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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. Nos. 198/11/13-RA & 195/172/15-RA / 3664

Date of issue: 05.09.2022

ORDER NO. 775-776/2022-CX (WZ) /ASRA/MUMBAI DATED 24.8.2022  
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 CENTRAL  
EXCISE ACT, 1944.

**I. F.No. 198/11/13-RA**

Applicant : Commissioner of Central Excise, Raigad  
Respondent : M/s. Anchor Engineering Corporation  
Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No.  
BC/410/RGD(R)/2012-13 dated 27.11.2012 passed by the  
Commissioner of Central Excise (Appeals), Mumbai-III.

**II. F.No. 195/172/15-RA**

Applicant : M/s. Anchor Engineering Corporation  
Respondent : Commissioner of Central Excise, Raigad  
Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No.  
CD/137/RGD(R)/2015 dated 07.01.2015 passed by the  
Commissioner of Central Excise (Appeals), Mumbai-II.

**ORDER**

The Revision Application No. 198/11/13-RA has been filed by the Commissioner of Central Excise, Raigad, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai - 410 206 (hereinafter referred to as "the Applicant-Department") against the Order-in-Appeal No. BC/410/RGD(R)/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

The Revision Application No. 195/172/15-RA has been filed by M/s. Anchor Engineering Corporation, PAP, R-305, 3<sup>rd</sup> floor, TTC Industrial Area, MIDC Rabale, Navi Mumbai 400 701 (hereinafter referred to as "the Applicant-II") against the Order-in-Appeal No. CD/137/RGD(R)/2015 dated 07.01.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2.1 The case in brief is that M/s. Anchor Engineering Corporation, is a merchant exporter and had exported excisable goods from the factory premises of the manufacturer i.e. M/s. Munis Forge Limited, Nagpur. Against these exports they had filed 83 rebate claims totally amounting to Rs.56,12,056/-. The rebate claims were rejected by the rebate sanctioning authority vide Order-in-Original No. 1092/11-12/D.C.(Rebate)/Raigad dated 14.07.2012 mainly on the ground that the said manufacturer had defaulted in payment of central excise duty during the period October, 2009 to July, 2010 and therefore as per Rule 8(3A) of the Central Excise Rules, 2002, was required to pay consignment-wise duty on every removal and also without utilizing Cenvat credit, which they failed to comply.

2.2 Therefore, the Applicant-II filed an appeal which was allowed by the Commissioner (Appeals) vide the impugned Order-in-Appeal No. BC/410/RGD(R)/2012-13 dated 27.11.2012, on the basis of following findings:

- i. As the original demand notice issued to the manufacturer i.e. M/s. Munis Forge Ltd., Nagpur had been dropped by the

jurisdictional Commissioner vide OIO No. 16/CEX/2011-12 dated 28-12-2011, the Assistant Commissioner (Rebate), at a later date, cannot now hold that rebate cannot be sanctioned as no duty was paid by the manufacturer.

- ii. There was a default for the period from October 2009 to July 2010. There was no dispute about payment of duty by the manufacturer i.e. M/s. Munis Forge Ltd., for the goods cleared after July 2010, therefore the rebate claims in respect of 49 claims cannot be denied on the ground that duty was not paid by the manufacturer.
- iii. The procedural lapses such as non-submission of triplicate copy, non-appearance of duty payment certificate etc. cannot be ground for denial of rebate claims.

3. Aggrieved, the Applicant-Department has filed the impugned Revision Application mainly on the following grounds:

- (i) An appeal has been filed with Hon'ble Tribunal against the OIO No. 16/CEX/2011-12 dated 28-12-2011 passed by the Commissioner of Central Excise, Nagpur.
- (ii) During review of OIA No. BC/410/RGD/2012-13 dated 27-11-2012 it is also observed that vide an amendment brought by inserting new Rule 8(3A) w.e.f. 31.03.2005 and its subsequent substitution by Notification No. 13/2006(C.E.)N.T. dated 1-6-2006, there is a specific bar to utilize the cenvat credit for duty payment during defaulting period, till the date the claimant pays the outstanding amount including interest thereon and in event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow. This has to be done automatically & there is no need of any written order after 2006. This view is also supported by various other Judgments passed by the High Courts & Tribunal.
- (iii) Paras 1 to 4 above were regarding default of payment for the period from October 2009 to July 2010. At para 10 of the O-I-A the

