



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre - I, Cuffe Parade,
Mumbai-400 005

F.No.195/523/13-RA / 5A

Date of Issue 09.04.2018

ORDER NO. 110/2018-CX (WZ) / ASRA / MUMBAI/ DATED 28.3.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Thermax Limited, Pune.

Respondent : Assistant Commissioner , Central Excise,
Pune II Division, Excise Bhavan, Akurdi, Pune.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. P-I/MMD/246/2012 dated 27.12.2012 passed by the Commissioner (Appeals), Central Excise, Pune-I.



ORDER

The instant Revision Application is filed by M/s Thermax Ltd Pune, (hereinafter referred to as "the applicants") against the Order-in-Appeal No. P-I/MMD/246/2012 dated 27.12.2012 passed by the Commissioner (Appeals-II), Central Excise, Pune-I.

2. Briefly stated the facts of the case are that the applicants are engaged in the manufacture of excisable goods viz. Boilers, Thermo Fluid Heater, Hot Water Generators etc. falling under Chapter 84 of the Central Excise Tariff Act, 1985. During the period from April 2006 to January 2011 the applicants cleared their goods for export to foreign buyers as well as SEZ developers. The appellants received bought out items in their factory premises and cleared the same for export along with boilers manufactured by them by availing Cenvat credit of duty paid on such bought out items.

3. It appeared that the said bought out items were not inputs used in the manufacture of the applicants duty paid goods and hence they were not eligible for the Cenvat credit of duty paid on these bought out items. As such, a Notice to Show Cause No. DGCEI/MZU/I&IS 'C'/30-09/2011 dtd. 26.07.2011 was issued to the applicants proposing denial of the Cenvat Credit of Rs.5,90,83,654/- attributable to the duty paid on such bought out items. The said SCN was decided by the Commissioner of Central Excise, Pune-I (herein after to as CCE Pune I) vide Order-in-Original No. 16/CEX/2012 dtd. 23.04.2012, disallowing the impugned Cenvat credit of Rs. 5,90,83,654/-, interalia on the grounds that the subject goods were not inputs used in the manufacture of appellants' finished product. However, the impugned Order-inOriginal also held that the assessee would be entitled to claim rebate of the reversed amount of Rs. 5,90,83,654/- pertaining to wrongly taken Cenvat credit, provided they satisfy the jurisdictional Central Excise Officer that the impugned goods on which such credit has been taken have been exported and also that all other eligibility qualifications thereof are satisfied.



4. The applicants filed rebate claim of Rs.5,90,83,654/- on 07.06.2012 with the jurisdictional Assistant Commissioner. The said rebate claim was rejected by the jurisdictional Assistant Commissioner vide Order-in-Original No. Rebate/45/Dn.11/2012-13 dated 07-09-2012 interalia on the grounds of time bar.

5. Being aggrieved by the Order-in-Original dated 07-09-2012, the applicants preferred appeal before Commissioner (Appeals), Central Excise, Pune-I. Commissioner (Appeals), Central Excise, Pune-I vide Order in Appeal No. P-I/MMD/246/2012 dated 27.12.2012 upheld Order-in-Original No. Rebate/45/Dn.11/2012-13 dated 07-09-2012 passed by Assistant Commissioner, Central Excise, Pune-II Division, Pune-I Commissionerate.

6. Being aggrieved with the said Order-in-Appeal, the applicant filed Revision Application (Revision Application No.195/523/13-RA against Order in Appeal No. P-I/MMD/246/2012 dated 27.12.2012 passed by Commissioner (Appeals), Central Excise, Pune-I under Section 35 EE of the Central Excise Act, 1944 before the Central Government on various Grounds.

7. Meanwhile, being aggrieved by the Order in Original No. 16 /CEX / 2012 dated 23.04.2012 passed by Commissioner of Central Excise, Pune-I, in so far as it was prejudicial to the interest of the applicants, the applicants filed appeal before Hon'ble Tribunal, Mumbai bearing Appeal No. E/1094/2012. Similarly, the department filed appeal bearing No. E/1191/2012 before Hon'ble Tribunal, Mumbai, also against Order in Original No.16/CEX/2012 dated 23.04.2012 passed by Commissioner of Central Excise, Pune-I on the ground that Commissioner of Central Excise, Pune-I has traversed beyond the grounds in the Show Cause Notice by holding that the applicants are entitled to rebate of the amount of Rs.5,90,83,654/-.



