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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F.No. 195/195/13-RA /2086 Date of Issue: 30.11.2022

ORDER No. 1156/2022-CX (WZ) /ASRA/Mumbai DATED 29.11.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Bhuwalka Steel Industries Ltd., Gate No. 204, Wada Bhiwandi Road, Village- Khupri, Taluka Wada, Dist. Thane.

Respondent : Commissioner CGST & CEx., Bhiwandi Commissionerate, 12th Floor, Lotus Infocentre, Near Parel Railway Station, Parel(E), Mumbai – 400012.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/251/TH-I/2012 passed by the Commissioner (Appeals), CGST & CEx. Thane.

ORDER

This revision applications has been filed by M/s. Bhuwalka Steel Industries Ltd., Gate No. 204, Wada Bhiwandi Road, Village- Khupri, Taluka Wada, Dist. Thane (hereinafter referred to as "applicant" against the Order-in-Appeal No. BR/251/TH-I/2012 dated 16.10.2012 passed by the Commissioner (Appeals), CGST & CEx. Thane upholding Orders-in-Original No. 69/PP-27/TH-I/2012 dated 28.03.2012 passed by the Additional Commissioner CGST & CEx., Bhiwandi Commissionerate.

2. The facts, in brief, of the case are that the M/s. Bhuwalka Steel Industries Ltd. (hereinafter referred to as the 'Applicant) is engaged in manufacture of goods falling under Chapter 72 of the CETA, 1985. The applicant was exporting and clearing certain quantity of their finished goods to Special Economic Zones (SEZ's) under the cover of ARE-I's on payment of appropriate Central Excise duty.

3.1 The applicant filed 10 rebate claims before the jurisdictional Assistant Commissioner of Central Excise, Kalyan-1 Division. All the said rebate claims were allowed vide various Order-in-Originals as under:-

Sr. No.	OIO No. & Date	Sanctioned Amount (Rs.)
1	R-7/10-11 dated 12.04.2010	Rs.60,367/-
2	R-8/10-11 dated 13.04.2010	Rs.52,428/-
3	R-9/10-11 dated 13.04.2010	Rs.4,29,128/-
4	R-10/10-11 dated 13.04.2010	Rs.4,51,372/-
5	R-18/10-11 dated 19.04.2010	Rs.4,29,633/-
6	R-19/10-11 dated 19.04.2010	Rs.4,48,941/-
7	R-20/10-11 dated 19.04.2010	Rs.3,36,726/-
8	R-21/10-11 dated 19.04.2010	Rs.33,696/-
9	R-41/10-11 dated 10.05.2010	Rs.51,084/-
10	R-93/10-11 dated 21.06.2010	Rs.82,453/-

The above said Order-in-Originals were reviewed by Department and appeals were filed against them.

3.2 The applicant had also filed other rebate claims amounting to Rs.4,64,502/- which were rejected the Assistant Commissioner Excise, Kalyan-I vide Order-in-Original 528/09-10 dated 22.02.2010.

3.3 Aggrieved by the decision the applicant appealed before Commissioner of Central Excise(Appeals). The Commissioner Central Excise(Appeals), vide Order-in-Appeal No. SB/40 to 43/Th-I/2010 dated 25.01.2011 accepted the Departmental appeal and the appeal filed by the applicant was rejected.

3.4 Before the appeal was decided Assistant Commissioner Central Excise. Kalyan-I issued two notices both dated 11.10.2010 proposing recovery of the erroneously sanctioned rebate and adjudicated the same vide Order-in-Original No. R41/2010-11 dated 10.05.2010 for Rs. 51,453/- and No. R-93/2010-11 dated 21.06.2010 for Rs. 82,453/- with interest thereon.

3.5 After issuance of the aforesaid Order-in-Appeal, Additional Commissioner Central Excise, Thane-I Commissionerate issued another Show Cause Notice proposing to recover the erroneously paid rebate of Rs. 26,03,291/- paid vide various Order-in-Originals(Para 3 supra), along with interest thereon.

