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

F. Nos.195/89/13-RA &  
195/1019/13-RA

12669

Date of Issue:

05.09.2022

777-778  
ORDER NO. /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.

Applicant : M/s. Anchor Engineering Corporation  
Respondent : Commissioner of Central Excise, Raigad  
Subject : Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No.  
US/418/RGD/2012 dated 27.06.2012 and Order-in-Appeal  
No. SK/230/RGD/2013 dated 28.08.2013 both passed by  
the Commissioner of Central Excise (Appeals), Mumbai-II.

**ORDER**

These two Revision Applications have 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") against following Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mumbai-II:

F. No.	OIO No./Date	Amount (in Rs.)	OIA No./Date
195/89/13-RA	655/11-12/DC(Rebate)/Raigad dated 26.07.2011	2,40,299/-	US/418/RGD/2012 dated 27.06.2012
195/1019/13-RA	Raigad/ADC/12/SJ/13-14 dated 18.06.2013	2,40,299/-	SK/230/RGD/2013-14 dated 28.08.2013

2.1 The case in brief is that the applicant, a merchant exporter, had filed rebate claims totally amounting to Rs.2,40,299/- under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for the exports carried out by them during the period Jul'09 to Sep'09. After thorough scrutiny of the relevant documents, the rebate claims were sanctioned by the rebate sanctioning authority vide Order-in-Original No. 655/11-12/DC(Rebate)/Raigad dated 26.07.2011.

2.2 However, the Department filed an appeal against the said Order, on the ground that the goods were exported by the applicant availing benefit under Notification No. 41/2001 - CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) of the concerned ARE-1 forms. Under the said Notification, the claim for rebate of duty paid on materials used in the manufacture or processing of goods is required to be lodged with the jurisdictional Assistant/ Deputy Commissioner and the goods have to be cleared for export under Bond in form ARE-2. The appeal was allowed by the Appellate authority vide the impugned Order-in-Appeal No. US/418/RGD/2012 dated 27.06.2012.

3. Aggrieved, the Applicant has filed the impugned Revision Application mainly on the following grounds:
- i. The Commissioner erred in passing ex parte impugned order as no hearing was ever granted to this applicant.
  - ii. The Commissioner ought to have appreciated that in the instant case there is absolutely no dispute as to — (A) that the goods have been exported, (B) that correct Central excise duty has been discharged by the manufacturer of the goods exported, (C) that the convertible foreign exchange has been earned.
  - iii. The Commissioner ought to have appreciated that in the facts of the case the declaration of notification number by the manufacturer / merchant exporter (applicant herein) in form ARE-1, is ex facie a typographical/ mere technical error.
  - iv. The Commissioner ought to have appreciated that the applicant herein being a "merchant exporter", despite the declaring on ARE-1 that the goods are being exported by availing facility under Notification 41/2001, was not capable of claiming such benefit since such a benefit is made available only to the manufacturer and not to the merchant exporter under the provisions of law.
  - v. The Commissioner ought to have appreciated that this 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 19/2004 CE (NT), as amended, during the relevant period.
  - vi. The Commissioner ought to have appreciated that in the prescribed format of form ARE-1 even today there is no provision for a declaration that the goods are being exported under claim of rebate under Notification 19/2004.
  - vii. The Commissioner conveniently looked only the wrong declaration/typographical error of this applicant when it was ex facie clear from all other documents such as manufacturers excise invoice, debit entry in CENVAT account, Duty paying certificate issued by the jurisdictional Central Excise authorities, rebate claim that the goods

were cleared for export under claim of rebate of duty paid by the manufacturer on the final products.

- viii. The Commissioner ought to have appreciated that it is settled law that that the substantial benefit of rebate claim should not be denied for procedural lapses and that in the instant case the only lapse appears to be declaration of wrong serial number of a notification because from all other documents and actions taken by the applicant it is clear that what was being claimed by this applicant in his capacity as a merchant exporter was nothing but a rebate of Central excise duty paid by the manufacturer of final products.

On the above grounds, the applicant prayed to set aside the impugned Order-in-Appeal and uphold the Order-in-Original.

4. A Personal hearing was held in this case on 28.04.2022. Shri Anil Balani, Advocate, appeared on behalf of the Applicant, for the online hearing and reiterated their earlier submissions. He requested that since duty has been properly discharged, the matter should be concluded in their favour.
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.
6. Government observes that the issue involved is whether a rebate claim can be rejected due to incorrect certification in the export document?
7. Government observes from the relevant ARE-1's submitted by the applicant that at col.3(b) they have scored out the words 'without availing facility'. Thus the sentence reads as 'We hereby certify that the above mentioned goods have been manufactured availing facility/~~without availing facility~~ under Notification 41/2001-Central Excise (N.T.).....' In their Revision Application, the applicant has admitted that it is a typographical/technical error.

