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F.No. 195/560/11-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 26/7/13

Order No. 1063 /13-cx dated 26-07-2013 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, 1944 against the Order-in-Appeal No. Commr(A)104/VDR-II/2011 dated 17.03.2011 passed by Commissioner (Appeals), Central Excise & Customs, Vadodara.
Applicant	:	M/s. Intas Pharma Ltd., Ahmedabad.
Respondent	:	Commissioner of Central Excise & Customs, Vadodara-II.

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ORDER

This revision application is filed by the M/s. Intas Pharma Ltd., Ahmedabad against the Order-in-Appeal No. Commr(A)104/VDR-II/2011 dated 17.03.2011 passed by Commissioner (Appeals), Central Excise & Customs, Vadodara, with respect to Order-in-Original passed by the jurisdictional Assistant Commissioner, Central Excise & Customs, Division-City, Vadodara.

2. Brief facts of the case are that the applicant a SEZ unit is located at Pharmaceutical SEZ, Ahmedabad. The applicant received the goods i.e. HR Plates from Registered Dealer M/s Americal Steel Lt.d., of Vadodara. The said goods were purchased by dealer from manufacturer M/s Essar Steel Ltd., Surat. The Registered Dealer of the Domestic Tariff Area supplied goods on payment of Central Excise duty to the applicant, i.e. an unit situated in SEZ. The applicant had taken N.O.C. from the domestic Tariff Area supplier and filed a rebate claim of Central Excise duty of Rs. 2,55,371/- in terms of the provisions of Section 2(m) of SEZ Act, 2005 read with Rule 30 of SEZ Rules, 2006. The said rebate claim was sanctioned by the lower authority vide impugned Order-in-Original.

3. Being aggrieved by the said Order-in-Original, department filed appeal before Commissioner (Appeals), on the ground that rebate claim in terms of Circular No. 29/2006-Cus dated 27.12.2006 under Rule 18 of Central Excise Rules, 2002 is admissible to supplier of SEZ only and not to an unit situated in SEZ and also that SEZ unit was located in Pharmez, Ahmedabad and hence, the jurisdictional Assistant Commissioner of Central Excise was not having jurisdiction to sanction rebate claim. Commissioner (appeals) decided the case in favour of department.

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 fact that the supply of excisable goods, by a DTA Supplier, whether the manufacturer or a Dealer, to a Unit or Developer, situated in SEZ, is to be taken as physical export of the excisable goods, by DTA manufacturer or dealer, as per the provisions of Section 2(m) of the SEZ Act, 2005, read with Rule 30 of the SEZ, 2006, has not been denied by the Excise Authorities. The excisable goods, which were duty-paid goods, were exported by the manufacturer-exporter, under ARE-1 and his Central Excise Registration Certificate, in a favour of the applicants, who are situated in a SEZ, is therefore, a question of fact.

4.2 Nobody can deny the legal position that the merchant-exporter or dealer, was eligible to claim rebate of central excise duty, which was reimbursed by him, to the supplier-manufacturer, under Rule 18 of the central excise rule, 2002, on account of the fact that the duty-paid excisable goods, were duly exported by him. In place of claiming rebate of central excise duty, in question, the dealer surrendered no objection certificate, in favour of the applicants and accordingly, without making any reference to any other provisions of the central excise law or SEZ provisions, the excise authorities, are required to return back the said central excise duty, to the applicants.

4.3 The fact that the excisable goods, have been exported being not denied by the excise authorities. Once the excisable goods, have been exported, on payment of central excise duty, duty, paid thereon, cannot be retained by the Government. The applicant relied upon various judgements in favour of their contention.

4.4 Once the factum of export is not denied by the excise authorities, duty paid on the excisable goods, is to be refunded by the excise authorities, to the exporter, without any arguments, as per the judgement of the Hon'ble Madras High Court, in the case of Tablets India Lt.d., Vs. Joint Secretary, Ministry of Finance and Commissioner of Central Excise & Cutoms, Chennai-I, reported in 2010-TIOL-652-HC-MAD-CX.