Commissioner (Appeals) Central Excise, Mumbai - III held that "As regards the remaining rebate claims cited at SR. No.35 to 83 i.e. 49 rebate claims pertain to the period from 1<sup>st</sup> August, 2010 to 13.9.2011. These are invoices which were issued post the default period. In the instant case, the default was continued from October, 2009 to July, 2010. There was no dispute about payment of duty by the manufacturer i.e. M/s. Munis Forge Ltd., for the goods cleared post July 2010. Hence, the rebate claims in respect of entries cited at Sr. No. 35 to 83 cannot be denied on the premise that duty was not paid by the manufacturer." However, the claimant may not have disclosed the factual position of default in payment before the Commissioner (Appeals). Similarly there was also default in payment of duties for the period from 1-8-2010 to 13-09-2011(1-8-2010 to 28-02-2012 and factory closed in March 2012). Three show cause notices demanding duty for the period from (i) August 2010 to October 2010 (ii) November 2010 to June 2011 and (iii) July 2011 to February 2012 was issued by the Commissioner, Central Excise, Nagpur and all S.C.Ns are pending for adjudication. This proves that there was no payment of duty on the goods cleared for export during the period from August 2010 to September 2011, in addition to the non-payment of duty for the period from October 2009 to July 2010.

- (iv) It is to state that the manufacturer has also defaulted in the payment of duty for the period from August 2010 to September 2011. Hence the provisions of Rule 8 (3A) of CER, 2002 are squarely attracted for duty payments for the succeeding months. Therefore, all such goods cleared for home consumption as well as export under rebate are without payment of duty. Hence at the time of the clearances, goods for export under claim of rebate were exported without payment of duty. As the goods exported were non duty paid in terms of Rule 8 (3A) of CER 2002, therefore, the provisions of Rule 18 of CER, 2002 read with notifications issued there under prohibits the payment of rebate in this case.

- (v) As per the judgment of the Hon'ble Tribunal in the case of Commissioner of Customs, Amritsar v/s. Sona Castings, after examining the law and a number of judgments, held that the public exchequer should not suffer on account of a fraud committed by someone just because he has transferred the scrip to a third party successfully after obtaining the same fraudulently. The person who acquires such scrip should safeguard his interest by carrying necessary enquiry. The same legal issue also be applicable to this case and the respondent cannot avail of the rebate benefit in this case.

On the above grounds, the Applicant-Department prayed to set aside the impugned order-in-appeal.

4.1 A Personal hearing was held in this case on 28.04.2022. Shri Anil Balani, Advocate appeared on behalf of the Applicant-II, for the online hearing and reiterated their earlier submissions. He submitted that the Tribunal vide Order dated 02.08.2021 has set aside the Commissioner's Order, where though duty payment was confirmed, penalty was imposed. He requested that since duty has been properly discharged, the matter should be concluded in their favour as no other ground is mentioned.

4.2 No representative from Applicant-Department's side appeared nor any written communication has been received from them in the matter.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Final Order No. A/86663-86664/2021 dated 02.08.2021 passed by Hon'ble CESTAT, Mumbai.

6. Government observes that the case in hand can be summarized as under:-

- a) The Applicant-II, a merchant exporter, had exported excisable goods from the factory premises of M/s. Munis Forge Limited, Nagpur, the

manufacturer of excisable goods, and filed 83 rebate claims totally amounting to Rs.56,12,056/- during the period Oct'09 to Nov'11.

b) The rebate sanctioning authority vide Order-in-Original No. 1092/11-12/DC/RGD dated 14.07.2012, rejected the rebate claims citing the following reasons:-

- i. That the duty has not been paid by the manufacturer on finished goods exported by the respondent.
- ii. That in respect of certain rebate claims, duty payment certificate was not appearing on the triplicate copy of the ARE 1.
- iii. That in respect of certain rebate claims, duty payment certificate was not appearing on the triplicate copy of the ARE1 and also the jurisdictional Range Superintendent has not counter signed the said ARE1s.
- iv. That in respect of one rebate claim, the triplicate copy of the ARE1 duly counter signed by the Range Superintendent is not available.

