/Mumbai DATED

To,
M/s Stanadyne Amalgamations Pvt. Ltd.
96, Thiruvallur Ponnammalle Road,
Aranvoyal Village,
Thiruvallur - 602 025

Copy to:

- 1) The Commissioner of CGST & Central Excise, Chennai Outer
- 2) The Commissioner (Appeals-II), Chennai
- ~~3) Sr. P.S. to AS (RA), Mumbai~~
- 4) Guard file