3.6 Additional Commissioner Central Excise, Thane-I Commissionerate vide his Order-in-Original No. 69/PP-27/TH-I/2012 dated 28.03.2012 confirmed the recovery of the erroneously sanctioned rebate claims amounting to Rs.27,36,828/-, under Section 11A of the Central Excise Act, 1944, along with interest thereon in terms of Section 11AB of the Central Excise Act, 1944, as proposed by the aforesaid 3 show cause notices. (Para 3.4 & Para 3.5 supra)

3.7 Aggrieved by the aforesaid Order-in-Original the applicant preferred an appeal before the Commissioner of Central Excise (Appeals). Mumbai Zone-1. Commissioner(Appeals) vide impugned Order-in-Appeal No. BR/251/TH-1/2012 dated 16.10.2012 upheld the recovery amount or Rs 27,36,828/- Section 11A of the Central Excise Act, 1944, along with interest thereon in terms of Section 11AB of the Central Excise Act, 1944.

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 main grounds :-

A. The Commissioner(Appeals), erred entering into the question as whether the supply of goods to SEZ units was export' or otherwise within the meaning of Central Excise Act or any Rules framed thereunder when said clearances were treated as exports by CBEC Circular 29/2006 Cus. 27.12.2006, he erred in adopting the definition of export given under the Customs Act in deciding the issue, that is, whether, the clearances made by the applicant to a SEZ be eligible to claim rebate of the duty paid at the time of clearance of goods to SEZ.

B. The Learned Commissioner of Central Excise (Appeals), has also failed to consider and discuss the implication of the said Circular vis-a-vis the applicability of the principle of law relating to refund of accumulated CENVAT Credit under Rule 5 of the CENVAT Credit Rules as discussed and laid down by the Tribunal in the case of M/s. Tiger Steel Engineering Pvt. Ltd. versus CCE, reported in 2010 (259) ELT.375 (Tri-Mum.)

C. The Learned Commissioner of Central Excise (Appeals), has also failed to take cognizance of the fact that in view of the confusion about the admissibility of rebate under Rule 18 of Central Excise Rules, when clearances were made from the Domestic Tariff Area to SEZ by following the procedure land down for export the Central Board of Excise Customs, New Delhi had issued a clarificatory Circular bearing No.6/2010 CUS dated 19-03-2010, wherein it had specifically laid down that rebate under Rule 18 of the Central Excise Rules 2002, is admissible for supplies made from DTA to SEZ and the same does not warrant any change even if Rule 18 does not mention such supplies in clear terms.

D. The applicant submits that the said circular is binding on the learned Commissioner of Central Excise being issued by the Apex Administrative Authorities ie., CBEC. Further, in view of the principle of law settled by the Supreme Court in the case of Paper Products Ltd. v/s Commissioner of Central Excise 1999 (112) ELT 765 (SC) wherein, it is clearly led down that the Circular issued by the Department are binding on the Departmental authorities and they cannot take a contrary stand on the view expressed in the Circular.

E. The learned Commissioner of Central Excise (Appeals), has failed to appreciate that the principle of law settled by the Hon'ble High Court of Gujarat in the case of M/s. Essar Steel Limited and Others Vs. Union of India & Others, reported in 2009 TIOL 674-HC-AHM-CUS is not applicable to the facts and circumstances of the present case.

F. The learned Commissioner (Appeals) has failed to appreciate the submission of the Appellant that the Assistant Commissioner has rejected the said rebate filed by the appellant on the sole ground that though Section 53 of the SEZ Act, 2005 provides that a SEZ shall he deemed to be the territory outside the Customs territory of India for the purpose of undertaking the authorized operations, the clearances to SEZ could not be considered as export for grant of rebate under Rule 18 of the Central Excise Rules, 2002 as the SEZ does not qualify to be a country other than Nepal or Bhutan and that even the SEZ Act, 2005 does not recognize the receipt in SEZ from DTA as imports, which is not the case when the goods are exported to other countries and therefore the provisions of Section 51 of the SEZ Act will have no effect with respect to rebate under Rule 18 of the Central Excise Rules, 2002 as these provisions are not inconsistent with the provisions of SEZ Act, 2005. This finding of the learned Assistant Commissioner is not sustainable. Supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer falls within ambit of the meaning of the term 'export' as defined under Section 2(m) of The Special Economic Zones Act, 2005 and therefore the clearances / supply of excisable goods from the Domestic Tariff area to an SEZ are to be treated as exports. Further, Section 53 of the SEZ Act, 2005, categorically stipulates that SEZ shall be deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorised operations.

