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F.NO.195/411 & 414/11-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: 13.8.13

ORDER NO. 1936 -1937/2013-Cx DATED-10.09. 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

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| Subject | : | Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal No.SB/40-43/Thane-I/10 dated 25.1.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I |
| Applicant | : | M/s Bhuwalika Steel Industries Ltd., Thane |
| Respondent | : | Commissioner of Central Excise, Mumbai Zone-I |

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## ORDER

These revision applications have been filed by M/s Bhuwalika Steel Industries Ltd., Thane against the orders-in-appeal No.SB/40-43/Thane-I/10 dated 25.1.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I

2. Brief facts of the case are as under:-

2.1 The applicant, M/s Bhuwalka Steel Industries Limited having their factory at Gut No.:204, Village: Khupri, Taluka, Wada, Dist.:Thane, are engaged in the manufacture of various Iron and Steel products viz. M.S.Rods, Bars, Channels, Angles, Beams etc., falling under Chapter No. 72 of the First Schedule to the Central Excise Tariff Act,1985. For the said activity of manufacture, the Applicants are registered with the Central Excise Department bearing Registration No.C.Ex./R-VII/Bhiwandi/81/94. The Applicant had cleared manufactured finished excisable goods during the relevant period viz., 2009-2010 to SEZs on payment of appropriate duty and by following the procedure laid under Notification No.19/04-CE(NT) dated 6.9.04 issued under Rule 18 of the Central Excise Rules, 2002. After due export of the goods against ARE-1 form they filed various rebate claims under Section 11B of the Central Excise Act 1944, from time to time as and when export was made under Rule 18 of Central Excise Rules, 2002 to units/developers situated in SEZ on payment of appropriate Central Excise Duty. The said rebate claims after being processed were sanctioned by Assistant Commissioner of Central Excise vide Order-in-Original Nos.R-07/10-11 dated 12.04.2010, R-08/10-11 dated 13.04.2010, R-09/10-111 dated 13.04.2010, R-10/10-11 dated 13.04.2010, R-18/10-11 dated 19.04.2010, R-19/10-11 dated 19.04.2010, RR-20/10-11 dated 19.04.2010, R-21/10-111 dated 19.04.2010, R-93/10-11 dated 21.06.2010 and R-41/10-11 dated 10.05.2010, The total amount of rebate claims sanctioned under the aforesaid Orders-in-Original was Rs.27,36,828/- (Rupees Twenty Seven Lakhs Thirty Six Thousand Eight Hundred Twenty Eight Only). The said orders were reviewed by

Commissioner of Central Excise and department filed appeals before Commissioner (Appeals).

2.2 In case of other rebate claims the two show cause notices dated 22.12.04 & 11.1.10 were adjudicated by Assistant Commissioner of Central Excise who rejected the said claims of Rs.464502/- vide order-in-original No.R.528/09-10 dated 22.2.10. In this case applicant filed appeal before Commissioner (Appeals).

3. Commissioner (Appeals) vide common orders-in-appeal dated 25.1.11 allowed the appeals filed by department and rejected the appeal filed by applicant.

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

4.1 The impugned order passed by the Commissioner of Central Excise(Appeals), is bad in law, devoid of merit and substance, contrary to the Circulars issued by the Board from time to time which binding on him and hence liable to be quashed and set aside.

4.2 The Commissioner of Central Excise(Appeals) has erred in entering in to the question as to whether the supply of goods to SEZ units was an 'export' or otherwise within the meaning of Central Excise Act or any rules framed thereunder when the said clearances were treated as export by CBEC in its Circular 29/2006-Cus. dated 27.12.2006. He has further, 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 the SEZ.

4.3 The Commissioner of Central Excise (Appeals) has failed to appreciate the Circular issued by the Central Board of Excise Customs bearing No.29/2006-Cus. dated 27.11.2006, the intention of the said Circular has been clearly laid down at 'Para 2' of the same.

4.4 The Commissioner of Central Excise (Appeals) has failed to consider and discuss the implication of the said Circular vis-a-vis the applicability of the principle of law relating to refund 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 P.Ltd., vs CCE - 2010 (259) E.L.T.375 (Tri.-Mum.)

