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F.No. 195/1104/11-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 17/9/13

Order No. 1257 /13-Cx dated 16.09.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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/181/Thane City DN/2011 dated 22.07.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I
Applicant	:	M/s SGS India Private Ltd.
Respondent	:	The Commissioner of Central Excise, Thane-I

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ORDER

This revision application is filed by M/s SGS India Private Ltd., Mumbai against the Order-in-Appeal No. YDB/181/Thane City DN/2011 dated 22.07.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect to order-in-original passed by the Deputy Commissioner of Central Excise, Thane City Division, Thane, Mumbai.

2. Brief facts of the case are that the applicants during the period September, 2006 to December, 2008 in addition to its service business was engaged in the business of supplying Cyclic Hydrocarbon Chemical ('Marker'), a tracer for detecting adulteration in petroleum products. The applicants had entered into agreements with Oil Marketing Companies ('OMCs') i.e. India Oil Corporation Ltd., Bharat Petroleum Corporation Ltd. and Hindustan Petroleum Corporation Ltd. for supply of Marker to various locations across India. The product Marker was imported in bulk from Authentix Ltd, UK ('Authentix') and marketed in India subsequent to repacking the same into 5 litre retail jar pack. As Marker is classified under heading 29029090 of the First Schedule to the Central Excise Tariff Act, 1985, the process of conversion from bulk to retail pack amounts to manufacturing in terms of Chapter Note 10 of the Chapter 29 of the Central Excise Tariff Act, 1985. Accordingly, the Applicants obtained Central Excise registration under the provisions of the Central Excise Act, 1944 at a factory located at Bhiwandi and removed the repacked Marker to its various depots located across the country after discharging appropriate excise duty liability. However, the applicants discontinued the Marker business in January, 2009, pursuant to which the balance goods lying at the depots were brought back to the factory. At this juncture, since the goods were originally removed on payment of applicable excise duty, the said duty paid at the time of removal of were availed as CENVAT credit in terms of provisions of Rule 16 of the Central Excise Rules, 2002. The brought back Marker containers were again repacked

from 5 litre retail packs to 190 litre bulk packs and exported to Authentix under self-sealing and self-certification procedure vide Shipping Bill No. 8338872 dated April 9, 2010. As the process of repacking Marker from retail to bulk pack does not amount to manufacturer, an amount equal to CENVAT credit availed at the time re-entering the goods were paid at the time of subsequent removal. Being eligible as exporter of goods, the applicants filed a rebate claim of duty amounting to Rs.44,23,572/- on September 7, 2010 in terms of Rule 18 of Central Excise Rules, 2002. Being in disagreement with the applicants' contention of claiming rebate under Rule 18 of Central Excise Rules, 2002, the Central Excise authorities issued show cause notice dated November 2, 2010 requiring the applicants to show cause as to why rebate claim should not be rejected on the basis of following main grounds:-

a. The goods received back were finished duty paid goods and thus cannot be treated as input as defined in CENVAT Credit Rules, 2004 for taking Cenvat Credit of the duty paid in terms of Rule 16 (1) of the Central Excise Rules, 2002;
b. The activity of repacking Marker from retail to bulk cannot be treated as a process of manufacturer and accordingly the manner adopted by the Applicants is not in conformity with the provisions of Rule 16 of the Central Excise Rules, 2002 and the Cenvat Credit Rules, 2004;
c. Rebate under Rule 18 of Central Excise Rules, 2002, is allowed for duty paid on excisable goods. Therefore, in absence of involvement of manufacturing process filing rebate claim under the said rule is not correct as the exported goods are not excisable goods.
d. Commercial invoice with respect to export of the said products has declared that the consignment is 'Re-export under Section 74 of Customs Act". Hence, the Applicants should have opted the drawback channel available under Section 74 of the Customs Act, 1962 to avail benefit of Customs Duty element.

After following due process of law, the adjudicating authority rejected the rebate claims.

