

REGISTERED SPEED POST



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. 380/52/DBK/11-RA/197

Date of Issue:- 07.01.2020

ORDER NO. 105 /2020 -CX(WZ)/ASRA/MUMBAI DATED 03.01.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	380/52/DBK /11-RA	Commissioner of Central Excise & Customs, Surat-I	M/s Bhalaria Metal Craft Pvt. Ltd., Bhayander, Thane

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. RKA/282/SRT-1/2011 dated 12.09.2011 passed by the Commissioner of Central Excise (Appeals), Surat.

ORDER

This Revision application is filed by The Commissioner of Central Excise & Customs, Surat-I Commissionerate (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. RKA/282/SRT-1/2011 dated 12.09.2011 passed by the Commissioner (Appeals), Central Excise, Surat.

2. The Brief facts of the case are that M/s Bhalaria Metal Craft Pvt. Ltd., Plot J & K, Todi Industrial Estate, Radha Swami Road, Bhayander (West), Thane - 411 (hereinafter referred to as "The Bhalaria DTA") are engaged in the activity of trading of stainless steel utensils and cutlery. The Bhalaria DTA had made supply to M/s Bhalaria Metal Forming, a SEZ unit, Sachin (hereinafter referred to as "The Bhalaria -SEZ") and filed Drawback Claims under Rule 2(C) of Customs & Central Excise Duty Drawback Rules, 1995 for Rs. 4,79,404/- and Rs. 7,53,618/- for DBK item No. 73 & 74 respectively, when Cenvat was not allowed.

3. The Deputy Commissioner of Customs, SEZ, Sachin (Development Commissioner's Office) vide order in originals No. SSEZ/Cus/DC/19/07-08 & SSEZ/Cus/DC/19/07-08 both dated 31.03.2008 rejected the claim of Drawback under impugned two orders in Original. The Original Authority observed that :-

3.1 the procedure for grant of drawback claim is laid down under Rule 24 of the SEZ Rules, 2006.

3.2 He also observed that Rule 30(5) of SEZ Rules, 2006 provides that in case the unit does not intend to claim the entitlement of Drawback, a disclaimer to that effect shall be given to the DTA suppliers for claiming such benefits.

3.3 In the present case, Bhalaria-SEZ has given such disclaimer and hence DTA unit is required to file DBK claim.

3.4 The said rule specifically provides that in case of Duty Drawback claimed by the DTA, supplier, the same shall be claimed with the Commissioner of Central Excise & Customs having jurisdiction over said DTA unit and the said Commissioner shall sanction the said drawback claim.

3.5 In view of the same, the Original Authority returned the Impugned Drawback claims without going into the merits.

4. Being aggrieved by the original orders, the respondents filed an appeal before the Commissioner (Appeals), Central Excise & Customs, Surat-I. The appellate authority vide Order in Appeals No. RKA/526-527/SRT-I/2009 dated 24.07.2009 rejected the orders in original and annulled the same. The Appellate Authority observed that :-

4.1 Rule 14 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (herein after referred as 'Drawback Rules') specifically provide that drawback shall be paid by the proper officer of Customs to the exporter.

4.2 Rule 13 of the Drawback Rules states that Triplicate copy of the Bill of Export, under claim of drawback, shall be deemed to be a claim of drawback filed on the dated on which the proper officer of Customs makes an order permitting clearances and loading of goods for export.

4.3 From these Rules, it is very clear that the authority for grant of ~~drawback is the proper officer of customs at the Customs-Station from where~~ the goods are exported.

4.4 SEZ being a specific Customs Station, the drawback on exports to SEZ under the drawback Rules is to be determined by the Customs Officer posted at SEZ.

5. Aggrieved by the said Order in Appeal, the Commissioner, Central Excise & Customs, Surat-I filed appeal before Hon'ble CESTAT on the grounds that Commissioner (A) has no appellate jurisdiction over the order passed by the

Deputy Commissioner of Customs, SEZ ,Sachin, Surat. The Hon'ble CESTAT vide Order No. A/1296-1299/2010-WZB/AHD dated 25.08.2010 observed that jurisdiction of Commissioner of Central Excise (Appeals) who had passed the order in appeal was never the subject matter of dispute before him. As such, his views as to whether he has jurisdiction to pass orders or not are not available.

