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F.NO. 195/238/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

<>

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...6/2/11

ORDER NO. 102 /2013-CX DATED 05.02.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT 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. 14/2011-CE DATED 24.1.11 PASSED BY THE COMMISSIONER (APPEALS-I) CENTRAL EXCISE, BANGALORE

APPLICANT : M/s SEQUENT AUTOMATION PRIVATE LIMITED, BANGALORE

RESPONDENT : COMMISSIONER OF CENTRAL EXCISE, BANGALORE-II, CR BUILDING, QUEEN'S ROAD, BANGALORE 560 001.

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**ORDER**

This revision application is filed by the applicant M/s Sequent Automation Private Limited, Bangalore against the order-in-appeal No. 14/2011-CE dated 24.1.11 passed by the Commissioner (Appeals-I) Central Excise, Bangalore with respect to order-in-original No.814/10 dated 22.3.10 passed by Assistant Commissioner of Central Excise, E 2 Division, Bangalore.

2. Brief facts of the case are that the applicant had filed the rebate claim for Rs.4,70,405/- on 19.11.2009 with the rebate sanctioning authority. The applicant has claimed the duty drawback of Rs.2,01,704/- from the customs on the shipping bill. Considering the provision of Rule 12(a) (ii) of Customs and Central Excise duties and Drawback Rules 1995 that "in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities. The Original authority has rejected the rebate claim, after following the due process of law.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who upheld the impugned order-in-original and rejected the appeal.

4. 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 Central Government on the following grounds:

4.1 The order of the appellate authority is the wholly misconceived and not legally sustainable. The appellate authority's findings are contrary to statute law and binding judicial precedents. The impugned order is therefore, bad in law and merits revision.

4.2 The Appellate Authority has invoked Rule 5 of the Cenvat Credit Rules, 2004. The applicant submits that Rule 5 of the CCR, 2004 deals with the refund of goods in case of exports. The applicant submits that this is not the case in the instant application. A perusal of the show-cause notice shows that nowhere either in the notice or in the reply Rule 5 of the CCR, 2004 has been invoked. The applicant submits that the Appellate Authority has erred in invoking this Rule and has traversed beyond the show-cause notice.

4.3 The Appellate Authority has failed to appreciate the difference between the duty drawback and the rebate of duty. Duty drawback is governed by the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Rebate of duty is governed by Rule 18 of the Central Excise Rules, 2002. Under the drawback rules, the exported goods are relieved of the burden of the customs duty, Central Excise duty and the cesses paid on the imported and indigenously procured inputs/raw materials and input services used in its manufacture. Duty drawback operates in the field of the input stage duties. On the other hand, rebate of duty, as far as the present case is concerned, operates in the field of duty paid on the final products. The two rules operate under the different fields. Hence, the authorities below erred in denying rebate on the ground that it results in double benefit to the claimant.

4.4 The drawback claimed by it is that of the customs duty paid on the imported goods only. It relates to the duty incidence on the inputs used in the exported goods. There is no Central Excise component or duty drawback at all. The applicant further submits that the drawback rate for the finished goods with or without cenvat benefit is 3.6%. As far as claiming duty drawback is concerned, what is available as drawback is that of customs duty only and not that of the Central Excise duty on the exported goods. Hence, the applicant submits that taking of Cenvat credit on the inputs and utilizing it

tor payment of duty on the exports under rebate claim does not in any manner, prejudice the interests of the Revenue.

4.5 The applicant submits that it has claimed rebate of duty paid on the final product which has been exported. The duty drawback sanctioned to it by the customs authority is a benefit available on the Inputs side and has nothing to do with the duty paid on the final product. The findings of the Appellate Authority that both drawback and refund cannot be claimed in without legal basis, as it operates on two different fields.

4.6 The applicant submits that in light of the above submissions, the reliance placed by the Appellate Authority on CCE Vs Punjab Stainless Steel, 2009 (234) ELT 605 (Del) is manifestly wrong. The Appellate Authority has quoted the head notes of the case which are not considered as part of the case and hence it has no evidentiary value.