5. Personal hearing was scheduled in this case on 05.03.2013 and 27-06-2013. However, nobody attended the hearing. Hence, Government proceeds to decide this case on merits on the basis of available.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes, that in the instant case goods were supplied to an unit situated in SEZ, Ahmedabad by a registered dealer of DTA. After taking NOC from supplier of the goods, the applicant filed rebate claims, which was sanctioned by the original authority. Department filed appeal before Commissioner (Appeals) on the ground that under Rule 18 of Central Excise Rules, 2002 rebate is admissible to supplier of goods to SEZ Unit only and not to an unit situated in SEZ and also that SEZ unit was located in Pharmez, Ahmedabad and hence, the jurisdictional Assistant Commissioner of Central Excise was not having jurisdiction to sanction rebate claim under Rule 18 of Central Excise Rules, 2002. Commissioner (Appeals) decided the case in favour of department. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the department is mainly contesting that the applicant, an unit situated in SEZ being deemed importer of the goods cannot claim rebate benefit as the same is available to exporter of the goods. In this regard, the applicant stated that as per the provision of Rule 2(m) of the SEZ Act, 2005 read with Rule 30 of SEZ Rules, 2006, the DTA supplier/dealer is eligible for rebate claim and since, the DTA dealer has surrendered NOC in favour of applicants, the rebate should be sanctioned to them.

8.1 In order to examine the issue, Governments finds it proper to examine relevant statutory provisions. In this regard, the basic Rule 18 of the Central Excise Rules, 2002 read as under:-

*"**Rebate of duty**.. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the*

manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."

The rule 18 stipulates that the rebate claim is available only if duty paid goods are exported. Further, the detailed conditions and procedure for eligibility, admissibility and sanction of rebate claim under rule 18 has been provided in the Notification No. 19/2004-CE(NT) dated 06.09.2004.

8.2 Relevant paras of CBEC's Circular No. 29/2006-Customs dated 27.12.2006 issued for implementation of SEZ Act, 2005 and SEZ Rules, 2006 reads as under:-

"Attention is invited to the notification No S.O. 196(E), dated 10.02.06 issued vide F./1/7/2005 EPZ dated 10.2.2006, by the Department of Commerce, Ministry of Commerce & Industry, Government of India on the above subject. The said notification appoints 10th February 2006 as the date on which Special Economic Zone Act, 2005 (excluding sections 20 to 24 and section 31 to 41) has come into force. Further, in exercise of the powers conferred under section 55 of the Special Economic Zones Act 2005, (hereinafter referred to as the Act) the Special Economic Zones Rules, 2006 (hereinafter referred to as the Rules) have been notified vide notification F/1/7/2005 EPZ dated 10.2.2006 w.e.f. 10.02.2006.

2. Following the enactment of Act and the Rules, certain representations have been received from the trade regarding implementation of Rule 30 relating to procurement of goods by Special Economic Zones (SEZs) from the Domestic Tariff Area (DTA). It has been felt necessary to issue instructions, as detailed under, for proper implementation of the said Rule. Department of Commerce has also issued Instruction No. 6 dated 3rd August, 2006 on the said issue.

3. The important provisions of the Act & the Rules having a bearing on procurement of goods from DTA by SEZ units and SEZ developers for their authorized operations are listed below: -

(a) Under section 2 (m) of the Act, supplying goods or providing services, from DTA to a SEZ unit or a SEZ developer, has been defined to constitute "export".

(b) Section 51 of the Act provides that the said Act shall have effect in case of any inconsistency with the provisions contained in any other law for the time being in force, etc.;

(c) Sub section (1) of section 52 of the Act provides that w.e.f 14.03.2006, the provisions contained in chapter X A of the Customs Act, 1962, the SEZ Rules, 2003 and the SEZ (Customs Procedure) Regulations, 2003 made there under, shall not apply to Special Economic Zones; and

(d) Section 53 of the Act provides that w.e.f 10.02.2006, a Special Economic Zone shall be deemed to be territory outside the customs territory of India for the purposes of undertaking the authorized operations.

4. In the light of the aforesaid provisions, with effect from 14.03.2006, Chapter X A of the Customs Act, 1962, the SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003, and the exemption notification no. 58/2003-CE dated 22.7.2003 regarding the supply of goods to SEZ units & SEZ developers have become redundant. Consequently the supplies from DTA to a SEZ unit, or to SEZ developers for their authorized operations inside a SEZ notified under sub-section (1) of section 4 of the Act, may be treated as in the nature of exports.

