

**SPEED POST**



F. Nos. 199/01-03/ST/2021—R.A.

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F. Nos. 196/01-03/ST/2021—R.A.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6th FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.. 28/01/22

Order No. 09-14/22-ST dated 27-01-2022 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the Orders-in-Appeal Nos. 13-15/HAL/ST/2020-21, all dated 04.11.2020, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : The Commissioner of CGST, Haldia, Kolkata.

Respondent : Ms. Rashmi Metaliks Ltd., Kolkata.

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Respondent : The Commissioner of CGST, Haldia, Kolkata.

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**ORDER**

Revision Applications Nos. 199/01/ST/2021-R.A. dated 08.06.2021, 199/02/ST/2021-R.A. dated 14.06.2021 & 199/03/ST/2021-R.A. dated 14.06.2021, and revision applications nos. 196/01-03/ST/2021, all dated 11.02.2021, have been filed by the Commissioner of CGST, Haldia (hereinafter referred to as the 'department') and M/s. Rashmi Metaliks Ltd., Kolkata (hereinafter referred to as the 'Party'), respectively, against the Orders-in-Appeal Nos. 13-15/HAL/ST/2020-21, all dated 04.11.2020, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, decided the appeals filed by the Party against the Orders-in-Original No. R/01-03/Rebate/KGP/CGST/2019-20, all dated 06.05.2019, passed by the Assistant Commissioner, CGST, Kharagpur Division and in respect of rebate claims of service tax (filed under notification no. 41/2012-ST dated 29.06.2012) granted certain relief to the Party while on certain other issues, the Party's appeals have been rejected. The department has filed the revision applications challenging the reliefs granted to the Party whereas the Party has filed revision applications in respect of the issues where they have been unsuccessful before the Commissioner (Appeals). The details including issues involved are as under:

SI. No.	OIA No. & Date	RA No.	Filed by	Issue	Result	Agitated by
1.	13/HAL/ST/2020-21 dated 04.11.2020	199/02/ST/2021-RA	Department	1. Rs. 4,56,056/- Railway Freight is inadmissible for short-shipments.	Allowed	Department
		196/01/ST/2021-RA	Party	2. Additional invoice amount Rs. 11,95,705/-+SBC is not admissible being time barred.	Rejected	Party
				3. Rs. 1,47,000/- GTA service for want of correlation and inconclusive evidence of non-availment of CENVAT Credit of service tax paid on GTA services.	Allowed	Department
				4. Rs. 30,289/- service received from KPT.	Rejected.	Party
2.	14/HAL/ST/2020-21 dated 04.11.2020	199/03/ST/2021-RA	Department	1. Rs. 5,05,468/- Railway Freight + Rs. 7,43,781/- Rake handling charges inadmissible short shipment.	Allowed.	Department
		196/02/ST/2021-RA	Party	2. Rs. 36,363/- ST on sampling & analysis service.	Allowed	Department
				3. Rs. 1,45,373/- additional invoice of SBC submitted after deficiency memo inadmissible being time	Rejected	Party

				barred.		
				4. Rs. 3510/-+Rs. 8140/- non-submission of original invoice.	Rejected	Party
3.	15/HAL/ST/2020-21 dated 04.11.2020	199/01/ST/2021-RA	Department	1. Rs. 2,59,088/- Railway Freight + Rs. 2,77,776/- Rake handling charges inadmissible – short shipment.	Allowed	Department
		196/03/ST/2021-RA	Party	2. Rs. 88,580/- ST on Railway Freight as Receipt issued prior to ARE-1.	Rejected	Party
				3. Rs. 2,11,823/- additional invoice of SBC submitted after deficiency memo is inadmissible – time bar.	Rejected	Party
				4. Rs. 2,67,284/- non-submission of original invoices.	Rejected	Party

2. Personal hearings in the aforesaid revision applications were fixed on 29.12.2021, 07.01.2022, 10.01.2022 & 24.01.2022. Neither Party nor the department appeared for personal hearing. The Authorized Representative of the Party, vide email dated 24.01.2022, has requested for decision on the basis of Written Submissions. The department has also, similarly, vide letter dated 28.12.2021, stated that it has nothing further to add in the matter. The Written Replies, all dated 10.08.2021, have been filed by the Party against the RAs filed by the department.

3. As bulk of the issues involved in these RAs are common, they are being taken up for disposal together based on Written Submissions.

