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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.195/19(I) to 19(V)/14-RA/6260
F. No.198/92-112/13-RA

Date of Issue: 03.11.2022
~~10.2022~~

ORDER NO. 1029-1054 /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.

Applicants : 1. Commissioner of Central Excise, Raipur Commissionerate.
2. M/s Blackstone Overseas Pvt. Limited,
Alphanso Estate, 5, Surendra Mohan Ghosh Sarani, 3rd
floor, Room No.308, Kolkata, West Bengal.

Respondents : 1. M/s Blackstone Overseas Pvt. Limited,
Alphanso Estate, 5, Surendra Mohan Ghosh Sarani, 3rd
floor, Room No.308, Kolkata, West Bengal.

2. Commissioner of Central Excise, Raipur Commissionerate.

Subject : Revision Applications filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal bearing No.
190-194/RPR-I/2011 dated 22.11.2011 and Order-in-Appeal
No.161-181/RPR-1/2012 dated 19.10.2012, both passed by
the Commissioner (Appeals -I), Customs & Central Excise,
Raipur.

ORDER

Government finds that the Commissioner of Central Excise, Raipur Commissionerate (here-in-after referred to as 'the Department') and M/s Blackstone Overseas Private Limited (here-in-after referred to as 'the Exporter') have filed Revision Applications against two different Orders-in-Appeal, involving the Exporter, wherein the issue involved is common. The Order-in-Appeal dated 22.01.2011 decided the issue in favor of the Exporter, whereas the Order-in-Appeal dated 19.10.2012 went against the Exporter. Consequently, the Department has filed a Revision Application against the Order-in-Appeal dated 22.01.2011 and the Exporter against the Order-in-Appeal dated 19.10.2012. Both the impugned Orders-in-Appeal have been passed by the Commissioner of Central Excise (Appeals -I), Customs & Central Excise, Raipur. The Order-in-Appeal dated 22.11.2011 disposed of appeals filed by Department against five Orders-in-Original passed by the Assistant Commissioner, Central Excise, Division Raipur (C.G.) which in turn had sanctioned the rebate claims filed by the Exporter. The Order-in-Appeal dated 19.10.2012 had disposed of appeals filed by the Department against 21 Orders-in-Original passed by the same original authority sanctioning the rebate claims filed by the Exporter. The issue involved in both the Revision Applications, filed by the Department and the Exporter, being common, Government takes up both of them for being decided together.

2. Brief facts of the case are that the Exporter, a merchant exporter, filed several rebate claims in respect of 'Cast Iron Products' exported by them, which they had procured from the manufacturer viz., M/s Arpee Ispat Private Limited, Raipur, who had paid Central Excise duty on the same. The said claims were sanctioned by the original rebate sanctioning authority. Aggrieved, the Department filed appeals against the Orders-in-Original which sanctioned the said claims, on the grounds that the respondent had availed the benefit of the DEPB scheme and hence they would not be eligible to the rebate claimed by them as simultaneous availment of the DEPB and rebate of Excise duty was not permissible; reliance was placed on the decision of the Hon'ble High Court of Gujarat in the case of M/s Texcellent World Wide vs UOI [2008 (225) ELT 173 (Guj)] in support of their case. Appeals against five such Orders-in-Original were decided by the Commissioner (Appeals) vide Order-in-Appeal dated 22.11.2011, wherein the

Commissioner (Appeals) rejected the appeals filed by the Department and upheld the Orders of the original rebate sanctioning authority. The rest of the 21 appeals were decided vide Order-in-Appeal dated 19.10.2012, wherein the Commissioner (Appeals) set aside the Orders of the original authority and allowed the appeals filed by the Department.

