REGISTERED
SPEED POST

F.No. 195/251/11-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... 12/2/13

ORDER NO. 114 /13-Cx DATED 12-02-2013 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. YDB/914/RGD/2011 dated 28.12.2010 passed by Commissioner of Central Excise, (Appeals), Mumbai-II
APPLICANT	:	M/s. Jaguar International, Maharashtra.
RESPONDENT	:	Commissioner of Central Excise, Raigarh Mumbai.

****

ORDER

This revision application is filed by the applicant M/s. Jaguar International, Maharashtra against the Orders-in-Appeal No. YDB/914/RGD/2011 dated 28.12.2010 passed by Commissioner of Central Excise (Appeal), Mumbai-II, with respect to Orders-in-Original passed by the jurisdictional Assistant Commissioner (Rebate), Central Excise, Mumbai/Raigarh.

2. Brief facts of the case are that the applicant is engaged in the manufacture of MS Seamless Pipes and Tubes falling under Chapter 73 of the First Schedule to the Central Excise Tariff Act, 1985. The applicant imports billets falling under Chapter/Sub-heading No. 72249091 of the First Schedule to the Central Excise Tariff Act, 1985 on payment of customs duty and CVD. The applicant avails of the Cenvat credit of the countervailing duty (CVD) paid on the billets imported by it. The billets were sent to job worker known as M/s. Maharashtra Seamless Ltd. on the challans issues under Rule 4 (5) (a) of the Cenvat Credit Rules, 2004 read with Notification No. 214/86-C.E dt. 25-03-1085, as amended. The said billets are converted by MSL into steel pipes. After job work, the goods are returned back to the applicant on the challans issued under Rule 4 (5) (a) ibid read with Notification No. 214/86-C.E dt. 25-03-1085, as amended. The applicant has exported the said seamless pipes on ARE-1s and Central Excise invoices after payment of duty of Central Excise under claim for rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E dt. 06-09-2004, as amended. Thereafter, the applicant filed six rebate claims, claiming rebate with the Assistant Commissioner of Central Excise and Customs, Alibag Division, Raigad Commissionerate, Navi Mumbai. The said rebate claims were proposed to be rejected by the Assistant Commissioner through Show Cause Notice. The Assistant Commissioner vide impugned Order-in-Original No. AC/ABG/RO/1109/09-10 rejected all the rebate claims, on the grounds interalia that no plant and machinery was installed in the factory premises of the applicant and as such the applicant was not manufacturer within the meaning of section 2 (f) of the said Act; that the applicant was neither a manufacturer-exporter, nor was a merchant-exporter; that the Cenvat credit allowed on the inputs, if the said inputs had been used in the manufacture of final products and in cases

where the process undertaken be an assessee indisputably did not amount to manufacture, the Cenvat credit was not allowed, and hence, it was not entitled to claim the said rebate claims.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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 Appellate Commissioner has passed the impugned order without examining and appreciating the entire facts in proper prospective and context in accordance with the provisions of law and violation of the principles of natural justice has taken place' on account that the additional grounds submitted by the applicant on 28th Sep 2010 have not been taken into consideration by the Commissioner (Appeals) while passing the order dated 28.12.2010. He has rejected the appeal of the applicant on the ground that "the appellants were neither manufacturer-exporter nor merchant- exporter and the goods were not directly exported from the factory of manufacturers." In a very orthodox manner, he has negated the contentions of the applicant merely on the grounds of manufacturing activities of the job worker and duty liability thereof being the manufacturer of the goods. This fallacious insinuation of the Appellate Commissioner is without appreciating the facts that the applicant has got the goods manufactured from the job worker under job work exemption notification bearing Notification No. 214/86-C.E., dated 25.03.1986, as amended, which casts an obligation upon the supplier of the raw material to discharge the duty liability. Further, the Appellate Commissioner has also not appreciated the facts that the applicant has cleared the impugned goods for export on payment of duty. Denial of the rebate of duty tantamounts to discouragement to the exporters and the export of the domestic taxes alongwith the goods. This is not the policy of the government at all.

4.2 The applicant is manufacturer in terms of Rule 4 (5) (a) of the Cenvat credit Rules, 2004 for availing of Cenvat Credit and Cenvat credit is admissible to the applicant. Further there is no restriction which the applicant either to take credit, get complete work done on job bases as above and thus that the liability to pay duty, because in such circumstances it is upon the supplier of the goods, who gets the goods processed/ manufactured on job work basis under this Rule. It is further submitted that with reference to the duty liability, the provisions of erstwhile Rule 57F(4), which was analogous to the present Rule 4(5)(a) ibid, have been examined by not only by the various benches of the Tribunal, but the Hon'ble Apex Court as well. Further relied upon case laws are:-

i) Shrui Rayalaseema Dutch Kassenbouw Ltd., Vs. C.C.E., Tirupathi [2006 (203) E.L.T. 248 (T)].