c) The Applicant-II filed an appeal which was allowed by the Commissioner (Appeals) vide the impugned Order-in-Appeal No. BC/410/RGD(R)/2012-13 dated 27.11.2012 on the grounds as detailed at foregoing para 2.2. The main ground being that the Show Cause cum Demand Notice issued to the manufacturer, M/s. Munis Forge Limited, Nagpur had been dropped by the adjudicating authority, viz. Commissioner of Central Excise, Nagpur vide Order-in-Original No. 16/CEX/2011-12 dated 28.12.2011. Hence, the rebate rejection Order which was passed on a later date, viz. 14.07.2012, by the rebate sanctioning authority, who rejected the rebate claims as no duty had been paid by the manufacturer, was bad in law.

d) The said Order-in-Original No. 16/CEX/2011-12 dated 28.12.2011 passed by the Commissioner of Central Excise, Nagpur, was appealed by Department as well as M/s. Munis Forge Limited.

e) The Department had appealed as it was aggrieved by dropping of demand while M/s. Munis Forge Limited had appealed being

aggrieved by imposition of penalty under Rule 25 of Central Excise Rules, 2002.

- f) The Hon'ble CESTAT, Mumbai vide Final Order No. A/86663-86664/2021 dated 02.08.2021 did not find any merit in the appeal filed by the Department and dismissed the same while allowing the appeal filed M/s. Munis Forge Limited by setting aside the penalty imposed on them under Rule 25 *ibid*.

7.1 Government observes that the Applicant-II has vide letter dated 05.04.2021 informed that in an identical case pertaining to them, Government has already passed an Order viz. Order No. 357/2021-CX(WZ)/ASRA/Mumbai dated 12.10.2021.

7.2 Government observes that the Order-in-Original No. 16/CEX/2011-12 dated 28.12.2011 passed by the Commissioner of Central Excise, Nagpur had a reference in the said Order dated 12.10.2021 of the Government as apparent from the relevant paragraphs reproduced hereunder:

*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.*



7.3 Government further notes that the Hon'ble CESTAT Mumbai, has rejected the appeal of the Department against Order-in-Original No. 16/CEX/2011-12 dated 28.12.2011 passed by the Commissioner of Central Excise, Nagpur while allowing appeal of the applicant to drop the penalty imposed under Rule 25 of the Central Excise Rules, 2002. In the said Order, the Hon'ble CESTAT relied on the judgment passed by Hon'ble Gujarat High Court in the case of Indsur Global Ltd.[2014(310)ELT833(Guj)] wherein constitutional validity of Rule 8(3A) was decided. The relevant paragraphs from the said Order of Hon'ble CESTAT Mumbai are reproduced hereunder:

*4.3 Since the Rule 8 (3A) which restricted the payment of Central Excise duty from the CENVAT Credit Account during the period of default, has been held unconstitutional by the Hon'ble High Court to that extent, the very basis of Show Cause notice do not survive. In absence of the restriction imposed by the Rule 8 (3A) towards utilization of CENVAT Credit for payment of Central Excise duty the appellant cannot be defaulted for payment of duty by utilization of CENVAT Credit. Commissioner has category held in favour of the Appellant and have agreed that the appellant were making the payment of duty as due by utilizing the CENVAT Credit.*

*4.4 Since Appellant were paying the duty utilizing the CENVAT Credit they cannot be charged for contravention of the provisions of Rule 4, 8(1), 8(3) & 8(3A) of the Central Excise Rules, 2002 for which the penalty has been imposed under Rule 25 of Central Excise Rules, 2002, equivalent to the demand of duty. In view of Hon'ble High Court order since we conclude that payment of duty by utilizing the CENVAT Credit was proper mode of payment of duty during the period of default, the penalty imposed on the Appellant needs to be set aside.*

*4.5 Since the appeal filed by the revenue do not take into account the decision of Gujarat High Court, subsequently in case of Indsur Global Ltd., holding the Rule 8 (3A) unconstitutional to the extent of the*

*restricting the payment of Central Excise Duty by utilizing CENVAT Credit, we do not find any merits in the appeal filed by the revenue.*

*5.1 Thus appeal No E/460/2012 filed by the appellant is allowed and Appeal No E/614/2012 filed by the revenue is dismissed.*

Thus, Government observes that both, the duty demand as well as penalty imposed on the manufacturer, M/s. Munis Forge Limited, were found to be unsustainable, thereby leaving no doubts regarding duty paid nature of the goods exported. As it is established that duty has been discharged on the export goods and the fact of export is undisputed, rebate becomes eligible to the Applicant.