3. Aggrieved by the said Order-in-Appeal dated 22.11.2011 the Department has filed the subject Revision Application against the same on the following grounds:-

(a) The benefit of DEPB and Rebate is basically intended to neutralize the duty incidence on import content of the export product; that under Advance License, the exporters are allowed duty free import of inputs for production of export goods; therefore, grant of DEPB and Rebate in case of export of goods manufactured by using inputs imported under Advance License will amount to double benefit in respect of same inputs; that due to this reason, the DGFT vide public Notice No. 102/(RE-2008)/2004 09 dated 05.11.2008 had clarified as under:

“General Instruction for DEPB rates:

1. The rates of DEPB specified in book shall not be applicable to export of a commodity of product if such commodity or product is:

a. Manufactured partly or wholly in a warehouse under Section 65 of the Customs Act, 1962 (52 of 1962);

b. Manufacture and/or exported in discharge of export obligation against an Advance Authorization including Advance Authorization for Annual Requirement or exported under DFIA Scheme of the relevant Foreign Trade Policy;

c. Manufacture and/or exported by a unit licensed as 100% Export Oriented Unit in terms of the provisions of the relevant Foreign Trade Policy;

d. Manufactured and /or exported by any of the units situated in Free Trade Zones/Export Processing Zone/Special Economic Zones/EHTP Scheme;

e. Exports of goods of foreign origin, unless the goods have been manufactured or processed or on which similar operations have been carried out in India;

f. Exports made under paragraph 2.35 and 2.36 of the Foreign Trade Policy.

(b) The Hon'ble High Court of Gujrat had decided the above principle in the case of M/s Texcellent World Wide Vs UOI [2008 (225) ELT 173 (Guj)] wherein it was held that *"From the above it is clear that DEFB benefit and Rule 12(1)(b) rebate cannot be allowed simultaneously. This restriction is kept because reimbursement of duty incidence cannot be allowed twice, first time on deemed basis (DEF) and second time on actual basis [Rule 12(1)(b) rebate]. Benefit can be given only once in one of the methods available."*

(c) The Commissioner (Appeals) erred while holding that the said judgment was in the context of erstwhile Central Excise Rules 1944 and the judgment was not applicable after the amendment to Public Notice No. 02 dated 31.03.2002 made vide Public Notice No.06 dated 12.04.2002; that in the Public Notice No. 06 dated 12.04.2002 it is nowhere mentioned that both Rebate claim and DEPB will be allowed simultaneously;

(d) The CBEC vide the Circular No.89/2003-Cus dated 06.10.2003 issued under F. No.603/32/2003-DBK had clarified that duty drawback rate can be permitted only if the exporters furnish the evidence that they are not availing Cenvat facility under Cenvat Credit Rules 2002 (or earlier Rules) and Rebate of the inputs/materials used under Rule 18 of the Central Excise Rules, 2002 or the corresponding rule under the earlier rules; that this circular had been issued on 06.10.2003, i.e, after the issue of Public Notice No. 06/2002-07 dated 12.04.2002; that hence it was clear that simultaneous benefit is not admissible even after the amendment made in the Public Notice No.06/2002-07 dated 12.04.2002;

(e) The Commissioner (Appeals) had not come forward with any contradictory judgment on the issue and that the judgment of Hon'ble High Court would hold good and was legal unless overruled and relied on the decision of the Hon'ble Apex Court in the case of UOI vs Kamlakshi Finance Corporation Limited [1991(55) ELT433 (S.C)] in support of their argument; and that the Commissioner (Appeals) had not taken the cognizance of Grounds of Appeals filed by the Department while deciding the issue; that the Range Superintendent had reported that the respondent had exported the goods under DEPB Scheme and had accumulated credit as provided under the DEPB Scheme.

In view of the above submissions, the applicant Department prayed that the impugned Order-in-Appeal dated 22.11.2011 may be set aside.