4.3 This issue has been settled at rest by now. The applicant also relies upon the following judgments in support of its defense:-

i) Commissioner of Central Excise, Jaipur Vs. D.K. Processors [2000 (122) E.L.T. 802 (T)) upheld by the Supreme Court [2006 (198) E.L.T. A-67 (S.C.)

ii) Commissioner of Central Excise, Jaipur Vs. M. Tax. [2001 (134) E.L.T. 134 (T)); and

iii) Suvikram Plastex (P) Ltd. Vs. Commissioner of C. Ex. Bangalore-III [2008 (225) E.L.T. 282 (T)].

4.4 The Central Board of Excise and Customs vide Circular No. 306/22/97-CX., dated 20.03.2007 [1997 (98) E.L.T.- T- 21] has clarified that " under the provisions of Rule 57F(4), a manufacturer can get the job work done on his inputs or on partially processed inputs in terms of the provisions of Rule 57F(4) of the Central Excise Rules, 1944. In such cases duty liability is required to be discharged by the manufacturer and not by the job workers. Accordingly job worker is not eligible to avail credit in such cases. "

4.5 The Assistant Commissioner has also rejected the CENVAT credit availed of by the applicant on the ground that "as per the Board's Circular No. 911/01/2010-CX, dated 14.01.2010 issued by the Government of India, Ministry of Finance, Department of Revenue the credit of duty paid on the inputs is allowed only if the said inputs are used in manufacture of the final products and in cases where the process undertaken by an assessee indisputably does not amount to manufacture, the credit on inputs is not allowed."- Board's circular dated 14.01.2010 is not applicable for the case pertaining to the period of 2008-09. Secondly, this circular is also not applicable in the cases of export of goods, where duty is paid through CENVAT on the goods cleared for export. The relied upon case laws are:-

i) Nav Bharat Impex Vs. Commissioner of Central Excise, New Delhi [2009 (236) E.L.T. 349 (Trib.-Del.)

4.6 Notification No. 214/86-C.E., dated 25.03.1986, as amended, provides exemption to the job worker and fastens the duty liability upon the supplier of the inputs or the raw material. Sub-clause (iv) of Clause (a) of this notification exempts the specified goods manufactured in a factory as a job work and used in relation to the manufacture of specified final products by a manufacturer of dutiable and exempted final products, after discharging his obligation in respect of said goods under Rule 6 of the CENVAT Credit Rules, 2002 (now CENVAT Credit Rules, 2004); from whole of the duty of excise leviable thereon, which is specified in the First and the Second Schedule to the Central Excise Tariff Act, 1985. As per Para 2 of this notification, this exemption is subject to the condition the supplier of the raw material complies with the conditions stipulated therein.

4.7 The contention of the department that the applicant has not carried out any process on the goods after receipt from the job worker does not sustain on the ground that the expression "job Work" has been defined by Explanation 1 appended with the notification. This explanation defines this word thus:

" *Explanation 1. - For the purpose of this notification, the expression "job work" means processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process.* "

It follows from this definition that there is no bar on the working upon raw material or semi-finished goods. The job work may be carried out on raw material or on semi-finished goods. Any incidental or ancillary process towards 'manufacture' is construed as job work. Job work is not confined to a particular process. The job work may be for a minor process or for the whole process resulting into manufacturing of final product. An article may conceive finality as final product as a result of job. That Clause (iii) of Para 2 of the notification envisages that the exemption contained in this notification shall be applicable only to the said goods in respect of which the said supplier undertakes the responsibilities of discharging the liability in respect of Central Excise duty leviable on the final products. Thus, there is not dispute regarding the discharging of the liability of duty in the present matter. The applicant has cleared the goods for export on payment of duty of Central Excise, as leviable thereon.

4.8 It may be appreciated that this notification also does not speak of the manufacturer. Rebate of duty can be granted to any person who pays duty on the excisable goods exported and follows the procedure prescribed therein. There is no dispute about the procedure followed by the applicant. Thus, the applicant is clearly and unambiguously entitled for the rebate of duty paid on the goods exported.

