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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  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai - 400 005

F. No. 195/522/16-RA/6245

Date of issue: ~~10.2022~~

03.11.2022

ORDER NO. 1028/2022-CX (WZ)/ASRA/MUMBAI DATED 31.10.2022 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Sejasmi Industries (I) Pvt Ltd  
Survey No 879/919, At Rajpur, Tal Kadi,  
Nr.GEB Sub Station, Mehsana Highway,  
Dist: Mehsana, Gujarat-382715

Respondent : The Commissioner, Central Excise, Ahmedabad-III.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. AHM-EXCUS-003-APP-088-16-17 dated 23.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

The Revision Application has been filed by M/s. Sejasmi Industries (I) Pvt Ltd Survey No 879/919, At Rajpur, Tal Kadi, Nr.GEB Sub Station, Mehsana Highway, Dist: Mehsana, Gujarat-382 715 (hereinafter referred to as "the applicant") against Order-in-Appeal No. AHM-EXCUS-003-APP-088-16-17 dated 23.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. The facts briefly are that the applicant is engaged in the manufacture of cast articles including part and components of aluminium. The applicant filed 224 rebate claims under the provisions of Rule 18 of the Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 6.9.2004. Vide four OIOs dated 07.05.2013, 31.05.2013, 14.06.2013, 12.07.2013 and 26.07.2013, the refund sanctioning authority rejected these refund claims on the grounds that Central Excise(Preventive), Ahmedabad-III had booked a case against the applicant for failure to maintain proper records in respect of receipt of inputs and it was under investigation and show cause notice dated 04.01.2013 was issued. Aggrieved by the said Orders-in-Original, the applicant filed two separate appeals before the Commissioner (Appeals) Ahmedabad who remanded back the appeals to the original adjudicating authority vide Order-in-Appeals dated 27.09.2013 and 09.10.2013 holding that the claims should have been kept in abeyance and that issuance of notice does not mean conclusion of proceedings.

2.1. Being aggrieved by the Orders-in-Appeal, the department assailed the matter before the Hon'ble Tribunal, which vide its Order No. A/10581-10804/2014 dated 07.04.2014 dismissed the departmental appeal on the grounds that Revenue was pursuing legal remedies, before a wrong forum.

2.2. The refund sanctioning authority, based on the aforementioned two appellate orders, issued two OIO's both dated 11.3.2014 in respect of 138 rebate claims, which were once again rejected by the rebate sanctioning

authority. The applicant once again filed an appeal before the Appellate Authority who vide his OIA No. 82-83/2014-15 dated 17.9.2014, who remanded the matter once again to the lower adjudicating authority holding that the claims were not examined on merits and that the show cause notice dated 18.12.2013 issued to the applicant be adjudicated so that the admissibility or inadmissibility of the cenvat credit under question can be ascertained and a decision to be taken after ascertaining the same.

2.4. The show cause notices dated 04.01.2013 and 18.12.2013 were adjudicated vide OIO No. AHM-CEX 003-ADC-14 to 15-14-15 dated 28.11.2014 wherein he confirmed the demand in respect of the CENVAT Credit of Rs. 48.19 lakhs alongwith interest and imposed penalty on the applicant.

2.5. The applicant filed an appeal before the Commissioner (Appeals) Ahmedabad - III who vide OIA No AHM-EXCUS-003-018-19-15 dated 29.09.2015 upheld the Order-in-Original dated 28.11.2014.

2.5. The refund sanctioning authority vide his OIO No. 01-176/Reb/2015 dated 20.01.2015 consequent to the OIA dated 17.09.2014 sanctioned a rebate of Rs. 59,22,450/-and further allowed re-credit of Rs. 2,59,769/-

2.6. Aggrieved by the said Orders-in-Original, the department filed an appeal before the Commissioner (Appeals-I), Central Excise. Ahmedabad against the OIO dated 20.01.2015 interalia on the grounds that in OIO in respect of show cause notice dated 18.12.2013, it was held that Cenvat credit was wrongly availed and thus granting of rebate was improper. The department also issued a protective demand to the applicant for recovery of rebate erroneously sanctioned vide OIO No. 01-176/Reb/2015 dated 20.01.2015. The protective demand was adjudicated vide OIO No. AHM-CEX-003-JC-ADS-003-17-18 dated 06.11.2017 wherein an amount of Rs. 48,19,328/- was ordered to be recovered being erroneously sanctioned and was ineligible cenvat credit. The applicant once again filed an appeal againg

the said OIO. The Appellate Authority, vide O-I-A dated 13.02.2018 remanded the case back to the adjudicating authority as the Hon'ble CESTAT, Ahmedabad had resolved the dispute vide order dated 03.10.2017, and the Tribunals order was passed after the issue of the OIO

2.7. Separately, the Appellate Authority vide the impugned Order-in-Appeal disallowed the rebate in respect of duty of Rs.48.19 lakhs which was paid by utilizing the CENVAT credit and the rebate in for the remaining amount was upheld as there was no dispute as far as the credit availment was concerned.