The CESTAT, therefore, set aside the Order in Appeal and remanded back the matter for deciding the contested issue raised by the department. The Tribunal also directed that in case the Commissioner (Appeals) held that he has jurisdiction to decide the issue, he would re-decide the same, after taking into account the Board's Circular No. 43/2007-Cus dated 05.12.2007, replied upon by the department in support of their plea that in case of disclaimer by SEZ unit, the claim of DTA unit is required to be examined by the Commissioner of Central Excise having jurisdiction over the DTA unit.

6. The Commissioner (Appeals), Central Excise & Customs, Surat-I vide Order in Appeal No. RKA/282/SRT-I/2011 dated 12.09.2011 observed that :

6.1 The Bhalaria SEZ falls within the territorial jurisdiction of Commissioner of Central Excise (Appeals), Surat-I. By Notification No. 83/2004-Cus(NT) dated 30.06.2004 each Commissioner of Central Excise (Appeals) has been extended appellate jurisdiction under the Customs Act within his territorial limits notified under Rule 3 of Central Excise Rules. Since SEZ Sachin is within territorial jurisdiction of Central Excise, Surat-I, it cannot be said that the Commissioner of Central Excise (Appeal), Surat-I has no appellate jurisdiction over the orders passed by Deputy Commissioner of Customs , SEZ Sachin.

6.2 The Commissioner (Appeals) also observed that in the Board's Circular No. 24/2003-Cus dated 01.04.2003, in para 4, it is stated that SEZ shall be a Customs Station under the control of Commissioner of Customs.

This position was reiterated in the Customs Circular 31/2003 dated 07.04.2003. However, Circular No. 53/2005-Cus dated 29.12.2005 has changed the situation and in para 3 it is stated that the SEZ in places other than port cities shall be with the Commissioner of Central Excise, Sachin being non port city, SEZ Sachin falls under jurisdiction of Central Excise Commissionerate Surat-I. Thus as the matter stands there is no ambiguity and even Board's circular dated 53/2005 places SEZ Sachin under the jurisdiction of Commissioner of Central Excise, Surat I and consequently orders of Customs Authorities under Sachin SEZ are appealable to Commissioner of Central Excise (Appeals), Surat-I.

6.3 The Deputy Commissioner of Customs, SEZ Sachin passed the orders in original with preamble that appeal against the orders lie to Commissioner of Central Excise (Appeal), Surat-I. With such preamble the aggrieved party had no choice but to file appeal before Commissioner of Central Excise (Appeals), Surat-I.

6.4 The Commissioner of Central Excise (Appeals), Surat-I has appellate jurisdiction over the orders passed by Deputy Commissioner of Customs, SEZ Sachin in view of :

- i) Notification No. 83/2004-Cus (NT) dated 30.06.2004.
- ii) CBEC's Circular No. 53/2005-Cus dated 29.12.2005.

~~iii) The preamble of the order in originals issued.~~

iv) The Rule 20 of the SEZ Rules does not take away the authority of the Commissioner of Central Excise (Appeal), Surat-I to entertain appeal against orders passed by the Deputy Commissioner of Customs, SEZ Sachin.

7. Further, as regards the issue as to who shall pay Drawback, the Commissioner (Appeal) has observed that in view of Circular No. 43/2007-Cus dated 05.12.2007 drawback claims in respect to of supplies made by DTA units to units or Developers in SEZ are not to be processed or sanctioned by the

Customs and Central Excise formation. The Specified Officer posted in an SEZ is the appropriate authority for granting drawback in respect of goods supplied from DTA units to Developers and units in SEZ except where the unit or Developer issues a disclaimer to the DTA supplier in which case the Commissionerate of Central Excise / Customs & Central Excise. Thus the circular of the Board makes it clear that where claimant of Drawback is the DTA unit who supplied goods to SEZ unit, the same shall be paid by the Commissionerate of Central Excise / Customs & Central Excise having jurisdiction over DTA unit. Therefore, such payments shall lie to the jurisdictional Central Excise Authority.

8. Aggrieved by the said Order in Appeal, the Commissioner of Central Excise & Customs, Surat-I filed the instant revision application on the following grounds :

8.1 the findings that the Commissioner, Central Excise & Customs (Appeals), Surat-I has jurisdiction over the orders passed by the Deputy Commissioner, Customs, SEZ, Sachin, Surat is presumptive and not legally correct.

8.2 The Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-I erred in passing Order in Appeal, since as per Notification No. 14/2002-CE (NT) dated 08.03.2002, he has no appellate jurisdiction over any order passed by the Deputy Commissioner of Customs SEZ Sachin, Surat because the impugned order is in respect of Customs matter whereas CCE(Appeals), Surat-I has jurisdiction over Central Excise matters.