4. The Exporter, aggrieved by the Order-in-Appeal dated 19.10.2012, has filed the subject Revision Application on the following grounds:-

(a) There was no dispute that the export product was duty paid; that there was no restriction under Rule 18 of the Central Excise Rules, 2002 for grant rebate of excise duty paid on exported goods if DEPB had also been availed on such goods; that CBEC Circular No. 89/2003-Cus dated 06.10.2003 also stated that refund will be admissible even if DEPB has been allowed to exporter; that the judgment of Hon'ble Gujarat High Court in the case of Texcellent World Wide Vs. Union of India [2008 (225) ELT 173 (Guj)] related to export made prior to 12.04.2002 and was hence not relevant to their case in view of the statutory provisions applicable during the period of their export; that other Maritime Commissioners were allowing rebate in such cases;

(b) That none of the notifications issued under Rule 18 of the Central Excise Rules, 2002, stipulated any condition/restriction to indicate that if DEPB is availed, benefit of rebate shall not be allowed to the exporter and hence the contentions of the Appellate Authority were incorrect;

(c) The Commissioner (Appeals) erred in not considering the order of Maritime Commissioner, Kolkata-I as the facts of both the cases are identical and that the same amounted to violation of the judicial discipline; and relied upon the decision of the Hon'ble Supreme Court in the case of Birla Corporation Ltd Vs. CCE [2005(186) ELT 266 (S.C.)] wherein it was held that when question arising for consideration and facts are almost identical to previous case, revenue cannot be allowed to take a different stand;

(d) That the decision of Texcellent Worldwide, supra, was not applicable to the facts of the present case in view of the amendment in the General Instructions for DEPB w.e.f. 12.4.2002; that the period of dispute involved in the judgment of Texcellent Worldwide, supra, was 2001 when simultaneous benefits of DEPB and rebate of excise duty was not allowed in view of the

provisions of the General Instructions under Public Notice No.2/2002-07, dated 31st March, 2002. However, the said Public Notice was amended vide Public Notice No.6/2002-07 dated 12.4.2002, wherein there was no restriction for claiming simultaneous benefits under DEPB and Rebate; whereas prior to issue of aforesaid amending Public Notice there was restriction for availing the benefit of DEPB, if the benefit of rebate has been availed by the exporter; that moreover, the restriction was for grant of DEPB benefit and not for grant of rebate; that the finding of the learned Appellate Authority in this regard was not based on correct facts and statutory provisions in vogue during the relevant period and hence was liable to be set aside;

(e) That the Commissioner (Appeals) had gravely erred while giving his finding on simultaneous availment of rebate along with DEPB by referring the CBEC Circular No.89/2003-Cus dated 06.10.2003 as the said Circular was issued by the CBEC in relation to non-availment of Drawback of excise allocation and hence was not applicable to the facts of the present case;

(f) That the Commissioner (Appeals) did not agree with finding contained in Order-in-Appeal No.190-194/RPR-1/2011 dated 30.11.2011 of the predecessor Commissioner (Appeal-1), Raipur on the grounds that the said order did not attain finality and had incorrectly held that Public Notice No.06 dated 12.04.2002 did not state that rebate claim and DEPB will be allowed simultaneously;

In view of the above, the Exporter prayed that the Order-in-Appeal dated 19.10.2012 be set aside and their rebate claims allowed.

5. Personal hearing in the above case was granted on 03.12.2019, 10.12.2019, 22.01.2020, 02.02.2022 and 09.02.2022. However, neither of the applicants appeared for the same. Sufficient opportunity having being given to the applicants to be heard in person, the case is now taken up for decision.

6. Government has carefully gone through the relevant records, the written submissions of both the applicants and also perused the Orders-in-Original and the impugned Orders-in-Appeal.

7. Government finds that the issue involved in the present case is whether the Exporter could avail the benefit of the DEPB scheme and also claim rebate of Central Excise duty paid, simultaneously with respect to the goods exported by them. Prima facie Government finds that it is not in dispute that the goods in question were exported and that the Central Excise duty, the rebate of which been claimed, has been paid. Government finds that the exports in question had taken place during the period from August 2011 to September 2011.

8. Government notes that Department has relied on the following clarifications/decision in support of their case against the Order-in-Appeal dated 22.11.2011 which upheld the Orders-in-Original sanctioning the rebate claims of the Exporter:-

- The decision of the Hon'ble Gujarat High Court in the case of Texcellent World Wide Vs. Union of India [2008 (225) ELT 173 (Guj)];
- Public Notice No.102/(RE-2008)/2004-09 dated 05.11.2008 issued by the DGFT; and
- Circular no.89/2003-Cus dated 06.10.2003 issued by the CBEC.

