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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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. 195/600-601/13-RA /920

Date of Issue: 29.01.2019

ORDER NO. 128-129/2020-CX(WZ)/ASRA/MUMBAI DATED 24.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s John Deere India Pvt Ltd.

Respondent : Commissioner of Central Excise, Pune-III.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PIII/RP/20 & 21/2013 dated 30.01.2013 passed by the Commissioner (Appeals), Central Excise, Pune-III.

ORDER

These two Revision Application are filed by M/s John Deere India Pvt Ltd, Gar No. 166/167 & 271 to 291, Off Nagar Road, Sanaswadi, Pune 412 208 (hereinafter referred to as "the Applicant") against the Order-in-Appeal PIII/RP/20 & 21/2013 dated 30.01.2013 passed by the Commissioner (Appeals-III), Central Excise, Pune.

2. The Applicant is engaged in manufacture of Tractors and parts thereof falling under Chapter 87019090, 87081010 respectively of the first schedule to the Central Excise Tariff Act, 1985 (herein after as 'CETA'). They had filed rebate claims for the amounts of Rs. 77,09,774/- (Rupees Seventy Seven Lakhs Nine Thousand Seven Hundred and Seventy Four Only) and Rs. 57,96,235/- (Rupees Fifty Seven Lakhs, Ninety Six Thousand, Two Hundred Thirty Five Only) in respect of the goods (Aggregates) exported under Rules 18 of Central Excise Rules, 2002 (herein after as 'CER') read with Notification No. 19/2004-CE(NT) dated 6.9.2004. The Applicant was issued two Show Cause Notices both dated 05.06.2012 on the following grounds:

- (i) The Applicant's unit had converted from EOU unit to DTA on 08.08.2011 and stopped availing Cenvat credit from 08.08.2011 on the inputs, Capital Goods and Input Services used in or in relation to manufacture of their finished goods as provided under the Cenvat Credit Rules, 2004 as their final products viz. Agricultural Tractors are exempted vide Notification No. 06/2006-CE dated 01.03.2006 as amended. Monthly Returns viz. ER-1, for the month of August 2011 filed by the Applicant revealed that they had carried over the unutilized Cenvat credit Rs. 1,26,61,775/- which was lying in balance after having made duty payments for debonding as an EOU unit in their Cenvat account.
- (ii) At the time of debonding the Applicant had Cenvat credit balance of Rs. 1,26,61,775/-, out of which they utilised Rs. 1,05,98,681/-

towards payment of duty on their goods cleared for export on payment of duty. However, the DTA unit was not entitled to carry forward, avail and utilize Cenvat credit balance when they opted for conversion to DTA unit from EOU since as per provisions of Rule 11 (3) of the Cenvat Credit Rules, 2004, their Cenvat credit balance of Rs. 1,26,61,775/- would have lapsed as their final products viz. Agricultural Tractors were fully exempted under Notification No. 06/2006-CE. Hence, the availment of Cenvat credit of Rs. 1,26,61,775/- and consequent utilization of Rs. 1,05,98,681/-, out of this balance, for clearances of export goods is incorrect and irregular.

- (iii) Since, the Applicant has wrongly availed and utilized the Cenvat credit for payment of duty on export goods and claimed the rebate of the same, the claim becomes inadmissible. In view of above, the rebate claims of Rs 77,09,774/- and Rs. 57,96,235/- filed by the Applicant is liable for rejection.

The Deputy Commissioner, Central Excise, Pune-VIII Divn, Pune Commissionerate vide Orders-in-Original No. P-VIII/213 Ref & Reb/C.Ex./12-13 and No P-VIII/214 Ref & Reb/C.Ex./12-13 both dated 20.06.2012, rejected their rebate claims. On being aggrieved, Applicant preferred two separate appeals with the Commissioner(Appeals-III), Central Excise, Pune who vide ~~Order-in-Appeal PIII/RP/20 & 21/2013 dated 30.01.2013~~ upheld the two Orders-in-Original both dated 20.06.2012 and rejected their appeals.