4.5 The Commissioner of Central Excise (Appeals) has failed to appreciate that when the said Circular was brought to the notice of the Hon'ble Tribunal, they have categorically observed that the principle applicable for rebate of duty paid when excisable goods are cleared from DTA to SEZ stands in a different footing. The observation of the Hon'ble Tribunal at para 12 of the said judgement is as follows:

> *" .... The Board's clarification is in the context of applicability of Rules 18 and 19 of the Central Excise Rules, 2002 to a DTA supplier who might claim duty-free clearance of goods under Bond/Letter of Undertaking or rebate of duty paid on such goods or on raw materials used therein. Such limited clarification offered by the Board cannot be applied to the instant case where the issue under consideration is altogether different."*

4.6 The 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 the Central Excise Rules, when clearances were made from the Domestic Tariff Area to SEZ by following the procedure laid 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 and 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. The relevant portion of the said Circular are as mentioned as below (para 3 and 4):

> *"3. The matter has been examined. The Circular No.29/2006-Cus. dated 27-12-2006 [2007 (207) E.L.T. T35] was issued after considering all the relevant points and it was clarified that rebate under Rule 18 is admissible when the supplies are made from DTA to SEZ. The Circular also lays down the procedure*

*and the documentation for effecting supply of goods from DTA to SEZ, by modifying the procedure for normal export. Clearance of duty free material for authorised operation in the SEZ is admissible under Section 26 of the SEZ Act, 2005 and procedure under Rule 18 or Rule 19 of the Central Excise Rules is followed to give effect to this provision of the SEZ Act, as envisaged under Rule 30 of the SEZ Rules, 2006.*

*4. Therefore, it is viewed that the settled position that rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ does not warrant any change even if Rule 18 does not mention such supplies in clear terms. The field formations are required to follow the Circular No. 29/2006 accordingly."*

4.7 The Applicant say and submit in view of the aforesaid Circular treating the clearance from DTA to SEZ as export, therefore, the interpretation advanced by the Commissioner of Central Excise is contrary and against the later and spirit of the said circular No.29/2006-Cus dated 27.12.2006 & 6/2010-Cus. dated 19.03.2010 and hence such interpretation of the Commissioner in treating the clearances from DTA to SEZ as not an 'export' cannot in any circumstances be upheld.

4.8 The Applicant say and submit that the said circular is binding on Commissioner of Central Excise being issued by the Apex Administrative Authorities i.e., 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) E.L.T. 765 (S.C.) wherein, it is clearly laid 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. The Hon'ble Supreme Court at 'Para 5' of the said judgement has observed as:

*"5. It is clear from the above said pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of*

*the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."*

The principle of law laid down as above has been consistently approved and followed by the Hon'ble Supreme Court in a catena of cases including in a recent case reported in Union of India v/s. Arviva Industries Limited-2007(209)ELT 5 (S.C.).

4.9 The 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 as in the said case the Hon'ble High Court has confronted with the question of levy of export duty under Customs Act, 1962 by treating the clearances made from DTA to SEZ, whether, 'export' within the meaning and definition of the Customs Act. The said principle cannot be made applicable to the facts of the present case, where the issue involved is grant of rebate claim on the goods cleared by following the procedure laid down under Rule 18 of Central Excise Rules 2002 read with relevant notification being an incentive given by the Government of India for such clearances. The said intention of the Government of India cannot be scuttled down by resorting in to the irrelevant unwarranted technical interpretation when there is a clear cut clarification issued by the Board to the valid permission for implication of the said intention of the Government of India.

4.10 The Commissioner (Appeals) has failed to appreciate the submission of the Applicant that a combined reading of the provisions of Section 2(m) and Section 53 of the said Act makes it imperative that the provisions of the Notification No.19/2004-CE (NT) dated 06-09-2004, issued under Rule 18 of the Central Excise Rules, 2002, providing for granting of rebate of the duty paid on the excisable goods

would also be applicable in respect of the clearances made to Special Economic Zones. Further, under sub-rule (1) of Rule 30 of the Special Economic Zones Rules, 2006, the Domestic Tariff Area Supplier supplying goods to a unit or Developer shall clear the goods as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in Notification No.40/2001-CE(NT) dated 26.06.2001.

4.11 The Commissioner(Appeals) has further failed to appreciate the submission of the Applicant that the Central Board of Excise and Customs has issued the Circular No.29/2006-Cus dated 27.12.2006 relating to the procurement and clearance of goods from a DTA supplier to Special Economic Zones. At para 4 of the said circular, it has been clarified that the supplies from DTA to SEZ unit or 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 and further, in para 5 of the said circular, 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 of rebate under Rule 18 of the Central Excise Rules, 2002, subject to the fulfillment of conditions laid thereunder.