G. It has been clarified that the supplies from DTA to SEZ shall be exempt from payment of central excise duty under Rule 19 of the Central Excise Rules, 2002 and similarly such supplies shall be eligible for claim if rebate under Rule 18 of the Central Excise Rules, 2002, subject to the fulfillment of conditions laid there under.

H. The learned Commissioner (Appeals) failed to appreciate that therefore, from the provisions of the said Rule 30(1) of the SEZ Rules, 2006 and the said Circular of the CBEC, it is abundantly clear that a Domestic Tariff

Area supplier is eligible for rebate of the duty paid on the finished goods cleared to SEZ Units/Developers, under Rule 18 of the Central Excise Rules, 2002, which the learned Assistant Commissioner has failed to appreciate.

I. The learned Commissioner (Appeals) has also failed to appreciate the submission of the applicant that Section 51 of the SEZ Act, 2005, provides that the SEZ Act shall have effect in case of any inconsistency with the provisions contained in any other law for the time being in force. Therefore, even assuming but without admitting that the provisions of Notification No. 19/2004 CE (NT) dated 06-09-2004, issued Rule 18 of the Central Excise Rules, 2002, is not applicable to removals made to SEZ, the provisions or Rule 301) of the SEZ Act, which provides for granting rebate of the duty paid on the finished goods cleared to SEZ's, would prevail over the provisions of the said notification issued under the said Rule 18, by virtue of the said Section 51 of the SEZ Act, 2005. Hence, the applicant is entitled for the rebate of the duty paid on the goods cleared by us to Special Economic Zone, which the learned Commissioner (Appeals) has failed to consider while passing the impugned order rejecting the said rebate claims.

J. The learned Commissioner of Central Excise (Appeals) has failed to appreciate that the principle of unjust enrichment is not applicable in view of the specific provisions contained in the 3rd proviso to Section 11B of the Central Excise Act, 1944.

K. Therefore, the applicant earnestly submits that when the payment of duty on final products and subsequent export of it is not in dispute, essential aspect of Rule 18 of Central Excise Rules, 2002 is adhered to; then the rebate claim, it has been clarified that the supplies from DTA to SEZ shall be exempt from payment of central excise duty under Rule 19 of the Central Excise Rules, 2002 and similarly such supplies shall be eligible for claim if rebate under Rule 18 of the Central Excise Rules, 2002, subject to the fulfillment of conditions laid there under.

L. The learned Commissioner (Appeals) failed to appreciate that therefore, from the provisions of the said Rule 30(1) of the SEZ Rules, 2006 and the said Circular of the CBEC, it is abundantly clear that a Domestic Tariff Area supplier is eligible for rebate of the duty paid on the finished goods cleared to SEZ Units/Developers, under Rule 18 of the Central Excise Rules, 2002, which the learned Assistant Commissioner has failed to appreciate.

M. The learned Commissioner (Appeals) has also failed to appreciate the submission of the applicant that Section 51 of the SEZ Act, 2005, provides that the SEZ Act shall have effect in case of any inconsistency with the provisions contained in any other law for the time being in force. Therefore, even assuming but without admitting that the provisions of Notification No.

19/2004 CE (NT) dated 06-09-2004, issued Rule 18 of the Central Excise Rules, 2002, is not applicable to removals made to SEZ, the provisions or Rule 30(I) of the SEZ Act, which provides for granting rebate of the duty paid on the finished goods cleared to SEZ's, would prevail over the provisions of the said notification issued under the said Rule 18, by virtue of the said Section 51 of the SEZ Act, 2005. Hence, the applicant is entitled for the rebate of the duty paid on the goods cleared by us to Special Economic Zone, which the learned Commissioner (Appeals) has failed to consider while passing the impugned order rejecting the said rebate claims.