3 Aggrieved with their Order-in-Original applicant filed appeal before Commissioner (Appeals), who rejected the same

4 Being aggrieved with 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 applicants submit they have imported the marker in bulk quantity on which CVD has been paid. The applicants packed the marker in retail packs from bulk pack and in terms of Chapter Note 10 to Chapter 29, the process of packing of the Marker from bulk pack to retail pack is amounting to manufacturer. Therefore, the applicants paid excise duty as and when the said goods were cleared to depot of the applicants. The said Central Excise duty paid goods were returned back to the factory of the applicants and in terms of Rule 16 of the Central Excise Rules, 2002, the applicants have availed the credit on the said duty paid goods which were undisputedly manufactured by the applicants in view of the note 10 to Chapter 29 of the Central Excise Tariff read with Section 2(f)(ii) of the Central Excise Act, 1944. The retail packs of markers, which were the excisable goods manufactured by the applicants, were further converted into the bulk packs. According to the Central Excise department, the said activity of conversion from retail packs to bulk is not amounting to manufacturer. Even if this contention of the Central Excise Department is correct the excisable goods manufactured by the applicants remained the same and as they were duty paid and undisputedly exported from the factory of the applicant where they were manufactured, rebate of such duty paid on the said excisable goods is allowable in terms of Rule 18 of Central Excise Rules, 2002. the impugned order denying the rebate is therefore incorrect and unsustainable in law.

4.2 The Rule 16(1) of the Central Excise Rules, 2002 is inferred that the said rule authorizes receipt of duty paid goods into the factory of manufacturer for the purpose of refining etc. and removing again after payment of appropriate duty based on the nature of processes undertaken before subsequent removal. In view of the above, it is submitted that, the applicants had brought back duty paid excisable goods and cleared the same subsequently after following methodology of Rule 16 of the Central Excise Rules, 2002, which is not disputed and confirmed as appropriate by the adjudicating authorities. The applicants wish to state that Rule 16(2) of the Central Excise Rules, 2002 prescribes two manner of valuation of goods on subsequent removal depending upon the processes undertaken and consequent quantum of duty liability applicable on such removal. The mode of valuation and accordingly quantification of duty amount i.e. whether equivalent to Cenvat Credit or more or less than that as applicable under Section 3(2), 4 or 4A of the Central Excise Act, 1944, has been prescribed in order to cater to different circumstances as to the nature of processes that can be undertaken on the returned excisable goods. However, the returned duty paid goods which were originally manufactured does not cease to be excisable goods and continue to hold such status with or without the involvement of the further processes. The manner prescribed by Rule 16(2) of the Central Excise Rules, 2002 is just a valuation mechanism and mode of quantifying the duty liability as framers of law has envisaged both the situations of treatment of excisable goods returned to be factory. Thus, it is submitted that, that at the time of removal of the goods for the first time, the said goods were 'Excisable' and accordingly applicable excise duty as duly discharged on the same by the Applicants. Thus, under the circumstances, your goods self will appreciate that the applicants has actually deposited the duty into the treasury of the Government at the time of removal of goods from the factory. However, owing to non-renewal of contract when the goods could not be sold to OMCs, they were brought back to the applicant's factory. The said goods were then

ultimately re-exported after following the procedure prescribed under Rule 18 of Central Excise Rules, 2002.

4.3 In support of the above view, the Hon'ble Tribunal in the case of Nicco Corporation Ltd. Vs. CCE, Calcutta-II (1995) 79 ELT 437(T). In this case, the applicant had filed refund claim of goods returned to the factory under Rule 173L of the erstwhile Central Excise Rules, 1944. The lower authorities rejected the refund claim on the ground that reconditioning in the Rule 173L should amount to remanufacture and the best course for the applicant was to re-issue the goods without payment of duty under Rule 173H. The said Rules 173H and 173L of the erstwhile Central Excise Rules, 1944 prescribed the manner required to be adopted for goods returned to factory. Rule 173H refers to goods returned for being remade, reconditioned etc. not amounting to manufacture and cleared without payment of duty, whereas Rule 173L applies when duty is paid on goods which are reprocessed, remade, reconditioned etc. and refund is admissible of duty so paid. The applicant relied upon various case laws in favour of their contention.