4.9 Alternatively it is submitted that this Rule also grants rebate of duty paid on the materials used in the manufacture or processing of the goods exported. Notification No. 21/2004-C.E. (N.T.), dated 06.09.2004, as amended, issued in this regard, also directs that rebate of whole of the duty paid on excisable goods used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and procedure specified therein. There is no dispute regarding payment of duty on

the raw material or duty paid character of the raw material supplied to the job worker for job work. Thus, even otherwise also the applicant is entitled for rebate of duty paid on the raw material. In the conspectus of circumstances, the findings of the learned Appellate Commissioner that the applicant is neither "manufacturer-exporter", nor is "merchant-exporter" is obnoxious insinuation made without application of mind. We rely upon case laws of Nav Bharat Impex Vs. Commissioner of Central Excise, New Delhi [2009 (236) E.L.T. 349 (Trib.-Del.)]

4.10 Even if, the process does not amount to manufacture and / or the end-product is exempt or non-excisable, still rebate of duty paid thereon is admissible, in support of which, reliance is placed on the following judgments:

i) Norris Medicines Ltd. - 2003 (56) E.L.T. 353 (T);
ii) Serene Labs - 2005 (188) E.L.T. 290 (T);
iii) Malbros Stone Exports - 2007 (217) E.L.T. S-289 (T);
iv) Punjab Stainless Steel Industries - 2008 (226) E.L.T. 587 (T).

Alternatively, refund of CENVAT Credit admissible on inputs/raw materials is admissible to the applicant under Rule 5 of the Cenvat credit Rules 2004.

5. Personal hearing was scheduled in this case on 11-10-2012 & 20-12-2012. Hearing held on 20-12-2012 was attended by Shri Sachin Chitnis, advocate & Ms. Padmavati Patil, advocate on behalf of applicant and they re-iterated grounds of revision application. The applicant further stated that Commissioner of Central Excise confirmed the demand of wrongly availed Cenvat Credit, which has now been stayed by the CESTAT, Mumbai vide Order No. S/1611/12/EB/C-II dt. 10-09-2012. Shri Shakil Yusuf Sirnaik attended hearing on behalf of respondent and stated that Order-in-Appeal being legal and proper, may be upheld.

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 the applicant imported the billets on payment of CVD and availed Cenvat Credit of such CVD amount. The applicant sent the imported goods to M/s. Maharashtra Seamless Ltd. For job work, who converted the billets into steel pipes. The applicant exported the said seamless pipes on payment of Central Excise duty and filed rebate claim under rule 18 of the Central Excise rules, 2002. The original authority observed that no plant or machinery was installed in the factory premises of the applicant and as such the applicant was not manufacturer within the meaning of section 2 (f) of the said Act; that the applicant was neither a manufacturer- exporter, nor was a merchant-exporter; that the Cenvat credit allowed on the inputs, if the said inputs had been used in the manufacture of final products and in cases where the process undertaken by an assessee did not amount to manufacture, the Cenvat credit was not allowed, and hence, it was not entitled to claim the said rebate claims. 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 original authority has rejected the rebate claim mainly on the ground that no manufacturing activity was undertaken by the applicants and Cenvat Credit availed by the applicant was not admissible to them. The applicant has stated that the jurisdictional Commissioner of Central Excise, Raigarh vide Order-in-Original No. 55/KLG (55) COMMR/RGD/11-12 dt. 26-03-2012 has confirmed the demand of such alleged wrongly availed Cenvat Credit, which has now been stayed by the CESTAT, Mumbai vide Order No. S/1611/12/EB/C-II dt. 10-09-2012. Government finds that the basic ground on which rebate claims of the applicant was rejected, is now subjudice before the CESTAT, Mumbai. Under such circumstances, it will be premature to decide the impugned issue in hand until the issue is finally decided by Hon'ble CESTAT Tribunal. The decision of Tribunal will have a direct bearing on the admissibility of said rebate claims. Hence, Government finds it in the interest of justice to remand the case back to decide the same as per the final decision of the tribunal in the appeal filed by applicant against CCE Belapur order confirming the Cenvat Credit demand.

9. In view of above discussion, Government sets aside impugned orders and remands the case back to original authority to decide the same afresh in terms of observations made in above para.

10. Revision application is disposed off in above terms.

11. So, Ordered.

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

M/s. Jaguar International,
NH-17, BKJ Road, Pipe Nagar,
Village-Sukeli, Taluka Roha,
Distt.- Raigad, Maharashtra- 402126.

ATTESTED

12/2

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

Order No. 114 /13-CX dated 12-02-2013

Copy to:

1. The Commissioner of Central Excise, Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

2. The Commissioner of Central Excise (Appeals) Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra, Kurla Complex, Bandra (East), Mumbai-400 051.

3. The Asstt. Commissioner Central Excise & Customs, Alibag Division, Raigad, Commissionerate, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai.

4. PS to JS(RA)

5. Guard File.

6. Spare Copy

ATTESTED

12/2

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)