Government also finds that the Order-in-Appeal dated 19.10.2012, against which the Exporter has filed the subject Application, had placed reliance on exactly the above mentioned three clarifications/decisions to hold that the Exporter will not be eligible to the rebate claimed by them. As such, Government proceeds to examine the above cited three clarifications/decision to assess their applicability to the instant case.

9. On examining the decision of the Hon'ble High Court in the case of Texcellent World Wide cite above, Government finds that the Court had relied upon the Public Notice dated 31.03.2002 issued by the DGFT which had specified that the benefit of DEPB could not be extended to those goods which were manufactured and exported in terms of clause (b) of sub-rule (1) of Rule 12 of the Central Excise Rules, 2002, to hold that an exporter could

not avail the benefit of the DEPB scheme and also claim rebate of duty paid at the same time. Government finds that the Public Notice dated 31.03.2002 was amended by the Public Notice dated 12.04.2002 issued by the DGFT wherein the condition mentioned above was deleted and no such restriction was sought to be imposed. Government finds that the Commissioner (Appeals) in the Order-in-Appeal dated 22.11.2011 had lucidly discussed this issue and found that the said decision of the Hon'ble High Court would not be applicable to the present case as it had clarified the position prior to the issue of Public Notice dated 12.04.2002 and hence would be only be applicable to the period prior to the issue of Public Notice dated 12.04.2002. Government finds this decision of the Commissioner (Appeals) in the Order-in-Appeal dated 22.11.2011 to be legal and proper as the said condition imposed by Public Notice dated 31.03.2002, which forms the basis of the decision of the Hon'ble High Court, itself stood deleted vide the amending Public Notice dated 12.04.2002. Government notes that the present issue involved exports during the period from August 2011 to September 2011 and would hence be governed by the instructions contained in the latter Public Notice dated 12.04.2002. Further, Government notes that the Commissioner (Appeals), in the Order-in-Appeal dated 22.11.2011, had found that the Public Notice dated 31.03.2002 itself would not be applicable to the instant case as the same had imposed a restriction on the rebate of duty paid on the 'material used in the manufacture of excisable goods' in terms of Rule 12(1)(b) of the Central Excise Rules, 1944, whereas the instant case pertained to the rebate of duty paid on the final excisable product which was governed by Rule 12(1)(a) of the Central Excise Rules, 1944 on which no such restriction was imposed even by the said Public Notice dated 31.03.2002. Thus, Government finds that the Commissioner (Appeals) in the Order-in-Appeal dated 22.11.2011 has correctly held that the above cited decision of the Hon'ble High Court will not be applicable to the instant case.

10. Government now proceeds to the examine the Public Notice No.102/(RE-2008)/2004-09 dated 05.11.2008 issued by the DGFT. It is the contention of the Department that grant of DEPB and Rebate in case of export of goods manufactured by using inputs imported under Advance

Licence would amount to double benefit in respect of the same inputs and it was this reason that the DGFT, vide the above Public Notice, had disallowed the same. Government finds that the Commissioner (Appeals) in the Order-in-Appeal dated 19.10.2012 had arrived at a similar conclusion in view of para (b) of the said Public Notice. On examining para (b) of the said Public Notice, the relevant portion of which has been reproduced by the Commissioner (Appeals) in the Order-in-Appeal dated 19.10.2012, Government notes that the Public Notice states that the rate of DEPB would not be applicable if the goods exported were "*Manufactured and/or exported in discharge of export obligation against an Advance Authorization including Advance Authorization for Annual Requirement or exported under the DFIA Scheme of the relevant Foreign Trade Policy*". Government notes that in the present case there is no allegation that the goods exported were in discharge of an export obligation under an Advance Authorization, nor is there an allegation that exported goods were manufactured out of inputs which were imported under an Advance Licence scheme; neither is it alleged that the goods are being exported under the DFIA Scheme. Given this fact, Government finds that the Public Notice dated 05.11.2008 will not have any application to the instant case. Thus, Government finds that the plea of the Department and the finding of the Commissioner (Appeals) in the Order-in-Appeal dated 19.10.2012 on this count, will not hold good and deserves to be rejected/set aside.