3. Aggrieved, the Applicant then filed two Revision Applications on the following grounds :

- 3.1 That the Commissioner (Appeals) had come to the conclusion even though the issue was not before him i.e whether reversal of Cenvat Credit was required under Rule 11 (3) of Cenvat Credit Rules, 2004 of which no Show Cause Notice was issued till the time of Personal

Hearing before the first adjudicating officer and the said issue had not been still finalized by the jurisdictional Commissioner of Central Excise

- 3.2 That during the process of de-bonding duty was paid on raw material, Work in Progress(WIP) and after de-bonding order duty was paid on finished goods and Cenvat Credit was availed on raw material and WIP which is not at all disputed fact and therefore there was the accumulated balance on account of the same. The said accumulated balance was used for reversing Cenvat credit on stock of input and WIP on the date of final de-bonding order and balance Cenvat amount is correctly to be utilized for payment of Excise duty on excisable goods i.e. aggregates parts, components of the tractor, whether exported or cleared for home consumption in DTA.
- 3.3 That the Show Cause Notice F.No. V(87)15-05/Adj/Commr/John Deere/2012-13 dated 23.07.2012 had been issued by the Commissioner of Central Excise, Pune-III only after the facts became known to the department in the Applicant's replies to the two Show Cause Notices both dated 05.06.2012 in respect of the rebate claims. The Show Cause Notice for denial of carry forward balance in DTA was issued on 23.07.2012 i. e. after 05.06.2012 ~~therefore the issue was not disputable at the time of issue of Show Cause Notices for denial of rebate claim.~~
- 3.4 That duty was paid through Cenvat credit and therefore the duty paid against exported goods are eligible to rebate also. And the Applicant had fulfilled all the conditions of the Notification No. 19/2004-CE (NT) dated 06.09.2004.
- 3.5 That LOP granted by the Development Commissioner specifying item of manufacture as *Agricultural Tractors, Aggregates and*

Components & Parts thereof. Aggregates, parts and components of tractors are excisable goods chargeable to duty and only Tractors were exempted and therefore the provisions of Rule 11(3) of Cenvat Credit Rules, 2004 are not at all applicable.

3.6 That the Commissioner (Appeals) grossly failed to interpret the meaning of the provisions of the Board's Circular No.510/06/2000-CX dated 03.02.2000 on the subject of Export-Simplified Procedure-re-determination of rebate under Rule 12 & 13 in true manner.

3.7 That all ARE-1s were certified by Central Excise Officer wherein, payment of duty was already certified and payment through cash and Cenvat credit had been already reflected in ER-1. In view of the legal provisions of Section 3 of the CEA, Applicant had made payment of duty as required under law and therefore they were rightly admissible for the rebate of the duty paid.

3.8 That the Commissioner (Appeals) has not given any reason, explanation or findings how judicial decisions referred by the Applicant were irrelevant and out of context. In this regard, they relied on decision of Hon'ble Supreme Court in the case of M/s. SW Industries Ltd. Vs Commissioner of Central Excise & Customs [2000-(1-17)-E.L.T.-281-(S.C.)]

3.9 That they prayed that the impugned Order-in-Appeal dated 30.01.2013 be set aside and their rebate claims be sanctioned with consequential relief.

4. A Personal hearing in this case was held 23.08.2019 and Shri A.B. Nawal, Cost Accountant appeared on behalf of the Applicant. The Applicant reiterated the CESTAT decision of Mumbai Bench in their own case. The Asstt. Commissioner, CGST, Division-VII (Shirur), Pune-I Commissionerate vide letter

F.no/ R-VI/Misc. Legal/27/2019-20 dated 21.08.2019 furnished department's submissions

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

6. The main issue to be determined is whether carried forward Cenvat credit of DTA converted EOU should lapse in the face of Rule 11(3) of Cenvat Credit Rules, 2004 (or) otherwise.

7. The Applicants are manufacturers of Agricultural Tractors, Aggregates and Components & Parts thereof. They had converted their EOU unit to DTA on 08.08.2011, reversed the amount of appropriate duty on inputs, inputs in finished goods and Work in Progress and then carried forward the credit lying in balance in Cenvat credit in their books of DTA from 08.08.2011 onwards. The Applicant utilized this credit towards discharge of the duty liability in respect of goods cleared from DTA unit. The Respondent Department viewed the carried forward Cenvat credit as lapsed in view of the provisions of Rule 11(3) of Cenvat Credit Rules, 2004. The Rule 11(3) of Cenvat Credit Rules, 2004 states that

"RULE 11. Transitional provision. — (1)

(2)

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the

balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

8. In view of Rule 11(3) of Cenvat Credit Rules, 2004, Applicant's rebate claims were rejected on the grounds that their final product "Tractor" was fully exempted from payment of Central Excise duty. Hence the balance lying in EOU which was carried forward in their DTA unit gets automatically lapsed and cannot be transferred. Hence the duty payment amount of such credit is nothing but non payment of duty and shall not be utilized for payment of any duty and thereby had not complied with the conditions of the Notification No. 19/2004-CE(NT) dated 06.09.2004. and the rebate claims were accordingly rejected.

