

198/190/12-RA

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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, Cuff Parade,  
Mumbai- 400 005

F NO. 198/190/12-RA/916

Date of Issue: 24<sup>th</sup> January 2018.

ORDER NO. 04/2018-CX (WZ) /ASRA/MUMBAI DATED 23.01. 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Customs, & Service Tax, Raigad

Respondent : M/s Sam Alloys Pvt. Ltd, Khopoli.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/125/ RGD 2012 dated 27.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



## ORDER

This revision application is filed by the Commissioner of Central Excise, Customs and Service Tax, Raigad (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/125/RGD/2012 dated 27.02.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai upholding the Order-in-Original No.1714/10-11/AC(Rebate)/Raigad dated 24.01.2011 passed by the Deputy Commissioner of Central Excise, Rebate, Raigad.

2. The issue in brief is that M/s. Sam Alloys Pvt. Ltd. (a manufacturer Exporter) situated at 21, ABC Raju Industrial Estate, Penkar Pada Road, Mira, Dist: Thane-410 104 (herein after referred to as respondent) had filed a claim for rebate of duty amounting to Rs. 2,37,316/- (Rupees Two Lakhs Thirty Seven Thousand Three Hundred Sixteen only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 (as amended) in respect of goods exported.

2. The Deputy Commissioner (Rebate) Central Excise, Raigad Commissionerate vide his Order-in-Original No. 1714/10-11/AC (Rebate)/Raigad dated 24.01.2011 sanctioned the rebate amounting to Rs. 2,37,316/-.

3. Being aggrieved by the impugned Order-in-Original the applicant filed an appeal before Commissioner (Appeals-II), Mumbai as it was observed that the claimant had exported the non-excisable goods viz. "S.S. SHARP EDGE COIL, BLACK MOULD ITEMS" and claimed rebate which has been sanctioned by the rebate sanctioning authority. It was further observed that rebate in terms of Rule 18 of Central Excise Rules, 2002 is the rebate of Central Excise Duty paid on the goods manufactured and cleared from the factory of the manufacturer for export. However the goods viz. "S.S. SHARP EDGE COIL, BLACK MOULD ITEMS" being not manufactured in the factory, the sanction of the rebate to that extent viz. Rs.85,426/- (Rupees Eighty Five Thousand Four Hundred Twenty Six only), was in violation of Rule 18 of Central Excise Rules, 2002.



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4. Commissioner (Appeals) vide his Order-in-Appeal No.US/125/RGD/2012 dated 27.02.2012 rejected the departmental appeal and upheld the Order-in-Original No. 1714/10-11/AC (Rebate)/Raigad dated 24.01.2011, on the ground that :

- i) the question involved in the case is as to whether the rebate is eligible on the amount of credit reversed on input cleared as such for exports;
- ii) the issue is fully covered in favour of the appellant by CBEC Circulars 283/117/96-CX dated 31.12.1996 and 687/3/2003-CX dated 03.01.2003;
- iii) the Govt. of India vide its Revision order No. 384/10-CX dated 23.03.10 in M/s Balsara Home Products Ltd. has held that "an amount equal to cenvat credit taken on inputs debited, on removal of inputs as such in terms of Rule 3(4) (b) and 3(5) of Cenvat Credit Rules, 2004 is to be treated as payment of excise for purpose of Rule 18 of C.Ex. Rules, 2002 read with Notification issued there under; iv) that the instructions issued by the CBEC are binding on the authorities working under CBEC as held by the Apex Court in CCE Vs Indian Oil Corporation Ltd. [2004(165)ELT257(SC)].

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Government on the following grounds that:-

- 5.1 the goods exported are inputs procured by the manufacturer and removed as such for export without undertaking any process. In terms of Rule 18 of the Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods manufactured only. Further the reversal of credit was not "duty of excise";



*RM*

5.2 the said goods viz. "S.S. SHARP EDGE COIL, BLACK MOULD ITEMS" were not cleared from the factory of the manufacturer. The claimant had cleared the goods as 'input as such' for export from their factory premises they had not manufactured the said goods, but by some other manufacturer and thus the export has not been made directly from the factory premises who actually manufactured it. Also when no duty on manufactured goods was paid, no rebate is admissible.

5.3 in terms of Rule 18 of the Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods only. Since in respect of the above said goods, no manufacturing process has been undertaken in the factory of the manufacture, such exported goods are not excisable and consequently not eligible for rebate of duty paid on such goods in terms of Rule 18 of central Excise Rules, 2002.

5.4 that since the goods cleared for export as input as such, from their premises as the excisable goods, has not been manufactured by the claimant viz. M/s. Sam Alloys Pvt. Ltd. Therefore, the condition of Notfn.No.19/2004 (NT) dated 06.09.2004 is not fulfilled.