4.4 The impugned order states that, duty paid on manufactured goods exported shall be granted as rebate under Rule 18 of Central Excise Rules, 2002. However, the goods in question in the present case are not manufactured goods in absence of manufacturing process being carried out on the same prior to export and hence there is no duty liability on such goods. The applicants submits that, the view adopted by the authorities is primarily ill-founded on the very basis that ever a simple and plain reading of Rule 16 of the Central Excise Rules, 2002 clearly clarifies that, the said rule itself has laid down the mechanisms of duty payment in case of subsequent removal of duty paid goods returned to the factory even if the process undertaken on the goods doesn't amount to manufacture. The applicant relied upon various case laws in favour of their contention.

4.5 The applicants, further wish to place a legitimate contention that even assuming, without admitting, that the impugned order rejecting the rebate claim of duty actually paid under Rule 18 of Central Excise Rules, 2002 can be upheld, then the applicants would have adopted the alternative route available under Rule 19 of the Central Excise Rules, 2002 by clearing the goods without payment of duty and since the goods were otherwise also exempt the same would by no stretch of imagination cannot be questioned. However, in order to meet the conditions laid down by Rule 16(2) of the Central Excise Rules, 2002, the applicants paid the duty and adopted the course provided by Rule 18 of Central Excise Rules, 2002 instead of Rule 19 of the said rules. Thus, in any case, denial of benefit on export does not arise as the applicants was, and continues to be of the firm bona-fide belief that duty was required to be paid under rule 16(2) of the Central Excise Rules, 2002 and benefit of rebate would available of such duty paid under Rule 18 of Central Excise Rules, 2002 when the goods were ultimately exported. The applicant relied upon various case laws in favour of their contention.

4.6 The applicants further conveys a respectful submission that, it is a settled position of law that once duty on the final product is paid and accepted, rebate of such duty paid, allowed under any of the prescribed routes is not deniable on the basis of any superfluous ground. The applicants strongly contends that for the purpose of export, manufacture need not be an activity envisaged under Section 2(f) of the Central Excise Act, 1944 since the intention of Government if to promote export and to free the export goods from domestic taxes. Thus, denial of rebate of duty actually paid on the exported excisable goods on the basis that process to which goods were subjected doesn't amounts to manufacture is ill-founded and cannot be sustained. The applicant relied upon various case laws in favour of their contention.

4.7 The applicants would like to further draw your attention to the extract of the relevant Circular No. 283/117/96-Cx issued on 31 December 1996 stating that clearance of inputs as such for export under bond can be treated at par with final product. The above referred circular refer that a manufacturer will be entitled to rebate of duty paid on inputs exported as such. Hence, the applicants humbly submits that, the same ratio shall be applicable in the applicants' case wherein the excisable duty paid returned goods have been exported after following the mechanism provided by Rule 16 and Rule 18 of Central Excise Rules, 2002. The applicant relied upon various case laws in favour of their contention.

5. Personal hearing scheduled in this case on 07.08.2013 was attended by Shri Narendra Dave, Chartered Accountant on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended the hearing on behalf of Respondent department.