9. A Personal Hearing was held in matter on 21.11.2017, 27.12.2018, and 19.08.2019. Neither the applicant nor respondent attended the same. In the event, the revision application is taken up for decision on the basis of documents and evidences available on record.

10. The Government observes that the core issue in the case is the regarding who shall process and pay the drawback claim to the DTA supplier in case he

supplies goods to the SEZ unit and files the Duty Drawback claim after procuring disclaimer certificate from the SEZ unit. The impugned claims were filed by the claimant in the year 2005-2006. The same were returned by the Deputy Commissioner (SEZ), Sachin, Surat vide Order in Original Nos. SSEZ/Cus/DC/19/07-08 & SSEZ/Cus/DC/19/07-08 both dated 31.03.2008 stating that he has no jurisdiction over said DTA unit. The Government observes that the claims remained unprocessed for more than a decade pending decision on the issue related to the appellate jurisdiction of these orders. The Government finds that the issue related to appellate jurisdiction is now insignificant in the case and any further delay in the matter would amount to denial of justice to the claimant. The Government, therefore, keeping aside all other grounds in the impugned revision, takes up the core issue for decision by virtue of powers conferred by the provisions of Section 35 EE(4) of the Central Excise Act, 1944.

11. The Government holds that vide CBEC vide Circular No. 6/2005-Cus dated 03.02.2005 with operationalisation of the provisions of Chapter X-A of Customs Act, 1962 w.e.f. 11.05.2004, drawback is to be granted for the supplies made from DTA to SEZ. Further, the Deputy / Assistant Commissioner of Customs posted on deputation at the SEZ being the Dy. / Asstt. Commissioner of Customs at the Customs station of export shall be the authority for granting these drawback claims. However, the said provisions became inoperative and replaced by the SEZ Act, 2005 w.e.f. 10.02.2006.

12. The Government notes that :-

12.1. As per the provisions of Section 26(d) of the SEZ Act, 2005, the Developer and entrepreneur shall be entitled to drawback on goods brought from DTA into an SEZ.

12.2 Also, the Rule 30(5) of SEZ Rules, 2005 states that in case of procurement of goods from DTA where a Bill of Export has been filed under a claim of drawback the Unit or Developer shall claim the same from the

Specified Officer and in the case the Unit or Developer does not intend to claim entitlement of drawback, a disclaimer to this effect shall be given to the DTA Supplier for claiming such benefit.

12.3 The CBEC vide Circular No. 43/2007-Cus dated 05.12.2007 has clarified that wherever admissible, drawback claims in respect of supplies made by DTA units to units or Developers in SEZ are not to be processed or sanctioned by the Customs and Central Excise formations. The Specified Officer posted in SEZ is the appropriate authority for granting drawback in respect of goods supplied from DTA units to Developers and units in SEZ except where the unit or developer issues a disclaimer to the DTA supplier in which case the Commissioner of Central Excise / Customs & Central Excise having jurisdiction over the DTA unit would sanction the drawback.

13. The Government holds that in the instant case the Commissionerate of Central Excise / Customs & Central Excise having jurisdiction over the DTA unit is the proper authority to sanction the impugned drawback claims since the SEZ unit / developer has issued a disclaimer to the DTA unit.

14. In view of above discussion, Government remands the case back to Deputy / Assistant Commissioner of Customs posted on deputation at the SEZ for processing impugned drawback claims on merit. He will complete the requisite verification expeditiously and take the decision in the matter within six weeks of receipt of this order after following the principles of natural justice.

15. Revision application is disposed off in above terms.


(SEEMA ARORA)

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

To

As per
The Commissioner of Central Excise & CGST, Surat-I,
New Central Excise Building, Opp. Gandhi Baug,
Chowk Plaza, Surat- 395 001.

Copy to:

1. The Commissioner of CGST, Surat-I, New Central Excise Building, Opp. Gandhi Baugh, Chowk Bazar, Surat.
2. The Deputy Commissioner of Customs, SSEZ, Sachin, Surat.
3. M/s Bhalaria Metal Craft Pvt. Ltd., 8 M/s Bhalaria Metal Craft Pvt. Ltd., Plot J & K, Todi Industrial Estate, Radha Swami Road, Bhayander (West), Thane - 411.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.