5. The existing SEZs, i.e., the ones notified under section 76A of Chapter X A of the Customs Act, 1962 shall be deemed to have been notified under Section 4 of the Act. Supplies from DTA to SEZ shall be exempt from payment of any Central Excise duty under Rule 19 of Central Excise Rules, 2002. Similarly, such supplies shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfillment of conditions laid there under. The provisions relating to exports under Central Excise Act, 1944 and rules made there under may be applied, mutatis-mutandis, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations.

6. The provisions of Regulation 10 of the Special Economic Zone (Custom Procedure) Regulation, 2003 for requirement of issuance of Domestic Procurement Certificate (DPC) have been dispensed with in the SEZ Rules, 2006. Now the procedure for procurements of goods from Domestic Tariff Area to a SEZ Developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006, and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Annexure-I and Annexure-II, under notification no. 42/2001-C.E.(N.T.) dated 26.06.2001 as amended, and furnished by the DTA supplier to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. In the event of non-receipt of proof of export in form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and /or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from the DTA supplier by the jurisdictional Central Excise Officer as is done in the case of non-availability of proof of export for normal export of goods, without payment of Central Excise duty, under Rule 19 of Central Excise Rules, 2002.

7. Clearance of goods at the place of dispatch, i. e., at the factory or warehouse may be, at the option of the exporter (DTA Supplier), either 'under examination and sealing of goods by the Central Excise officer', or, 'under self- sealing and self examination', as is applicable in the case of export of goods under Rule 18 or 19 of Central Excise Rules, 2002. The manner of disposal of copies of ARE1, monitoring of proof of exports, demand of duty in case of non - submission of proof of exports, etc. shall be the same as is applicable in case of exports made under Rule 18 or Rule 19 of the Central Excise Rules, 2002. The DTA supplier shall ensure the bonafides of the SEZ unit or SEZ developer to whom duty free goods are being supplied. In the event of non receipt of proof of export due to loss of goods in transit due to theft, illegal diversion or any other reason, or in the event of proof of export being found to be fraudulent, the liability of payment of duty, fine, penalty and interest relating thereto, would lie with the supplier in DTA, in addition to any other liability under any law in force.

8. Difficulty, if any faced in implementation of the above said instruction, may please be brought to the notice of the Directorate General at the earliest.

9. Wide publicity may please be given to the above said instruction by way of issuance of public notice.

10. This issues with the approval of Central Board of Excise and Customs."

The above said Circular has been issued taking into account of provision contained in SEZ Act, 2005 and SEZ Rules, 2006. Para 3(c) of above said circular clarify in unambiguous terms that "Supplying goods or providing services, from DTA to a SEZ Unit or a SEZ developer has been defined to constitute "export".

As such, applicant, who in receiving the goods from DTA supplier cannot be treated as exporter nor he has exported any goods in terms of said section 2(m) of

the SEZ Act. The SEZ Unit, the applicant is a importer of said goods in this case. Hence applicant can not file the rebate claim under Rule 18 of Central Excise rules, 2002. As such the rebate claim is rightly held inadmissible to the applicants on this count.

9. The department also contended that the applicant is an unit situated in Ahmedabad SEZ, their rebate claim cannot be sanctioned by the Assistant Commissioner of Central Excise, Vadodara-II Commissionerate, as the same is beyond jurisdiction. Commissioner (Appeals) has dealt this aspect in detail in impugned Order-In-Appeal and Government concurs with the finding of appellate authority that original authority has sanctioned the impugned rebate claim beyond jurisdiction. As such, the applicant rebate claim is not admissible on this count also.

10. In view of above discussion, Government does not find any infirmity in order of Commissioner(Appeals) and hence, up holds the same.

11. Revision Application is thus rejected being devoid of merit.

12. So, ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s. Intas Pharma Ltd.,
Plot No. 5,6 & 7, Pharmez SEZ,
Village-Sanand, Ahmedabad-382213.

ATTESTED

(भागवत 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 Revn.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 1063 /13-CX dated 26.07.2013

Copy to:

1. The Commissioner of Central Excise & Customs, Vadodara-II, Central Excise & Customs Building, Subhanpura, Vadodara – 390023.
2. The Commissioner of Central Excise & Customs (Appeals) Central Excise Building, Race Course, Vadodara – 390 007.
3. The Assistant Commissioner of Central Excise & Customs, City Division, Vadodara –II.

4. ~~PS~~ to JS(RA)
5. Guard File.
6. Spare Copy

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)