8. Hon'ble West Zonal Bench, CESTAT Mumbai Bench decided both the aforementioned appeals together vide its Order dated 29.04.2016 (reported in 2016-TIOL-1227-CESTAT-MUM) and observed as under :

"From this, it would appear that, even if the manufacturer is compelled to assemble the product on-site, it is the boiler in complete form that is liable to duty including the value of the 'bought-out' components'. However, it has been pointed out, that in the matter of domestic clearance, the 'bought-out' items are generally not brought into the factory and the appellant does not take credit on the same. That, however, is not the practice when it came to exports or supplies made to special economic zones. Under the contractual agreement, as well as for compliance with statutory requirement, the appellant stores 'bought-out' components at the factory of manufacturer where these are tested and connected along with the parts manufactured in the factory and, thereafter, removed from the premises as boiler for erection and installation at Special Economic Zone or at the site of the purchasers abroad. In these circumstances there cannot be any conclusion other than that the manufacture of boiler in its final form is rendered at the factory of manufacturer and the clearance of boiler is, for all practical purposes, effected from the said factory gate. Since the boiler is the final product of the manufacturer, every component within it and every input that goes into the component manufactured in the factory would be an input so far as CENVAT Credit Rules, 2004 is concerned. It is certainly not a tenable claim that Revenue can distinguish between an input of an input and an input itself when there is no dispute that the components manufactured from inputs and the components that are inputs have gone into the final products; nor can Revenue presume to enter the commercial arena and dictate the manufacturing policy of an industry. In the context of the decision of the Tribunal in the appellant's own case cited supra which we respectfully follow, we find that the 'bought-out' items are also inputs for the purpose of taking credit in accordance with the definition in rule 2(k)(i) as it stood then.



Accordingly, noting that in view of the Tribunal decision in Flat Products Equipments (I) Ltd - 2011-TIOL-781-CESTAT-MUM, the demand of credit cannot survive, Hon'ble Bench, CESTAT Mumbai set aside Order in Original No.16/CEX/2012 dated 23.04.2012 passed by Commissioner of Central Excise, Pune-I and allowed the appeal of the applicant.

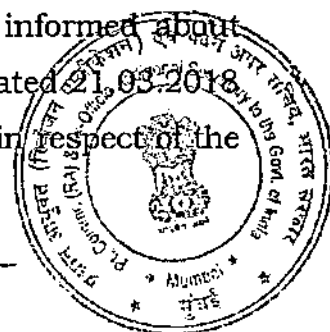
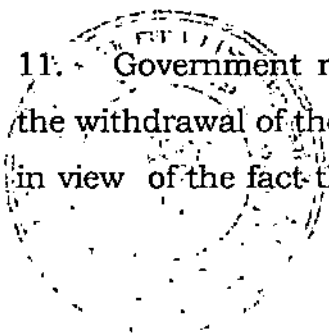
9. As regards appeal filed by the department against the very same order to the limited extent of it having allowed applicant assessee to file rebate claim, which was beyond the scope of the show cause notice and beyond the authority vested in the Commissioner of Central Excise, the Hon'ble Bench observed that-

"...We do not find any merit in these contentions. A show cause notice is intended to notify the tax-assessee that detrimental action is proposed and the adjudication proceedings is required to limit itself to the extent of detriment so proposed. Admission of a claim advanced by the noticee is not a detrimental outcome and can, therefore, never be described as having travelled beyond the notice. We also observe that impugned order has merely acknowledged the admissibility of claim for rebate without granting the rebate or directing that application for rebate be disposed off in a specific manner."

Accordingly, Hon'ble CESTAT, West Zonal Bench, Mumbai dismissed the Revenue appeal.

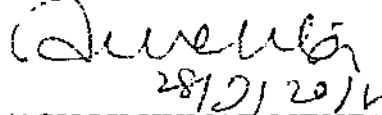
10. A personal hearing in the matter was fixed on 21.03.2018, however, the applicant did not appear for the hearing and thereafter vide letter dated 21.03.2018, informed the Government that they have already received the refund in respect of the said rebate claim from the Assistant Commissioner. Therefore, they are withdrawing the subject revision application filed by them.

11. Government notes that the applicant have themselves informed about the withdrawal of the present Revision Application vide letter dated 21.03.2018 in view of the fact that they have already received the refund in respect of the



said rebate claim. Under such circumstances, Government without going into the merits of the case, allows the applicant to withdraw the Revision Application bearing F.No.195/523/13-RA. The Revision Application is dismissed as withdrawn.

12. So, ordered.


28/2/2014
(ASHOK KUMAR MEHTA)


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

ORDER No. 110/2018-CX (WZ) /ASRA/ DATED 28.3.2018

True Copy Attested

To,

M/s Thermax Limited,
D-13, MIDC Industrial Area,
R.D. Aga Road, Chinchwad,
Pune - 411 019.


5/4/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C.)

Copy to:

1. The Commissioner, CGST Pune-I Commissionerate,.
2. The Commissioner (Appeals), CGST Pune-I.
3. The Assistant / Deputy Commissioner CGST, Division-I, Pune-I Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