6. Government has carefully gone through the relevant case records available and perused the impugned Orders.

7. On perusal of records, Government observes that applicant engaged in the activity of importing bulk quantity of Cyclic Hydro Carbon Chemical (Marker) a tracer for detecting adulteration in petroleum products classified in chapter 29 of Central Excise Tariff Act, 1985, after repacking the same into small containers for further sale to oil marketing companies, supplied it to their depot on payment of duty. After some time said business was dis continued and the unsold quantity was called back from depot to the factory, repacked from retail packs to bulk packs and exported to original supplier i.e. M/s Authentix UK under rebate claim under Rule 18 of Central Excise Rules, 2002. Applicant had taken Cenvat Credit of the duty paid of said goods at the time of receiving the goods in factory under rule 16(1) of Central Excise Rules, 2002 and reversed the same amount under

rule 16(2) while clearing goods for export. The said reversal of Cenvat Credit was not payment of duty and said goods were actually re-exported under section 74 of Customs Act, 1962 and therefore the rebate claim was rejected by original authority. Commissioner (appeals) has upheld the said order. Now, applicant has filed this revision application on the grounds stated in para (4) above.

8. Government notes that applicant has himself admitted that process of repacking from retail packs to bulk packs does not amount to manufacture since this activity is not covered under chapter note 10 of chapter 29 of the Central Excise Tariff Act, 1985. But, he has claimed that the processed goods were cleared in terms of rule 16(2) after reversal of Cenvat Credit and therefore rebate of said amount may be allowed. In this regard, Government observes that there are following two situations, in said rule 16(2).

(a) goods may be subjected to any process not amounting to manufacture in such case an amount equal to the Cenvat Credit taken under sub rule (1) shall be paid.

(b) in another case, the manufacturer shall pay duty at appropriate rate based on value determined under section 3(2), 4 or 4A of Central Excise Act, 1944.

Applicant has worked under situation (a) where Cenvat Credit was reversed. The fundamental condition for determining admissibility of rebate claim is that duty paid excisable goods are exported. In this, case equal amount of Cenvat Credit was reversed under rule 16(2) and said reversal of Cenvat Credit can not be treated as payment of duty for the purpose of Rule 18 of Central Excise Rules, 2002. Since, duty paid excisable goods are not exported in this case, the rebate claim is rightly held inadmissible by original authority as well as appellate authority.

9. The applicant has also declared on the Commercial Invoice that consignment is "Re-export under section 74 of Customs Act". It is a fact that imported goods have been re-exported. So the provision of section 74 of Customs Act, 1962 are applicable and drawback claim was required to be claimed in terms of the provisions of section 74 which applicant failed to comply and avail. Adjudicating Authority has also noticed that applicant has shown value in ARE 1 No. 1 & 2 dated 1.4. 2010 as Rs. 3,08,01,500/- but in the Shipping Bill No. 8338872 dated 09.04.2010, the invoice value was shown as Rs. 1,15,16,681/-. Also the rate of duty applied on the said ARE-1 varied from 10.3% to 16.48% to 14.42% where as he had reversed the equal amount of Cenvat Credit under rule 16(2). These applicant has misstated the facts also.

10. In view of the above position Government do not find any infirmity in the impugned orders and therefore upholds the some.

11. The revision application is rejected in terms of above.

12. So, ordered.

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

M/s SGS India Pvt. Ltd.,
AO 16, A&B, Raj Laxmi Commercial Complex,
Kalher Village, Bhiwandi,
Thane.

(Attested)
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Revenue)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 1257 /13-Cx dated 16. 09-2013

Copy to:-

1. The Commissioner of Central Excise, Thane-I, 4th Floor, Navprabhat Chambers, Ranade Road, Dadar (West), Mumbai – 400028.

2. The Commissioner of Central Excise (Appeals) Mumbai Zone-I, Meher Building, D.S. Lane, Chaowpathy, Mumbai – 400 007.

3. The Deputy Commissioner of Central Excise, Thane City Division, 4th Floor, New Central Excise Building, Wagle Industrial Estate, Thane (Maharashtra).

4. M/s SGS India Pvt. Ltd., AO 16, A&B, Raj Laxmi Commercial Complex, Kalher Village, Bhiwandi, Thane.

4. PS to JS(Revision Application)

5. Guard File

6. Spare Copy.

(Bhagwat P. Sharma)
OSD (Revision Application)