REGISTERED
SPEED POST

F.No.195/143/2014-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... 5/1/18

ORDER NO. 02/2018-CX dated 02-01-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT	:	Revision Application filed, under section 35EE of the Central Excise Act 1944 against the Order-in-Appeal No. NOI/EXCUS/000/APPL/217/13-14 dated 18.11.2013 passed by the Commissioner of Central Excise, Noida.
APPLICANT	:	M/s Samsung India Electronics Pvt. Ltd.
RESPONDENT	:	Commissioner of Central Excise, Noida

****

ORDER

The Revision Application No. 195/143/14-RA has been filed by M/s Samsung India Electronics Pvt. Ltd., Noida, (herein after referred to as the applicant) against Commissioner(Appeal)'s Order-in-Appeal No. NOI/EXCUS/000/APPL/217/13-14 dated 18.11.2013who has rejected the applicant's appeal against Order-in Original No. 261-R/AC/N-IV/12-13 dated 28.06.2013 of the Assistant Commissioner, Central Excise Division, Noida.

2. The Brief facts leading to the filing of the Revision Application are that the applicant had claimed rebate of duty of Rs.1,58,89,518/- against export of imported inputs as such after reversal of CENVAT Credit as per Rule 3(5A) of the CENVAT Credit Rules, 2004. However, their rebate claim was rejected by the jurisdictional Assistant Commissioner on the ground that the goods are not excisable goods,no duty of Excise has been paid and CENVAT credit has been reversed at the time of clearance from the factory as required under the CENVAT Credit Rules 2004. The above order is upheld by the Commissioner (Appeals) also vide his order dated 18.11.2013. Hence, the applicant has filed the above Revision Application with a request for allowing rebate of Rs. 1,58,89,518/- and to set aside the orders of the Commissioner (Appeals) on the followings grounds:

i) Credit on imported items has been availed in accordance with the provisions of CENVAT Credit Rules, 2004.

ii) There is no distinction between credit availed on imported inputs and indigenously procured inputs under the Credit Rules.

iii) Reversal of CENVAT Credit under Rule 3(4)/3(5) of Credit Rules on removal of inputs as such is to the treated as payment of duty for the purpose of Rule 18 of Central Excise Rules 2002 irrespective of the fact whether credit has been availed on imported inputs or indigenously procured inputs.

3. Personal hearing was held on 23.11.2017 which was attended by Ms. Nupur Maheshwari, advocate, for the applicant and Ms. Supriya Yadav, Assistant Commissioner, Division-V, Noida. While Ms. Nupur Maheshwari reiterated the grounds in the Revision Application, Ms. Supriya Yadav opposed the Revision Application on the grounds that no excise duty has been paid in this case and that the CENVAT credit reversed in this case is not a payment of Central Excise duty.

4. There is no dispute that under Rule 18 and Notification No. 19/2004 rebate of duty can be granted only if duty has been paid on the excisable exported goods or duty paid on materials used in the manufacture of exported goods. Therefore, the main issue in this case is whether the applicant has exported the excisable goods after payment of Central Excise duty. But on the basis of the facts discussed above; it is evident that the applicant had earlier imported the inputs, and the same were exported by them subsequently by reversing the CENVAT credit which they had availed earlier against CVD paid thereon. Thus the inputs exported by them are imported goods and these were not manufactured in India. Hence, it is beyond any doubt that the exported goods are not excisable goods and accordingly the question of payment of any Central Excise duty never arose and it is never paid. As per second explaination in rule 8 of Central Excise Rules, 2002, duty or duty of excise certainly include the amount payable in terms of Cenvat Credit Rules which is manifestly for the limited purpose of recovering of the specified amount as referred to in rule 3(5) and rule 3(5A) etc. and passing of the Cenvat Credit to the buyers. But such amount is not a duty of excise in terms of Section 3 of the Central Excise Act and Rule 18 of the Central Excise Rules, 2002 as the goods removed under rules 3(5) and 3(5A) of Cenvat Credit Rules are nowhere defined or deemed as excisable goods. Whereas as for Section 2(d) of the Central Excise Act excisable goods means only the goods as being subject to a duty of excise and under Section 3 of the said Act excise duty is leviable on the goods produced and manufactured in India only. Even the applicant has not claimed that the inputs are excisable goods and Excise duty is paid on the clearance of these goods. Reversal of CENVAT credit at the time of export of these goods is not an Excise duty at all and it is just a payment of an