N. The learned Commissioner of Central Excise (Appeals) has failed to appreciate that the principle of unjust enrichment is not applicable in view of the specific provisions contained in the 3rd proviso to Section 11B of the Central Excise Act, 1944.

O. Therefore, the applicant earnestly submits that when the payment of duty on final products and subsequent export of it is not in dispute, essential aspect of Rule 18 of Central Excise Rules, 2002 is adhered to; then the rebate claim cannot be denied.

In view of the foregoing, the applicant prayed to set aside the impugned orders-in-Appeal passed by the Commissioner (Appeals), CGST & CEx. Thane, and to hold that the applicant is eligible for whole of rebate paid as Central Excise Duties in terms of Rule 18 of Central Excise Rules, 2002.

5. A Personal hearing was fixed on 12.02.2018, 23.08.2019, 17.09.2019, 04.10.2019, 06.07.2020 or 20.07.2021, 09.02.2021 or 23.02.2021, 18.03.2021 or 25.03.2021, 22.04.2021. Neither the Department nor the respondent appeared for personal hearing or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

6. Government takes up the Revision Application against the Order-in-Appeal No. BR/251/TH-I/2012 dated 16.10.2012 which decided an appeal

against the Order-in-Original No. 69/PP-27/TH-I/2012 dated 28.03.2012 passed by the Additional Commissioner Central Excise, Thane-I Commissionerate. The facts of the case have been detailed above.

7. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. From the facts on record, the issues to be decided in the present case is whether the goods exported by the respondent manufacturer in Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) is export or whether the applicant is liable to pay the amount along with interest that was refunded to them.

8. Government observes that Commissioner(Appeals) had vide Order-in-Appeal No. SB/40 to 43/Th-I/2010 dated 25.01.2011 rejected the appeal filed by the applicant(para 3.3 supra). The Applicant has not filed appeal against the order dated 25.01.2011 and it has remained unchallenged. Applicant has neither clarified this issue in revision application nor have they appeared for personal hearing afforded to them to clarify the issue. In absence of Revision Application being filed, Order-in-Appeal No. SB/40 to 43/Th-I/2010 dated 25.01.2011 has achieved finality.

9. Hon'ble Supreme Court in case of Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC) has observed that –

If an appealable order is passed but the assessee decides not to file appeal, the party cannot later find fault with the adjudication order while claiming refund

10. Government observes that the applicant has raised several grounds in the grounds for revision. The applicant has also relied on various case laws. However, since Order-in-Appeal No. SB/40 to 43/Th-I/2010 dated 25.01.2011, was accepted by the applicant it has attained finality. Therefore, there is no necessity to delve into these contentions individually.

11. Government finds that the revision application is non est, devoid of merits and is hereby rejected.

29/11/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1156/2022-CX (WZ) /ASRA/Mumbai Dated: 29.11.2022

To,
M/s. Bhuwalka Steel Industries Ltd.,
Gate No. 204, Wada Bhiwandi Road,
Village- Khupri,
Taluka Wada,
Dist. Thane – 421312.

Copy to:

1. Commissioner CGST & CEx., Bhiwandi Commissionerate, 12th Floor, Lotus Infocentre, Near Parel Railway Station, Parel(E), Mumbai – 400012.
2. Commissioner (Appeals), CGST & CEx. Thane, 12th Floor, Lotus Infocentre, Near Parel Railway Station, Parel(E), Mumbai – 400012.
3. Assistant/Deputy Commissioner CGST & CEx., Kalyan -I Division, 3rd, Floor, Chandrama Building, Valipeer Road, Kalyan (W)- 421301.
4. A.S. Monnappa, Advocate, No. 128, III Stage, Vinayaka Layout, Vijayanagar, Bangalore- 560040.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard file.
7. Spare Copy.