3. Aggrieved by the said Order-in-Appeal, the applicant has filed the instant revision application on the following grounds:

3.1. That the Commissioner (Appeals) erred in allowing the Revenue's appeal in this case as there was no justifiable basis in regard to the findings that the exports were made without payment of duty, that the duty of Rs.61.82 lakhs paid and sought as rebate included Cenvat credit of Rs.48.19 lakhs and that the orders made in the separate proceedings for denial of Cenvat credit had not been stayed and were in operation;

3.2. That there was no demand of duty nor any proceedings against the applicant for recovery of excise duty amounting to Rs. 48.19 lakhs for the reason that they were cleared for export on payment of duty thereon which were by way of utilization of inadmissible Cenvat credit and thus the ground in the Order-in-Appeal for partial rejection was erroneous;

3.3. That there was no justification in the finding that duty of Rs.61.82 lakhs paid through Cenvat register on the goods cleared for export included Cenvat credit of Rs.48.19 lakhs because there is no one to one correlation between Cenvat credit and payment of excise duty and there was no justification in linking or correlating Cenvat credit of Rs.48.19 lakhs with the payments of excise duty made by utilizing Cenvat credit on the goods cleared for export only because cenvat was utilized for domestic clearances

also the Cenvat credit was denied in a separate adjudication proceedings also;

3.4. That there was no justification nor any merit in the observation/finding of the Commissioner (Appeals) that the order denying Cenvat credit of Rs.48.19 lakh had not been stayed and was therefore in operation now as an appeal was filed before the CESTAT Ahmedabad against OIA No.AHM-EXCUS-003-APP-018 to 019-15-16 dated 29.09.2015 in respect of the dispute about eligibility of the Cenvat credit and the applicant having debited/deposited an amount equal to 10% of the Cenvat credit denied, the recovery under the said OIA stands stayed by virtue of the scheme of Section 35F of the Central Excise Act, 1944 as it stands with effect from 06.08.2014 read with the Board's Circular No.984/8/2014-CX dated 16.09.2014;

3.5. That there was no allegation that the disputed credit was utilized for paying duties on exported goods for which rebate was sanctioned;

3.6. That when an assessee takes credit in the Cenvat register, it becomes a common pool for all the credit transactions, and there is no one to one correlation between a particular transaction of taking credit on one hand and a particular transaction of utilization of Cenvat credit on the other hand; and therefore there cannot be any correlation between the disputed credit of Rs. 48,19,328/- on one hand and utilization of Cenvat credit of Rs.61,81,918/- on the exported goods;

3.7. That the issues of denial of Cenvat credit and export of goods on payment of duty under claim of rebate are unconnected and could not have been linked or correlated;

3.8. That this was a case where all the conditions of Rule 18 and the Notification No.19/2004-CE(NT) were satisfied and consequently, the rebate claims so sanctioned on the basis of documentary evidence about availment

of relevant conditions of Rule 18 and the Notification issued thereunder could not have been upset, even partly, by the Commissioner (Appeals);

3.9. That each and every issue raised in the Revenue's appeal was explained in the appeal proceedings and the submissions and explanations tendered vide detailed written submissions but the Commissioner (Appeals) failed to appreciate these submissions and explanations while passing the impugned order and therefore, the impugned order which is against the weight of evidence is perverse in nature, is liable to be set aside.

4. Personal hearing in the case was scheduled for 14.06.2022 or 28.06.2022. Shri Amal Paresh Dave, Advocate appeared online for the personal hearing on behalf of the applicant on 28.06.2022. He reiterated his earlier submissions. He submitted further written submissions and stated that CESTAT has allowed cenvat credit except for Rs. 2.87 lakhs which had been paid by them. He requested to allow the rebate as dispute regarding availment of credit no longer existed.