11. As regards the reliance on Circular No.89/2003-Cus dated 16.10.2003 issued by the CBEC, by the Department in the subject Application and also by the Commissioner (Appeals) in the Order-in-Appeal dated 19.10.2012, in support of the view that Exporter would not be eligible to the rebate claimed, Government finds that the said Circular provided clarification for fixation of brand rate of duty Drawback under Rule 6 and Rule 7 of the Customs and Central Excise Duties Drawback Rules, 1995. There is no gainsaying the fact that the present case does not involve fixing of brand rate of Drawback and pertains to the rebate of duty paid by the manufacturer on the goods exported by the Exporter. Government notes that the only reference to the DEPB scheme in the said Circular is at para no.5, which reads as - "*Field formations should also note that under DEPB Scheme, drawback can only be*

allowed in terms of the Customs Circular no.39/2001 dated 6.7.2001." Government notes that this instruction would also not be relevant to the instant case as it does not involve a claim for Drawback. Further, it has not been alleged that the Exporter has availed or sought to avail Drawback on the export consignments in question. Thus, Government finds that the reliance placed on the Circular No.89/2003-Cus dated 06.10.2003 by both, the Department in their subject Application and also by the Commissioner (Appeals) in the Order-in-Appeal dated 19.10.2012, is unfounded and deserves to be rejected, and accordingly holds so.

12. Further, Government finds the submission of the Department that the Public Notice No.6 dated 12.04.2002 did not mention that both Rebate claim and DEPB will be allowed simultaneously, in support of their view to deny the rebate claim, to be without any basis. On the contrary, Government finds that the said Public Notice dated 12.04.2002 when compared to the previous Public Notice No.2 dated 31.03.2002 which it sought to amend, explicitly omits the clause restricting the availment of rebate under Rule 12(1)(b) of the Central Excise Rules, 1944. Government finds this submission is a futile attempt to read the law in a manner to suit the argument being made and not inconsonance with the actual legal provisions and hence rejects the same. Government notes that the Commissioner (Appeals) had also made a similar observation in the Order-in-Appeal dated 19.10.2012. Government holds the same to be incorrect for the afore said reasons.

13. Government has examined Rule 18 of the Central Excise Rules, 2002 which provides for rebate of duty on goods exported and also the notification no.19/2004-CE(NT) dated 06.09.2004 issued under the said rule and finds that the same do not place any restriction on the sanction of the rebate of duty paid on goods exported under claim of DEPB. As discussed above, Government does not find any merit in the arguments put forth by the Department to deny the rebate claims filed by the Exporter. Further, the submissions made by the Exporter in their subject Application against the

Order-in-Appeal dated 19.10.2012 have been addressed during the course of discussions in the afore said paras.

14. In view of the above, Government finds the Application filed by the Department against the Order-in-Appeal No.190-194/RPR-I/2011 dated 22.11.2011 to be devoid of merits and liable to be rejected and accordingly holds so. Further, Government finds that the Order-in-Appeal No.161-181/RPR-I/2012 dated 19.10.2012 deserves to be set aside for the above-mentioned reasons and accordingly holds so. The Revision Application filed by the Exporter is allowed.

15. The subject Revision Applications are disposed of in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. ¹⁰²⁹⁻1054 /2022-CX (WZ) /ASRA/Mumbai dated 31.10.2022

To,

1. Pr. Commissioner of Central Goods & Service Tax, Raipur
Commissionerate, GST Bhavan, Dhamtari Road, Tikrapara, Raipur -
492001. (C.G.)
2. M/s Blackstone Overseas Pvt. Limited,
Alphanso Estate, 5, Surendra Mohan Ghosh Sarani, 3rd floor, Room
No.308, Kolkata, West Bengal.

Copy to:

1. The Commissioner (Appeals - I), Central Excise & Customs, Central
Excise Building, Tikrapara, Raipur (C.G.)
2. Sr. P.S. to AS (RA), Mumbai.
3. Notice Board