7.4 Government observes that in their application the Applicant-Department has contended that Show Cause Notices issued to M/s. Munis Forge Limited covering the period August'10 to Nov'11 are still pending. However, no update regarding present status of said Show Cause Notices has been communicated by the Applicant-Department. Further, as same issue is involved viz. applicability of Rule 8 (3A) of CER, 2002, the impugned Final Order No. A/86663-86664/2021 dated 02.08.2021 passed by Hon'ble CESTAT, Mumbai, would be applicable to these cases also.

7.5 Government observes that the case law relied upon by the Applicant-Department involves entitlement of benefit of DEPB scrips which were fraudulently obtained by the transferor by submitted forged Bank Realisation Certificate, subsequently cancelled by JDGFT after being used by transferee for imports. Thus, Government does not find the same applicable in the instant matter as there is no forgery/fraud or any malafide intention involved in the instant case.

#### **8. Revision Application No. 195/172/15-RA**

This Revision Application is filed by Applicant-II. Brief facts of the case are summarized as under:

- a) The Applicant-II had filed various rebate claims totally amounting to Rs.56,12,056/- for exports carried between Oct'09 to Nov'11.

- b) The claims were rejected by the rebate sanctioning authority vide Order-in-Original No. 1092/11-12 dated 14.07.2012.
- c) Aggrieved, the Applicant-II filed an appeal which was allowed by the Commissioner (Appeals) vide Order-in-Appeal No. BC/410/RGD(R)/2012-13 dated 27.11.2012.
- d) On the basis of said Order-in-Appeal, the rebate sanctioning authority sanctioned the rebate amount of Rs.56,12,056/- vide Order-in-Original No. 3036/12-13/DC(Rebate)Raigad dated 06.03.2013.
- e) The Department filed an appeal against said Order-in-Original No. 3036/12-13/DC(Rebate)Raigad dated 06.03.2013 which was allowed by the Appellate authority vide Order-in-Appeal No. CD/137/RGD/2015 dated 07.01.2015.
- f) Therefore the Applicant-II has filed the impugned Revision Application, F. No. 195/172/15-RA, against said Order-in-Appeal No. CD/137/RGD/2015 dated 07.01.2015.

9. Government observes that in the Order-in-Appeal No. CD/137/RGD/2015 dated 07.01.2015, the Appellate authority had allowed the appeal of the Department on the following grounds:

*In the instant case the rebate sanctioning authority had sanctioned the rebate in view of the order of the Order-in-Appeal No. BC/410/RGD(R)/201213 dated 27.11.2012 which was not accepted by the department and an appeal was filed before the Revisionary Authority. Since the issue on the basis of which rebate was sanctioned is under appeal before the Revisionary Authority of the Government of India and as such the matter is sub judice before the higher judicial forum, it cannot be construed that the abovementioned order of the Commissioner (Appeals) had attained the finality. In view of that the impugned order of the rebate sanctioning authority needs interference and has to be set aside. Accordingly, the appeal has to be allowed.*

Government has already discussed the appeal filed by the Department against Order-in-Appeal No. BC/410/RGD(R)/201213 dated 27.11.2012 in the foregoing paras.

10. In view of the above, Government:

- i. upholds the Order-in-Appeal No. BC/410/RGD(R)/2012-13 dated 27.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III and rejects the impugned Revision Application filed by the Applicant-Department.
- ii. sets aside the Order-in-Appeal No. CD/137/RGD/2015 dated 07.01.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II and allows the impugned Revision Application filed by the Applicant-II.

*Shrawan*  
*24/8/22*  
(SHRAWAN KUMAR)

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

ORDER No. *775-776* /2022-CX (WZ) /ASRA/Mumbai dated *24.8.22*

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

Copy to :

1. The Commissioner of CGST, Raigad,  
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2. M/s. C. Subba Reddy & Co.,  
B-201, Kailash Industrial Complex,  
Veer Savarkar Marg, Off LBS Marg,  
Vikhroli (West), Mumbai - 400 079.
3. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.