5. In the written submissions made during the personal hearing, the advocate for the applicant reiterated the earlier submissions and stated that the issue pertaining to the show cause notice dated 18.12.2013 has been resolved by the Hon'ble CESTAT, Ahmedabad whereby the credit of Rs. 45,31,370/- was allowed and the matter was remanded for reverification of cenvat credit of Rs. 2,87,958/-. He further submitted that the amount of Rs. 2,87,958/- had been paid by them alongwith interest of Rs. 1,31,170/- and hence the department could not allege that the ineligible credit of Rs. 2,87,958/- was the cenvat credit which was utilized for payment of central excise duty on which rebate was sanctioned and requested to drop the proceedings. He submitted the copy of the Order No A/13015/2017 dated 03.10.2017 passed by CESTAT, Ahmedabad and also the copy of the OIO dated 17.05.2021 issued pursuant to the order of CESTAT and 'no dues' letter dated 04.04.2022 issued by the Department.

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

7. Government observes that the dispute in the instant case pertains to the Appellate Authority holding that the rebate in respect of duty of Rs. 48.19 lakhs, was erroneously sanctioned as it was paid by utilizing disallowed Cenvat Credit.

8. Government also observes that from the case records and submissions of the applicant it is evident that the issue of ineligible cenvat credit of Rs. 48.19 lakhs availed by the applicant had been agitated by the applicant before Hon'ble CESTAT, Ahmedabad in separate proceeding and Hon'ble CESTAT, Ahmedabad set aside the demand of Rs. 45,31,370/- and upheld the demand of duty of ineligible credit of Rs. 2,87,958/-.

9. Government also notes that the order of the CESTAT was challenged by the department before the Hon'ble High Court, Gujarat but had later withdrawn the case on monetary grounds.

10. Government also notes that pursuant to the order dated 03.10.2017 of Hon'ble CESTAT, Ahmedabad, the protective demand issued by the department which was remanded back to the adjudicating authority has vide OIO dated 17.05.2021 set aside the demand of Rs. 45,31,370/- and confirmed the demand of Rs. 2,87,958/- alongwith with interest and imposed a penalty of Rs. 2,87,958/-, on the lines of the order dated 03.10.2017 of the Hon'ble CESTAT, Ahmedabad. The department, vide letter dated 04.04.2022 has also confirmed the payment of interest of Rs. 1,31,170/- by the applicant and has issued a 'no pending dues' letter in respect of the OIO dated 17.05.2021. Government notes that there is no mention of the payment of the demand confirmed and the penalty imposed on the applicant.

11. In view of the above discussion, Government notes that as the issue of eligibility of the cenvat credit amounting to Rs. 48,19,328/- rejected by the Appellate Authority vide the impugned Order-in-Appeal has been finally decided, and the applicant having claimed to have paid the dues as stated at para 10 supra, the premise on which the rebate claim was held to be erroneous, does not exist.

12. In view of the foregoing discussion, Government sets aside the impugned Order-in-Appeal No. AHM-EXCUS-003-APP-088-16-17 dated 23.08.2016 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad and remands the case to the original authority for the limited purpose of verification of the payment of the ineligible cenvat credit of Rs. Rs. 2,87,958/- alongwith with interest and penalty of Rs. 2,87,958/-, imposed on the applicant.

13. The Revision application is disposed of on the above terms.

  
(SHRAWAN KUMAR)

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

ORDER No. 1028/2022-CX (WZ)/ASRA/Mumbai dated 31.10.2022

To,  
M/s. Sejasmi Industries (I) Pvt Ltd  
Survey No 879/919, At Rajpur, Tal Kadi,  
Nr.GEB Sub Station, Mehsana Highway,  
Dist: Mehsana, Gujarat-382715

Copy to:

1. The Commissioner of CGST, Gandhinagar, 2<sup>nd</sup> Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad 380 009
2. The Commissioner of CGST, Ahmedabad Appeals, 5<sup>th</sup> Floor, CGST Bhavan, Revenue Marg, opp Polytechnic, Ambawadi, Ahmedabad 380 015.



3. Shri Amal Paresh Dave, Advocate, 1, Vanashree Society, Near Udgam School, Opp Sardar Patel Institute, Drive-in Road, Thaltej, Ahmedabad 380 154

4. Sr. P.S. to AS (RA), Mumbai

5. Notice Board.

6. Spare copy