4. The Government has carefully examined the matter. The issue wise grounds, observations and findings are as under:

(i) **Admissibility of rebate in respect of service tax paid on Railway Freight and Rake Handling charges** –

The original authority had rejected the rebate corresponding to the service tax paid on Railway Freight and Rake Handling charges in respect of the quantity of Iron Ore Pellets not covered by the respective Shipping Bills for exports during the relevant quarters. To illustrate, in the case involved in Order-in-Appeal No. 15/HAL/ST/2020-21, the Applicants had dispatched 92086 MT of Iron Ore Pellets by Railway to Dhamra Port for export, however, 10015 MT, out of the total quantity so transported, was not exported under the Shipping Bills relevant to the rebate claim. The

original authority has rejected the rebate claim for service tax, proportionate to the quantity short shipped. The Commissioner (Appeals) has, however, allowed the same observing that the original authority had not adduced any evidence that the quantity short shipped, under the relevant Shipping Bills, was not exported subsequently, or diverted elsewhere. The judgment of Tribunal in the case of *Indian Metals & Ferro Alloys Ltd. {2015 (52) STR 134 (Tri-Kol.)}* has also been relied upon. The Government observes that it is an admitted position that in all these cases certain quantities were not exported against the Shipping Bills produced as proof of export. Though it is claimed that this short shipped quantity has been exported, subsequently, no specific details are forthcoming. It is trite that the responsibility to substantiate the claim rests squarely on the claimant and it is for the claimant to establish that the claim pertains to the goods which had been actually exported. In other words, the claimant has to prove that the service tax, in respect of which the rebate is being claimed, relates to the services provided in respect of goods covered by those export shipments which are the subject matter of a specific claim. Therefore, by observing that the department has failed to produce evidence that short shipped quantity is not exported, subsequently, or diverted elsewhere, the Commissioner (Appeals) has sought to shift the onus, to establish that the goods were actually exported, from the claimant to the department, which is not acceptable in law. The decision of the Tribunal in the case of *Indian Metals & Ferro Alloys Ltd. (supra)* has been relied upon by the Commissioner (Appeals). However, as the Tribunal has decided a matter which is not maintainable before it, in view of the proviso to Section 35B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, the said decision has no precedentiary value. In any case, the decision of the Tribunal hinges upon the interpretation of expression 'used for export of goods' used in earlier notification no. 41/2007-ST. The view taken by the Tribunal that the taxable services were used for export of goods, even in respect of

quantity which was not exported, has no basis in law since export of goods is the paramount requirement for admissibility of a rebate claim. Unless the exports take place, claim for rebate does not arise. If the view of the Tribunal were to be accepted, it could give rise to a situation where the rebate would become payable as soon as the goods leave the place of manufacture for export irrespective of whether export actually takes place or not. The impugned Orders of Commissioner (Appeals) can, therefore, not be sustained on this count.

- (ii) **Additional amounts added to the rebate claims by way of additional invoices/claims of Swachh Bharat Cess (SBC)** – The Party had revised the relevant claims by including additional invoices and by including amounts relevant to Swachh Bharat Cess, at the time of filing of reply to the Deficiency Memos, in all cases after the lapse of limitation period of one year. It is the contention of the Party that the revised claims were submitted with reference to the original claims, which were filed within the limitation period, and, hence, these revised claims are not barred by limitation. The judgments of Hon'ble Gujarat High Court, in the case of *Apar Industries (Polymer Division) vs. UOI* {2016 (333) ELT 246 (Guj.)} and that of Tribunal in the case of *Banco Products India Ltd.* {2016 (42) STR 535 (Tri-Ahmedabad)} have been relied upon. As correctly pointed out by the Commissioner (Appeals), the judgment in the Apar Industries case relates to a refund claim under Rule 57F of the Central Excise Rules, 1944 where the refund sanctioning authority had initially returned the refund claim due to non-submission of claim in proper format and after re-submission, the claim was rejected on the grounds of time bar. In the instant case, on the other hand, the Party has revised their claim subsequently, to include completely new invoices and items of claim. Therefore, the judgment in Apar Industries is of no help to Party in the present case. The judgment of Tribunal in the case of Banco Products India Ltd. is in respect of a case where the original refund claim of Rs. 5,45,657/- was revised

downwards to Rs. 4,96,486/- whereas, in the present case, the claim has been revised upwards by including totally new invoices and items for claim. Therefore, the decision in Banco Products India Ltd. is also not applicable in the facts of the present case. Further, the Government is not persuaded by the contention of the Party that they had not filed claims for the disputed amounts due to mistake or oversight and, therefore, the enhanced claims should be allowed as revised claims. It is observed that the Party themselves had calculated the amount of refund and is entirely responsible for the same. Tribunal has taken a similar view in the case of *Ravi Paints and Chemicals vs. Commissioner of Central Excise, Chennai* {2004 (177) ELT 1074 (Tri-Chennai)}. Thus, there is no infirmity in the view taken by Commissioner (Appeals) on this issue.

- (iii) **Claim rejected for non-submission of original invoices** – Amount of Rs. 2,67,284/- (in RA Nos. 199/01/ST/202-RA & 196/03/ST/2021-RA) and amounts of Rs. 3,510/- & Rs. 8,140/- (in RA Nos. 199/03/ST/2021-RA & 196/02/ST/2021-RA) have been rejected for non-submission of original invoices. The Commissioner (Appeals) has observed that the original copies of the invoices were not submitted even before him during the appeal proceedings. On the other hand, it is the contention of the Party that the original copies of the invoices were shown and, as advised, certified true copies were submitted. This contention is not acceptable in as much as the original copy of the invoice is required to be produced alongwith refund claim which has admittedly not been done. Further, as recorded by the Commissioner (Appeals), the original invoice was not produced even at the stage of appeal. Therefore, the Government does not find any infirmity in the view taken by the Commissioner (Appeals) on this count as well.
- (iv) **Rejection of claim pertaining to Railway Receipts issue prior to the ARE-1** – In the matter covered by the Order-in-Appeal No.