amount in accordance with Rules 3(5) and 3(5A) of the CENVAT Credit Rules 2004 in lieu of the CENVAT credit taken earlier in respect of these goods which were initially procured for being used for manufacturing of goods. Under Rule 3 of CENVAT Credit Rules credit is admissible on the condition that inputs or capital goods etc. will be used for manufacturing of final products and if these were not used ultimately for the aforesaid purpose the manufacturer is liable to reverse the CENVAT credit. Accordingly, in this case the applicant earlier availed the CENVAT credit in respect of CVD paid on the imported inputs since they intended to use them for manufacturing of final products in their factory. But later on when they exported these goods, the applicant was not eligible to enjoy the benefit of CENVAT credit at the same time and consequently they were required to reverse the credit. The applicant was fully aware about this liability and accordingly they reversed the CENVAT credit at the time of the export of above goods. Thus the reversal of credit in compliance of Rule 3 of CENVAT Credit Rules and it is not a payment of Central Excise duty at all. In fact, as discussed above Central Excise was not leviable at all as the aforesaid goods were not manufactured by them in India and accordingly no duty of Excise could be levied or paid. Therefore, their lengthy argument that reversal of CENVAT credit at the time of export of imported inputs should be considered as payment of Central Excise duty is completely baseless.

5. From the above discussed facts, it is manifest that the applicant has not paid any Excise duty on the inputs and there is no export of excisable goods. Consequently, the primary condition of export of duty paid excisable goods is not established in this case and thus the order of Commissioner (Appeals) cannot be faulted on this ground. The applicant has also placed reliance on the four High Court decisions in the cases of:

(i) CCE v. Micro Inks Ltd., 2011(270) ELT 360 (Bom.)

(ii) Union of India v. Sterlite Industries (I) Ltd., 2017 (354) ELT 87 (Bom.), affirmed in 2017 (354) ELT A26 (S.C.)

(iii) Commissioner of Central Excise v. Ispat Industries &Anr., Order dated 24.03.2011 in Writ Petition No. 88 of 2011.

(iv) CC v. Simplex PharmaPvt. Ltd., 2008(229) ELT 504 (P&H)

However these decisions are not found relevant to the present proceeding as all these decisions have been passed by Hon'ble High Courts mainly on the premise that the duty was paid on the export goods from CENVAT credit which is an accepted method of payment of duty and in none of these decisions the issue has been examined from the angle that the imported goods can not be termed as excisable goods, reversal of Credit under rules 3(5) and 3(5A) is not a payment of duty and mere reversal of credit and utilisation of credit for payment of excise duty are two distinct matters. But in the instant case it is evident that no excise duty has been paid either in cash or from CENVAT credit and it could not be paid as imported goods are not excisable goods at all as incidence of levy of Excise duty which is manufacturing of goods in India is not attracted in this case.

6. In view of the above discussion, no deficiency is found in the order of the Commissioner (Appeals) and Revision Application filed by the M/s Samsung India Electronics Pvt. Ltd., Noida, is rejected.

2.1.18

(R. P. SHARMA)
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

M/s Samsung India Electronics Pvt. Ltd.,
B-1, Sector 81, Phase-II, Noida- 201305 (U.P.)

ORDER NO. 02/2018-CX dated 02-01-2018

Copy to:-

1. The Commissioner of Central Excise, C-56/42, Renu Tower, Sector-62, Noida-201 307.
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida C-56/42, Sector 62, Noida (U.P.).
3. The Assistant Commissioner, Customs & Central Excise, Division-IV, Noida Hotel Formula One, Knowledge Part-3, Greater Noida.
4. Shri V. Lakshmikumaran, Advocate, No. 5, Link Road, Jangpura Extension, New Delhi.
5. PS to AS(RA)
6. Guard File.

ATTESTED
2.1.2018
(Debjit Banerjee)
STO (REVISION APPLICATION)