6. Applicant also filed Application for Condonation of delay stating therein that

- the impugned order dated 27.02.2012 passed by the Commissioner Central Excise (Appeals), Mumbai Zone - II was received by this office on 12.03.2012,
- the Revision Application to be filed against the above said Order-in-Appeal No. US/125/RGD/2012 dated 27.02.2012, passed by the Commissioner (Appeals), Central Excise, Mumbai Zone - II was prepared

and sent to the Joint Secretary, Government of India, Ministry of



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Finance, Revision Application Unit, Department of Revenue, New Delhi - 110 066 under this office F. No. V/15-39/Reb/Sam/Appeal/Rgd/2011-12/7138 dated 02.07.2012,

- since the date of filing of application is beyond three months, as stated in the letter dated 07.07.2015 received from Section Officer (RA), New Delhi, this application is being preferred,
- the Appellant has a very strong case on merits; that grave prejudice would be caused to the Applicant/Appellant if the delay in filing above is not condoned and the Appeal is not heard on merits. Whereas no prejudice of any nature whatsoever would be caused to the Respondents as their right to defend the Appeal remains intact; that the delay caused in filing Appeal is inadvertent and not deliberate,
- in the circumstances, the delay in filing of above Revision Application be condoned and the Application be made absolute with costs.

7. A Personal hearing in the matter was fixed on 28.12.2017. No one was present from the applicant's side (Revenue). Shri Nitin Gupte, Logistic Advisor and Shri Alex Thomas, Logistic Manager of the respondents appeared for the personal hearing and reiterated the submissions filed in the form of written statements along with case laws. They pleaded that RA filed by the Revenue be dismissed and OIA be upheld.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

9. Government first proceeds to take up the application for condonation of delay in filing the revision application by the Department. The Department has submitted that the impugned Order-in-Appeal was received by the applicant on 12.03.2012 while the revision application was filed on 12.07.2012 i.e. after a delay of 30 days. The Department has contended that the delay caused in filing Appeal is inadvertent and not deliberate. The Department filed this revision.



application in 30 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, in the interest of justice Government condones the said delay and proceeds to examine the case on merits.

10. On perusal of records, Government observes that the applicant has contended that the goods exported by the respondent are inputs procured by the manufacturer and removed as such for export without undertaking any process. In terms of Rule 18 of the Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods manufactured only. Further the reversal of credit was not "duty of excise";

11. In this regard Government observes that Hon'ble Bombay High Court in its Order dated 23.03.2011 in Writ Petition No. 2195 of 2010, in the case of CCE V/s Micro Inks Ltd. [2011 (270) E.L.T. 360 (Bom.)], while rejecting the petition filed by the Department on the similar issue, at paras 17 & 18 observed as under :

*17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does [not] (sic) lose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its Circular No. 283/1996, dated 31st December, 1996 has held that amount paid under Rule 57F(1)(ii) of Central Excise Rules, 1944 (which is analogous to the Cenvat Credit Rules, 2002/Cenvat Credit Rules, 2004) on export of inputs/capital goods by debiting RG 23A part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.*

*18. The argument of the Revenue that identity of the exported inputs/capital goods could not be correlated with the inputs/capital goods brought in to the factory is also without any merit because, in the present*



*Signature*

case the goods were exported under ARE 1 form and the same were duly certified by the Customs Authorities. The certificate under the ARE 1 form is issued with a view to facilitate grant of rebate by establishing identity of the duty paid inputs/capital goods with the inputs/capital goods which are exported.

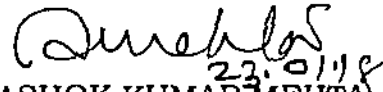
12. Government finds that ratio of aforesaid Hon'ble High Court Judgement is squarely applicable to the instant case. Moreover, the Deputy Commissioner (Review), Raigad Commissionerate vide letter F No. V/Spl Cell/CESTAT (F)/80/RGD/14-15 dated 18.12.2017 has informed that Special Leave Petition (SLP) seeking interim relief filed by the department before Hon'ble Supreme Court [SLP(C) 5159/2012 Commr. of Central Excise, Raigad Vs Micro Inks Ltd. &Anr.] against Hon'ble Bombay High Court's Order dated 23.03.2011 in Writ Petition No. 2195 of 2010, has been dismissed vide Order dated 25.11.2013 on the ground that there was no reason to entertain this Special Leave Petition. The Hon'ble Supreme Court Order dated 25.11.2013 was accepted by the Commissioner, Central Excise Raigad Commissionerate on 07.01.2014 and hence the Hon'ble Bombay High Court's Order in CCE Raigad v/s Micro Inks Ltd.2011 (270) E.L.T. 360 (Bom.), has attained finality. Following ratio judgement of the same, Government holds that the order of Commissioner (Appeals) is proper and legal, hence, liable to be upheld.

13. In view of above position, Government upholds the impugned Order-in-Appeal passed by the Commissioner (Appeals).

14. The revision application is accordingly dismissed.

15. So, ordered. **True Copy Attested**

  
SANKARSAN MUNDA  
Asstt. Commissioner of Customs & Excise

  
(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

04/2018-CX (WZ) /ASRA/Mumbai DATED 23<sup>rd</sup> January, 2018



To,

The Principal Commissioner of CGST & CX, Belapur,  
CGO Complex,  
Belapur,  
Navi Mumbai, Thane.

Copy to:

1. M/s Sam Alloys Pvt. Ltd, Plot No. 47, Ajivali, Vavoshi, Pen- Khopoli Road, Tal :Khalapur, Dist. Raigad, MS-410 210.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup>Floor,CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