4.12 The 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 Assistant Commissioner has failed to appreciate.

4.13 The 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 under Rule 18 of the Central Excise Rules, 2002, is not applicable to removals made to SEZ, the provisions of Rule 30(1) of the SEZ Act, which provides for granting rebate

of the duty paid on the finished goods cleared to SEZs, 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 Assistant Commissioner has failed to consider while passing the impugned order rejecting the said rebate claims.

5. Personal hearing scheduled in this case on 7.8.2013 at Mumbai was attended by Shri A.S.Monnappa, Advocate on behalf of the applicant who reiterated the grounds of revision application. Applicant further relied upon GOI Revision Order in the case of M/s Indo Amines Ltd. reported as 2012(284)elt147(GOI)

6. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of the records, Government observes that Commissioner (Appeals) has decided the appeals in favour of department solely relying on judgement of Hon'ble Tribunal in the case of M/s Tiger Steel Engineering Pvt. Ltd. 2010 (259)ELT 375(T-Mumbai), wherein it was held that export has same meaning as defined in Section 2(18) of Customs Act 1962 and not defined under Section 2(m)(ii) of SEZ Act 2005. Government notes that issue involved in the said case was refund of accumulated cenvat credit under Rule 5 of Cenvat Credit Rules 2004. Hon'ble Tribunal in para 12 of said judgement has observed as under:

> *"....The Board's clarification is in the context of applicability of Rules 18 and 19 of the Central Excise Rules, 2002 to a DTA supplier who might claim duty free clearance of goods under Bond/Letter of Undertaking or rebate of duty paid on such goods or on raw materials used therein. Such limited clarification offered by the Board cannot be applied to the instant case where the issue under consideration is altogether different."*

From above it is quite clear that CESTAT has not given any finding about the admissibility of rebate claim of duty paid on goods cleared to SEZ/SEZ Unit.

8. Commissioner (Appeals) has not considered the CBEC Circular Nos. 29/06-Cus dated 27.12.06 and 6/10-Cus dated 19.3.10 whereunder it was clarified that rebate under Rule 18 of Central Excise Rules 2002 is admissible to supplies made from DTA to SEZ. The GOI Revision Order No.116-117/2012-Cx dated 6.2.12 cited by applicant in the case of M/s Ando Amines Ltd. reported as 2012(284)ELT 147 (GOI) has categorically held that rebate of duty paid on goods cleared to SEZ is admissible under Rule 18 of Central Excise Rules 2002. In that case the party had filed appeal against order-in-appeal No.VSK/40-41/Thane-I/2010 dated 12.3.10 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I. Since the Commissioner (Appeals) has not considered the above CBEC Circulars which are binding on departmental authorities as held by Hon'ble Supreme Court in the case of Paper Products Ltd., Vs CCE 1999(112) ELT 765(SC), the matter is required to be remanded back for fresh consideration.

9. In view of above position, Government sets aside the impugned orders-in-appeal and remands the matter back to Commissioner (Appeals) for fresh consideration taking into account the above said CBEC Circulars and GOI Revision order. A reasonable opportunity of hearing will be afforded to the parties.

10. The revision applications are disposed off as above.

11. So ordered.

(D.P.Singh)
Joint Secretary (Revision Application)

M/s Bhuwalika Steel Industries Ltd.,
Gut No.204, Khupri Village
Taluka-WADA
Distt. Thane

(टी॰ आर॰ आर्य / T.R. ARYA)
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G.O.I. Order No. 1236 – 1237 /2013-Cx. dated 10.9. 2013

Copy to:-

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2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building Dadi Seth Lane, Chowpatty, Mumbai-4000 007.
3. Assistant Commissioner of Central Excise, Kalyan Division-I, 3rd Floor, Chandrama BuildingValipeer Road, Kalyan (W)-421301.
4. Shri A.S.Monappa, Advocate, No.128, III Stage, Vinayaka Layout, Vijayanagar, Bangalore-560040
5. PS to JS(RA)
6. Guard File.

ATTESTED

(T.R.ARYA)
SUPERINTENDENT (REVISION APPLICATION)