15/HAL/ST/2020-21 dated 04.11.2020, the Commissioner (Appeals) has upheld the decision of the original authority to reject the rebate claim amounting to Rs. 88,580/- in respect of service tax on Railway Freight where Railway Receipts/invoices were issued prior to the date of ARE-1 on the grounds that the services rendered in respect of the service tax so paid have no correlation to the export of goods in the subject case. The Government agrees with the view taken by the lower authorities as the Railway Receipts/Invoices have been issued prior to the date of first ARE-1 and, hence, these are not related to the transport of goods in respect whereof subject rebate has been claimed. The correlation of services with the goods exported, in respect of which the rebate is being claimed, is not a technical matter, as claimed by the Party, rather it is a substantive issue at the core of admissibility of the refund claim. Therefore, the Commissioner (Appeals) has taken a correct view in the matter.

- (v) **Service Tax on Sampling & Analysis Service** - In the claim involved in the Order-in-Appeal No. 14/HAL/ST/2020-21 dated 04.11.2020, the original authority had rejected the rebate claim for an amount of Rs. 36,363/- in respect of sampling and analysis service provided by CCIC India Pvt. Ltd. on the grounds that the Party received these services in the overseas country after the export of goods. The Commissioner (Appeals) has, however, allowed the claim. The Government observes that the sampling and analysis services were provided at the port of discharge of exported goods. Thus, it is evident that these services were provided after the export of goods had been completed. As such, the notification no. 41/2012-ST is not applicable to subject services.

- (vi) **Rejection of rebate claim for want of correlation and for want of inconclusive evidence of non-availment of CENVAT Credit –**

In the rebate claim involved in Order-in-Appeal No. 13/HAL/ST/2020-21

dated 04.11.2020, the original authority had rejected the rebate claim in respect of service tax amounting to Rs. 1,47,000/- paid on GTA services for want of correlation and due to inconclusive evidence of non-availing of CENVAT Credit of the service tax so paid. The Commissioner (Appeals) has, however, allowed these claims on the basis of Board's Circular No. – 120/01/2010-ST dated 19.01.2010. As per these para-3.2.1 of the said Circular, the correlation and nexus between inputs/input services and exports is to be accepted on the basis of self-certification by the exporter or the Chartered Accountant in respect of relevant invoices. It is also provided therein that the departmental officers are only required to make a basic scrutiny of the documents and, if found in order, sanction the refund claim. The Commissioner (Appeals) has observed that while the Party has fulfilled the procedure as mentioned in the said Circular, the lower authority had failed to point out any discrepancies that may have been noticed after basic scrutiny of the documents. Thus, the Government does not find any infirmity in the impugned Order-in-Appeal on this count.

**(vii) Rejection of claim in respect of invoices of Kolkata Port Trust –**

In the matter under Order-in-Appeal No. 13/HAL/ST/2020-21 dated 04.11.2020, the Commissioner (Appeals) has upheld the Order of the original authority where the amount of Rs. 30,289/- paid as service tax on the services received from the Kolkata Port Trust towards Port services has been rejected on the grounds that the relevant invoices are relating to import. It is the contention of the Party that by "import", the Kolkata Port Trust meant the inward movement of the goods into the port. The Government observes that there is an inward movement of goods into the port for "export" whereas there is an outward movement of goods from the port in respect of "import". The words "import" and "export" are well known and it is a travesty to suggest that Kolkata Port Trust considered inward movement of goods into the port as "import" of goods. In this view of the matter, the Government



does not find any infirmity in the Order of Commissioner (Appeals) on this count as well.

5. For the reasons aforesaid, the RA Nos. 196/01-03/ST/2021-RA filed by the Party are rejected and the RA Nos. 199/01-03/ST/2021-RA filed by the department are allowed, except to the extent of amount of Rs. 1,47,000/-, as per para 4(vi) above.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST, Haldia,  
15/1, Strand Road, 7<sup>th</sup> Floor,  
MS Building, Customs House,  
Kolkata – 700001.

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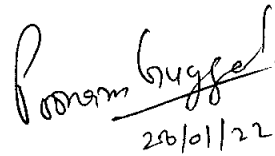
M/s Rashmi Metaliks Limited,  
39, Shakespeare Sarani, Premlata  
Building, 6<sup>th</sup> Floor, Kolkata – 700017.

G.O.I. Order No. 09-14/22-ST dated 27-1-2022

Copy to:-

1. The Commissioner (Appeals-II), CGST & Central Excise, 3<sup>rd</sup> & 4<sup>th</sup> Floor, Bamboovilla, 169, A.J. Chandra Bose Road, Kolkata – 700014.
2. PA to AS (Revision Application).
3. Spare Copy.
4. Guard File.

ATTESTED



20/01/22

(Poonam Buggal)

Subdt. RA .