



F. No. 195/05/SZ/2018-RA
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. 06/02/23

Order No. 46/2023-CX dated 06-02-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application, filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. 468/2017 CT dated 23.11.2017, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

Applicant : M/s Steer Engineering Pvt. Limited, Bengaluru.

Respondent : The Commissioner of CGST, Bengaluru (North West).

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ORDER

Revision Application, bearing No. 195/05/SZ/2018-RA all dated 21.02.2018, has been filed by M/s Steer Engineering Pvt. Limited, Bengaluru (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 468/2017 CT dated 23.11.2017, passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld Order-in-Original No.143/2016-17(Rb) dated 03.03.2017, passed by the Deputy Commissioner of Central Excise, Jalahalli Division, Bengaluru.

2. Briefly stated, the Applicants herein exported goods valued at Rs.3,96,57,400/-, under ARE-1 and thereafter filed rebate claim amounting to Rs. 49,57,175/-, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 claiming rebate of duty paid on the goods exported by them. Out of the total amount of rebate claimed, the original authority allowed the rebate claim amounting to Rs. 21,49,890/-, in cash, but rejected an amount of Rs. 28,07,285/- on the ground that there was a short realization of Rs. 2,24,58,273/- in the declared ARE-1 value of Rs. 3,96,57,400/- and held that the Applicant herein were not entitled to rebate to the extent of short realization of Rs. 2,24,58,273/- in sale proceeds. The appeal filed by the Applicants herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 23.11.2017.

3. The Revision Application has been filed, mainly, on the grounds that the Applicants had realized the remaining export sale proceeds from their foreign buyer and had furnished the details of BRCs to the appellate authority but their submission was not considered for want of not submitting the copies of BRCs; that neither Rule 18 of the Central Excise Rules,2002 nor the Notification No. 19/2004-CE(NT) dated 06.09.2004 has any pre-condition to submit BRC for granting rebate of duty paid on the goods exported.

4. Personal hearing, in virtual mode, was held on 06.02.2023. Sh. H Y Raju, Advocate appeared for the Applicants and stated that the rebate has been partially rejected to the

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extent foreign exchange was not realized. However, subsequently entire amount has been received, which has not been considered by the Commissioner (Appeals). He also reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. In this case, the rebate has been sanctioned partially to the extent proportionate to the sale proceeds realized during the pendency of proceedings before the original authority and claim for balance amount was rejected for want of BRCs for the remaining amount of sale proceeds by the original authority by referring to RBI guidelines, issued vide RBI/2014-15/306/A.P.(D/R Series) Circular No.37 dated 20/11/2014, which stipulated time period of nine months from the date of export for realization and repatriation of export proceeds. Therefore, the question that arises for consideration is whether a rebate claim in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) can be rejected, if the proof of realisation of export proceeds is not submitted within nine months of the date of export.

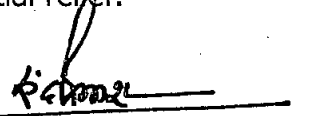
5.2 The Government observes that as per Rule 18 *ibid*, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Notification No. 19/2004-CE(NT) dated 06.09.2004 has been, accordingly, issued prescribing the 'conditions and limitations' as well as the 'procedure' for grant of rebate. The said notification dated 06.09.2004 does not prescribe realisation of export proceeds and submission of BRCs to evidence the same as a condition for sanction of rebate claim. In the present case, the original authority has proceeded on a premise that the proof of realisation of export proceeds and submissions of BRC is a condition for sanction of rebate and, accordingly, held that the Applicant was entitled to rebate proportionate only to that portion of sale proceeds that had been realized, which has no legal basis. Hon'ble Allahabad High Court has, in the cases of Polyplex Corporation {2014 (306) ELT 24 (All.)}

& Jubilant Life Sciences Ltd. {2016 (241) ELT 44 (All.)}, taken a view that executive orders cannot be allowed to prevail over the statutory provisions of Rule 18 and the notification dated 06.09.2004. .

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5.3 The Government further observes that even though there is no requirement of submission of BRC for sanction of rebate, the Applicants herein have subsequently claimed to have realized the balance sale proceeds in full, which was also brought to the knowledge of the Commissioner (Appeals) during the appellate proceedings. The copies of relevant BRC, evidencing realization of balance sale proceeds viz. BRC Nos. SBINO14125100056883 dated 28.07.2017, SBINO14125100056906 dated 03.08.2017 & SBINO14125100056907 dated 03.08.2017 have been placed on record.

5.4 In view of the above, the Government holds that the Orders of the authorities below cannot be sustained and are, accordingly, set aside.

6. The Revision Application is allowed in above terms with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Steer Engineering Private Limited,
No.290, 298, 299, 4th & 4th Main,
4th Phase, Peenya, Industrial Area,
Peenya SSI, Bengaluru Urban,
Karnataka-560058.

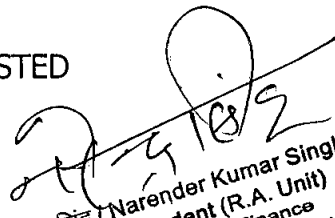
G.O.I. Order No. 46/23-CX dated 06-02-2023

Copy to:

1. The Commissioner of Central Goods & Services Tax (North West), 2nd Floor, BMTC Bus Stand Complex, Shivaji Nagar, Bengaluru-560051.
2. The Commissioner of Central Tax (Appeals-II), Bengaluru, Traffic & Transit Management Centre, BMTC Bus Stand, Domluru, HAL Airport Road, Bengaluru-560071.
3. Sh. H.Y.Raju, Advocate, No. 418/1/02, Unit No.101, First floor, 4th Cross, 6th Main, Wilson Garden, Bengaluru-560027.

4. PPS to AS(RA).
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED


नरेंद्र कुमार सिंह / Narender Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
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राजस्व विभाग / Department of Revenue
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