9. On the same issue, the Commissioner of Central Excise, Pune-III Commissionerate had issued Show Cause Notice F.No. V(87)15-05/Adj/Commr/John Deere/2012-13 dated 23.07.2012 to the Applicant. The same was adjudicated by the Commissioner of Customs, Pune vide Order-in-Original No. PUN-EXCUS-003-COM-007-13-14 dated 14.08.2013 disallowing the Cenvat credit amounting to Rs. 1,26,61,775/- under the provisions of Rule 11/Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act and confirmed the demand of duty equal to inadmissible ~~Cenvat credit of Rs. 1,05,98,681/- utilized for the goods cleared,~~ under provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(1) of Central Excise Act.

10. Aggrieved with the above order, the Applicant then filed Appeal No E/89409/2013-Mum with the CESTAT, West Zonal Bench, Mumbai. The Hon'ble Cestat in their final Order No. A/2996/2015-WZB/EB dated 08.09.2015 [2015 (326) ELT 205 (Tri.-Mumbai)] allowed the Applicant's appeal and the CESTAT's findings are as below:-

“Cenvat credit – Recovery of – Conversion of EOU into DTA Unit and carry forward of balance unutilized credit for discharge of duty liability on clearance of goods from DTA unit – Revenue contending said unutilized credit lapsed due to final product ‘agricultural tractors’ being fully exempt in terms of Rule 11(3) of Cenvat Credit Rules, 2004 – HELD : Assessee manufacturing parts and components of agricultural tractors also which not exempt and on which applicable Excise duty paid – Rule 11(3) ibid not applicable when out of common Cenvat credit availed inputs, more than one final product manufactured and when some final products become exempted others remain dutiable – Utilisation of balance credit for discharge of duty on parts and components cleared in DTA admissible – Impugned order set aside – Rule 11 of Cenvat Credit Rules, 2004.”

The said order was accepted by the department on merits.

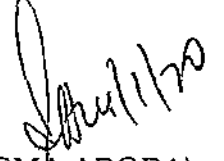
11. In the aforementioned order, the Hon'ble CESTAT has observed that Rule 11(3) of Cenvat Credit Rules, 2004 will apply only in a situation where Cenvat credit availed inputs are used for the manufacture of final product and the final products are fully duty exempted and lying in stock. The same would not be applicable to the cases where both exempted and dutiable final products are manufactured and the unutilized Cenvat credit so availed on inputs of dutiable products can be carried forward and used for discharging duty liability of the finished products. In the instant case, the Applicant is not only a manufacturer of agricultural tractors which are exempted from duty, but also other dutiable products such as aggregates and components & parts of tractors. Therefore, the manufacturers can avail the carried forward Cenvat credit accrued on the inputs of dutiable finished goods for payment of duty on the final products. The ratio held by the CESTAT is squarely applicable to the present case as the material facts are identical.

12. In view of the foregoing discussion, Government holds that the carried forward Cenvat credit utilized, for the payment of duty on dutiable goods, would not lapse, and therefore, the duty payment out of this Cenvat credit is legal and proper

13. Hence, Government set aside the impugned Order-in-Appeal No. Order-in-Appeal PIII/RP/20 & 21/2013 dated 30.01.2013.

14. The Revision Application is disposed off in terms of above.

15. So, ordered.



(SEEMA ARORA)

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

ORDER No. ¹²⁸⁻¹²⁹ /2020-CX (WZ) /ASRA/Mumbai Dated 24-01-2020

To,
M/s John Deere India Pvt Ltd,
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Off Nagar Road, Sanaswadi,
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Copy to:

1. The Commissioner of GST & CX, Pune-I, GST Bhavan, ICE House, Opp Wadia College, Pune 411 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.