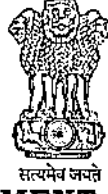


-SPEED POST
REGISTERED POST



**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, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/251/14-RA/6294

Date of Issue: 27.10.2021

ORDER NO. 410 /2021-CX (SZ) /ASRA/Mumbai DATED 26.10.2021 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Modern Machine Manufacturers.

Respondent : The Commissioner of CGST & CX, Bengaluru North

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. 353/2014-C.E dated 16.06.2014 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

ORDER

This revision application is filed by the M/s Modern Machine Manufacturers, 37 & 38B Industrial Estate, Ollur, Thrussur-680306, (hereinafter referred to as "applicant") against the Order-in-Appeal 353/2014-C.E dated 16.06.2014 passed by the Commissioner of Central Excise (Appeals -I), Bangalore.

2. The applicant is a merchant exporter and had procured three LPG storage tanks from M/s Senrco Engineering Co Private Ltd, Bangalore, who are holders of Central Excise Registration No AACCS6571RXM001 and had exported the same vide shipping bill No 2256143 dated 05.11.2009 to Afghanistan through Karachi Port. The applicant had filed rebate claim for rebate of central excise duties for an amount of Rs. 1,27,720/- paid by the manufacturer under Rule 18 of the Central Excise Rules, 2002 and Notification No 19/2004 CE (NT) dated 06.09.2004 read with Section 11B of the Central Excise Act, 1994.

3. It appeared that the merchant exporter had not followed the procedures prescribed in Notification No 19/2004-CE (NT dated 06.09.2004 as amended in as much as

- (i) the manufacturer and the merchant exporter had not furnished the ARE 1 containing signature and seal of both
- (ii) the goods have not been sealed at the place of dispatch i.e at the factory of the manufacture by the Central Excise Officer
- (iii) the applicant had not furnished any evidence to show that the goods cleared from the factory of the manufacturer is the same goods exported by the merchant exporter.

4. In view of the above, show cause notice was issued to the applicant by Assistant Commissioner of Central Excise, Bangalore -III Division, Bangalore proposing to reject the rebate claim. The submissions of the applicant to the show cause notice rejecting the claim was examined and accepted and the rebate claim of Rs. 1,27,720/- was sanctioned by the Assistant

Commissioner, Bangalore III Division vide order in original No 37/11 (R) dated 09.02.2011.

5. Subsequently show cause notice No. 05/2012 dated 16.01.2012 was issued to the applicant for recovery of Rs. 1,27,720/-, being rebate sanctioned erroneously, alongwith applicable interest.

6. The show cause notice was confirmed vide order in original No 43/2013 dated 21.02.2013 issued by Assistant Commissioner, Bangalore III Division, Bangalore and the rebate amounting to Rs. 1,27,720/- was ordered to be recovered alongwith interest.

7. Being not satisfied with the legality and propriety of the Orders in Original, the applicant filed an appeal before Commissioner of Central Excise (Appeals-I), Bangalore

8. The Appellate Authority, after considering the submissions of the applicant, rejected the appeal filed by the applicant vide Order in Appeal No. 354/2014-CE dated 16.06.2014. The Appellate Authority, while rejecting the appeal made the following observations:-

i) Earlier the department had filed an appeal against the order in original No 37/11 dated 09.02.2011 vide which the rebate was sanctioned and the appeal was allowed by the appellate authority. The order sanctioning the refund was set aside vide order in appeal No 365/2012-CE dated 08.11.2012.

ii) The instant show cause notice for recovery of erroneous refund was issued on grounds similar to those based on which the earlier appeal by the department had been filed.

iii) The appeal No 365/2012-CE dated 08.11.2012 had attained finality as the applicant had not submitted anything with regard to the filing of the appeal against the order in original No 365/2012-C.E dated 08.11.2012.

iv) The decision cited by the applicant in the matter of M/s U.M Cables vs UOI in the Bombay High Court examined two types of situations 1) rejection

of refund claims for not producing the original and duplicate copies of ARE 1 and 2) rejection of the refund claim because the fundamental requirement regarding the export of goods, their identity and duty paid character was not established. In the first situation the rebate claim was allowed and in the second situation the rejection has been upheld. The second situation dealt in the said decision was squarely applicable to the instant case, as not establishing the identity of the goods was one of the points in the show cause notice.

v) There was no merit in the contentions of the applicant that the original authority had travelled beyond the scope of the show cause notice.

9. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on the following grounds:-

- a) The Assistant Commissioner has travelled beyond the scope of the original SCN and made out altogether new case in the Review which is against the principles of law.
- b) There is clear evidence that the goods manufactured by the manufacturer have actually been exported.
- c) That the non issuance of ARE 1 is a procedural irregularity which has been condoned by the Assistant Commissioner of Central Excise Bangalore III.
- d) The department has not given evidence whether the goods have been diverted to DTA, if not exported.
- e) Omission to file LUT or ARE-1 is to be treated as procedural lapse

The applicant has relied on the following case laws in support of their contention

- i) M/s Aero Products vs Commissioner of Service Tax, Bangalore – 2011(22) STR 522 (Tri-Bang)
- ii) Commissioner of Customs, Mumbai vs Toyo Engineering India Ltd 2006 (201) ELT 513(SC)
- iii) Non Ferrous Material Technology Development Centre 1994 (71) ELT 1081(GOI)

- iv) U M Cables Ltd vs Union of India 2013 (293) ELT 641(Bom)
- v) Commissioner of Central Excise, Bangalore vs Maini Precision Products 2010 (252) ELT 409 (Tri-Bangalore)
- vi) Hydraulics India Services Pvt Ltd vs Commissioner of Central Excise, Bangalore II 2011-TIOL-1752-CESTAT-Bang

10. Personal hearing in the matter was granted on 15.05.2018, 16.10.2019, 25.02.2020, 05.02.2021, 19.02.2021, 18.03.2021, 25.03.2021, 20.04.2021, 27.04.2021, 06.07.2021 and 20.07.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant / department. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

11. The 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.

12. In the instant case, the Government observes that: -

12.1. The applicant had filed another application pertaining to the issue of rejection of the rebate claim amounting to Rs. 1,27,720/- before this Revisionary Authority, which has been decided vide Order No 345/2021-CX(SZ) ASRA/Mumbai dated 30.09.2021, wherein the rebate claim for Rs.1,27,720/- was found to be admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.2004.

12.2. The Government notes that the instant application is in respect of the order of the appellate authority in respect of the proceedings initiated for recovery of rebate claim sanctioned erroneously.

12.3. The Government observes that the present case has arisen pursuant to the show cause notice issued to the applicant for recovery of rebate sanctioned erroneously. The case pertaining to the sanction of rebate has

been settled in the Order No 345/2021-CX(SZ) ASRA/Mumbai dated 30.09.2021 issued by this Revisionary Authority. This Revisionary Authority in Order No 345/2021-CX(SZ) ASRA/Mumbai dated 30.09.2021 held that the impugned rebate claims for Rs.1,27,720/- was admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.2004. and set aside the Order in Appeal No 365/2012-CE dated 08.11.2012 passed by the Appellate Authority.

12.4. The Government observes that the issue of sanction of rebate to the applicant having been settled, no cause of action for recovery of erroneous rebate sanctioned subsists.

13. In view of the above, the Government holds that ends of justice will be met if the impugned Order in Appeal is set aside. Accordingly, Government sets aside the Order in Appeal No 353/2014-CE dated 16.06.2014 passed by Commissioner of Central Excise (Appeals-I), Bangalore

14. The Revision application is allowed on above terms.


26/10/21
(SHRAWAN KUMAR)

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

ORDER No 410/2021-CX (SZ) /ASRA/Mumbai DATED 26.10.2021

To,
M/ s. Modern Machine Manufacturers,
37 & 38B Industrial Estate, Ollur,
Thrussur-680306

Copy to:

1. The Commissioner of CGST & CX, Bengaluru North, No. 59, HMT Bhavan, Bellary Road, Bengaluru 560 032
2. The Commissioner of CGST & CX (Appeals I), Traffic and Transit Management Centre, BMTC Bus Stand, HAL Airport Road, Dommaluru, Bengaluru-560 071
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.