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F.No. 195/510/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue..... 25/7/11

ORDER NO. 1060 /13-Cx DATED 24.07.2013 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.YDB/259/RGD/2011 dated 21.03.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II

Applicant : M/s Jaicorp Ltd., Mumbai

Respondent : Commissioner of Central Excise, Raigad

ORDER

This revision application is filed by M/s Jaicorp Ltd., Mumbai against the order-in-appeal No.557/R/RGD/2010/2636 dated 28.04.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai -II, with respect to order-in-original passed by Assistant Commissioner of Central Excise (Rebate), Central Excise Commissionerate, Raigad.

2. Brief facts of the case are that the applicant M/s Jaicorp Ltd., Mumbai, a manufacturer exporter filed six rebate claims under the provisions of Rule 18 of Central excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 on the basis of relevant documents/details. The rebate was sanctioned vide impugned order-in-original by the original authority for Rs.7,49,164/-. However, the order-in-original was reviewed by the department and appeal was filed before Commissioner (Appeals) against the above order-in-original on the ground that in one rebate claim in respect of ARE-1 No.637 dated 12.12.2008 amounting to Rs.71,507/-, the goods exported were wholly exempted from payment of central excise duty vide Notification No.30/2004-CE dated 9.7.2004 as the applicant had not availed cenvat credit facility, and hence the payment made by the party cannot be considered as payment of central excise duty and consequently rebate of such amounts cannot be sanctioned. Department filed appeal before Commissioner (Appeals), who set aside the impugned order-in-original in respect of one claim amounting to Rs.71,507/- and allowed appeal filed by the department.

4. Being aggrieved by the impugned order-in-appeal, applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government mainly on the following grounds:

4.1 The Applicant submits that Notification No.30/2004 CE dated 9-7-2004 was issued under Section 5A(1) of the Central Excise Act, 1944. For ready

reference, the Applicant would like to reproduce Section 5A(1), which is as follows:

If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon.

The Applicant submits that Notification is issued under Section 5A(1) may grant absolute exemption or conditional exemption. In the present proceedings, Notification No.30/2004-CE dated 9-7-2004 is conditional in nature, hence, an option is available to the manufacturer as regards to availment of said Notification.

4.2 The Applicant submits that under Section 5A (1) of the Central Excise Act, 1944, it has been clarified as follows:

For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

In other words, it has been clarified that if the goods are exempted absolutely then manufacturer is not allowed to pay Central Excise duty on such goods.

4.3 The Applicant submits that reliance placed by the Appellate Authority on the decision of P.R.S. Permacel Pvt. Ltd., reported in 2006(202) ELT 153 (G.O.I.) has no application to the facts of this case. In the said decision, goods were exempted by Tariff itself and not by way of Notification. On the contrary, in the

present proceedings, the goods are dutiable in nature and exemption is granted vide conditional Notification No.30/2004 CE dated 9-7-2004, hence, said decision relied upon by the Appellate Authority is improper and illegal.

4.4 The Applicant submits that duty paid on goods exported cannot be termed as "deposit", as said goods are dutiable and not enjoying absolute exemption. The Applicant submits that to treat amount as deposit, goods exported are required to be absolute exempted by Tariff or by way of Notification. It is an undisputed fact that goods exported were not exempted absolutely and hence, payment in connection with the goods exported cannot be termed as "deposit".

5. Personal hearing was scheduled in this case on 5.3.2013 & 27.6.2013. Personal hearing held on 27.6.2013 was attended by Shri Ravindra Kumar Bhutoria, Vice-President, Finance-I (Taxation) on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

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

7. Government observes that the applicant exported the said goods on payment of duty and filed six claims of Rs.7,49,164/- which was initially sanctioned by the original authority vide impugned order-in-original. Department filed appeal in one rebate claim of Rs.71,507/- pertaining to ARE-1 No.637 dated 12.12.08 on the ground that in that case, the goods were exempted wholly from payment of duty vide Notification No.30/2004-CE(NT) dated 9.7.2004, as the applicant had not availed cenvat credit facility and payment made by the party cannot be considered as payment of central excise duty and hence, rebate cannot be sanctioned in such case. Commissioner (Appeals) upheld impugned

order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant availed exemption from payment of duty under Notification No.30/04-CE(NT), for domestic clearances whereas on export clearance duty was paid in terms of Notification No.29/04-CE(NT).

As per CBEC instructions both the Notifications can be availed simultaneously subject to compliance of condition specified in the relevant CBEC Circular. In this case, department has argued that since goods were exempted under Notification No.30/04-CE(NT), the applicant was not required to pay any duty as per provisions stipulated in Section 5A(1A) of Central Excise Act 1944.

9. Sub-Section (1A) of Section 5A of the Central Excise Act, 1944 stipulates as follows;-

"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

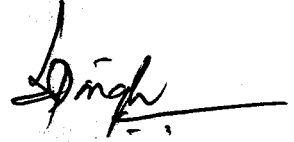
The above provisions stipulate that the exemption granted absolutely from whole of duty of excise has to be availed and in that case there is no option to pay duty. In this case goods are not exempted unconditionally. The Notification No.30/04-CE(NT) is a conditional one since said exemption is available only if cenvat credit is not availed. So, the applicant was not under any statutory compulsion to avail said notification. As such there was no bar on the applicant to pay duty under Notification No.29/04-CE(NT) since as per CBEC Circular No.845/03/06-Cx (F.No.267/01/06-Cx.8) dated 1.2.07 and 795/28/2004-Cx dated

28.7.04, both the Notifications can be availed simultaneously. There is no dispute about export of said duty paid goods and compliance of all the conditions and procedure of Notification No.19/04-CE(NT) dated 6.9.2004.

10. In view of above position, Government finds that rebate claim is admissible to the claimant under Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04. Therefore, Government sets aside the impugned order-in-appeal and allows the revision application.

11. The revision application is allowed in terms of above.

12. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Jaicorp Ltd.
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Attended



(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI

Order No. 1060 /2013-Cx dated 24.07 2013

Copy to:

1. Commissioner of Central Excise & Customs, Raigad Commissionerate, 4th Floor, Kendriya Utpad Shulk Bhawan, Sector 17, Plot No.1, Khandeshwar, Navi Mumbai – 410 206
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai – 410 206

4. PA to JS (RA)

5. Guard File

6. Spare copy

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