8. Government observes that the rebate sanctioning authority had before sanctioning the rebate amount, carried out necessary verifications in compliance with the relevant Notification and guidelines issued in the matter as apparent from the findings of the impugned Order-in-Original, reproduced hereunder:

1. *The goods have been shipped within period as stipulated under Notfn. No. 19/2004-CE(NT) dated 06-09-2004 and the claims for rebate have been lodged within period as stipulated under Section 11B read with Rule 18 of Central Excise Rules, 2002.*
2. *The goods are excisable. The sub-heading of the tariff classification is different in the Shipping Bill vis-a-vis ARE-1/Excise Invoice. However it is verified that there is no change in the rate of duty due to the difference and consequential rebate amount.*
3. *The description and quantity of the goods as mentioned in the ARE-1 vis-a-vis in Shipping Bill and Bill of Lading tallies and are in order.*
4. *The triplicate copy of ARE-1 carries the endorsement of Excise Officer in Part A that the export clearance is recorded in Daily Stock Register.*
5. *The duty payments has been ascertained from the Invoice and from the endorsement on ARE-1 Part A by Supdt., in-charge of manufacturing unit.*
6. *The Export goods covered by the ARE-1s have been certified as exported by Customs Officer in Part-B of Original & Duplicate ARE-1s the said aspect is and also supported by Bills of Lading and Shipping Bills.*
7. *The market price as declared in the ARE-1 / Invoice is seen to be more than the rebate claimed.*
8. *Necessary Disclaimer Certificate produced by the claimant.*
9. *In view of the above it has proved that ;*
  - (i) *The rebate claim was submitted within time*
  - (ii) *The goods in question have been exported*
10. *The Verification of unjust enrichment s not required in terms of proviso (a) of Section 11 B of Central Excise Act, 1944. The conditions specified*

*in the Notification No. 19/2004-CE(NT) dated 06-09-2004 have been fulfilled by the claimant. In view of the same the Rebate Claim/s is / are found correct and admissible to them.*

11. *As per Instruction No.01 & 2 dated 12.06.2006 & 14.06.2006 of Commissioner regarding verifications to be carried out in case o merchant / manufacturer exporters, the verifications were accordingly carried out. Also followed the instruction No. 01/2008 dated 27.10.2008 and Instruction No.02/2008 dtd. 26.12.2008 issued by the Commissioner, Central Excise, Raigad. The genuineness of shipping Bill have been verified from computer system and found correct. The Superintendent during the telephonic Confirmation of the DPC it was noticed that certain crucial observation DPC were missing on the DPC letters sent to this office. Hence for confirmation of the same again all the DPC letters were forwarded to Divisional Assistant Commissioner for verification of genuineness of duty paying documents in respect of M/s. Munis Forge Ltd. To which Divisional Assistant Commissioner has confirmed that duty payment of the above referred ARE-1 only vide his letter C. No.VIII(Cus)48-01/2011/CT/77 dated 08/02/2011 forwarded to this office under Additional Commissioner (Vig), Nagpur's letter No. C.No. 939)2-Vig/2011/74 dated 11/02/2011.*

12. *BRCs are attached with the claims.*

9. Government observes that none of the above mentioned elaborate findings of the rebate sanctioning authority have been challenged by the Department. Therefore Government concludes that an inadvertent mistake in an export document without any supporting evidence to prove any malafide intention on part of the claimant cannot be a valid reason for denying rebate. The fact that though it is certified in the ARE1s that Notification 41/2001-Central Excise (N.T.) has been availed, the details of Cenvat credit reversal entries towards duty payment on export goods contradict said certification as under said Notification export of excisable goods is required to be carried out without payment of duty under a general Bond. Therefore, the mistake needs to be overlooked as an inadvertent lapse which occurred at the time of preparation of the export document.

10. **Rebate Application F.No.195/1019/13-RA**

Brief facts of the case are summarized as under:

- a) The Applicant had filed various rebate claims totally amounting to Rs.2,40,299/- for exports carried out between Jul'09 to Sep'09.
- b) The claims were sanctioned by the rebate sanctioning authority vide Order-in-Original No. 655/11-12/DC(Rebate)/Raigad dated 26.07.2011.
- c) Aggrieved, the Department filed an appeal which was allowed by the Commissioner (Appeals) vide Order-in-Appeal No. US/418/RGD/2012 dated 27.06.2012.
- d) On the basis of said Order-in-Appeal, the Department issued a Show Cause cum Demand Notice for recovery of rebate sanctioned, which was confirmed by the adjudicating authority vide Order-in-Original No. Raigad/ADC/12/SJ/13-14 dated 18.06.2013.
- e) The Applicant filed an appeal against said Order-in-Original No. Raigad/ADC/12/SJ/13-14 dated 18.06.2013 which was rejected by the Appellate authority vide Order-in-Appeal No. SK/230/RGD/2013 dated 28.08.2013.
- f) Therefore the Applicant has filed the impugned Revision Application, F. No. 195/1019/13-RA, against said Order-in-Appeal No. SK/230/RGD/2013 dated 28.08.2013.

11. Government observes that in the Order-in-Appeal No. SK/230/RGD/2013 dated 28.08.2013, the Appellate authority had rejected the appeal of the applicant on the following grounds:

*5. Department while filing appeal before this office, simultaneously issued a protective demand dt. 16.1.2012 to the appellant. Now, the Adjudicating Authority has confirmed the said demand vide the impugned order. Since the subject issue has already been decided by this office vide OIA dt. 27.6.2012, it is operative unless the same is set aside by a higher forum of authority.*

*In view of the above, the appeal filed by the appellant is rejected*

Government has already discussed the appeal filed by the Applicant against Order-in-Appeal No. US/418/RGD/2012 dated 27.06.2012 in the foregoing paras.

12. In view of the above, Government rejects Order-in-Appeal No. US/418/RGD/2012 dated 27.06.2012 and Order-in-Appeal No. SK/230/RGD/2013 dated 28.08.2013 both passed by the Commissioner of Central Excise (Appeals), Mumbai-II and allows both the impugned Revision Applications filed by the Applicant.

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

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

ORDER No *777-778* /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,  
Plot No.1, Sector-17, Khandeshwar,  
Navi Mumbai - 410206.
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.