4.7 The applicant submits that Rule 12(a)(ii) of the Drawback Rules, 1995 does not forbid the rebate claim of the duty paid on the final product. The Rules forbid the claim of the rebate or duty of customs and Central Excise duties paid on the containers, packing materials and materials used in the manufacture of the export goods. The Rule does not prohibit either taking of the Cenvat Credit of input duties or the claim if the rebate or duty paid on the final products using the input stage credit.

5. Personal hearing scheduled in this case on 13.12.12, was attended by Shri K.Kumareshan, Advocate on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records Government observes that adjudicating authority has rejected the rebate claim on the ground that they have availed drawback of duty on the goods exported vide said shipping bill. The said order was upheld by the Commissioner (Appeals). Now the applicants have filed this Revision Application on the grounds stated at para 4 above. The main contention of applicants is that they were sanctioned drawback of customs portion only and such availment of drawback of customs portion cannot be the basis for denial of rebate of Central Excise duty paid on exported goods.

8. Government notes that it is not in dispute that the applicants have cleared the impugned goods on payment of Central Excise Duty under the ARE-Is procedure and have exported the impugned goods out of India. The applicants rebate claim has been rejected on the grounds that they now have claimed drawback on the goods exported. The applicants have contended that they have claimed and got drawback under All Industry Rate only of Customs portion and no drawback in respect of Central Excise Duty allocation under the all Industry Rate of Drawback has been claimed. On perusal of impugned orders, it is observed that lower authorities have not recorded in their finding about availment of duty drawback of only customs portion. Rather they have stated that applicants have already claim drawback. Applicants have also contended that as per rule 12 (a) (ii) of Drawback Rules 1995, benefit of input rebate claim as well as duty drawback is not admissible and they have claimed rebate of duty paid on final exported goods for which there is restriction.

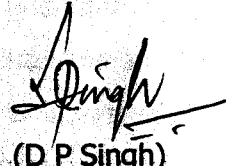
9. In this regard, Government notes that as per CBEC circular No. 83/2000-Cus dated 16.10.2000, it is clarified that "where only customs portion of duties is claimed as per the All Industry Rate of Drawback, Rule 57F(14) does not come in the way of admitting refund of unutilized credit of Central Excise/Countervailing Duty paid on inputs used in the products exported." It is clear that allowing rebate of duty paid on finished exported goods and drawback of custom portion will not amount to double benefit. The

same view is already taken by Government in the case of M/s Benny Impex Pvt. Ltd. 2003 (154) ELT 300 (GOI) and also in the case of William Industries, GOI order No. 38/09- Cx dated 30.01.2009.

10. In view of above facts and circumstances, Government is of the considered opinion that the impugned order-in-appeal is not maintainable. This view is already taken by Government vide GOI Order No. 884-885/06 dated 29.09.06, in the case of Benny Impex Pvt. Ltd. reported as 2003 (154) ELT 300 (GOI) and in GOI order no. 38/09-Cx dated 30.01.2009. Government, accordingly, sets aside the impugned orders and remands the matter back to the original authority for sanctioning rebate, if applicant has availed drawback of only customs portion only and claim is also otherwise in order.

11. Revision applicationis disposed off in terms of above.

12. So ordered.




(D P Singh)

Joint Secretary (Revision Application)

M/s Sequent Automation Private Limited,  
49/A, II Phase, Peenya Industrial Area  
Bangalore-560058

Attested



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Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
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Copy to:

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2. Commissioner Central Excise, Central Excise II Commissionerate, CR Building, Queen's Road, P B No. 5400, Bangalore-560 001.
3. Asstt. Commissioner of Central Excise, E-2 Div., 1st Main Road, Seshadripuram, Bangalore-560 020.
4. Shri Advocate, Bangalore-560 054.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(P.K.Rameshwaram)  
OSD (Revision Application)

