



REGISTERED
SPEED POST

F.No.195/1575/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 29/1/16.....

ORDER NO. 13/2016-CX Dated 25.01.2016 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, 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. 246/2012-CE dated 31.08.2012 passed by
Commissioner of Central Excise (Appeals-I),
Bangalore.

APPLICANT : M/s Dynamatic Technologies Ltd.

RESPONDENT : Commissioner of Central Excise, Bangaluru-II.

ORDER

This revision application is filed by M/s. Dynamatic Technologies Ltd against the Order-in-Appeal No. 246/2012-CE dated 31.08.2012 passed by the Commissioner of Central Excise (Appeals-I), Bangalore with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Bangalore.

2. Brief facts of the case are that the applicant are holders of Central Excise Registration and manufacture of Excisable goods viz., Hydraulic Gear Pumps falling under Chapter Sub Heading 84131990 of the Central Excise Tariff Act. 1985. The applicants have exported the said product and have filed rebate claims against the export made by them on payment of duty under rule 18 of the Central Excise Rules, 2002. It was observed that there was deficiency in their rebate claim and accordingly deficiency Memo was issued. The applicants submitted their reply along with required documents on 14.03.2011. On verification of the claim, the adjudicating authority denied an amount of Rs. 1,04,442/- to extent of remittance not received in foreign currency and sanctioned an amount of Rs. 1,64,738/- in cash and Rs. 8,671/- as Cenvat credit.

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 Applicant submits that, the order of the respondent is legally untenable in as much as there is no provision in the Central Excise Rules, 2002 or notification issued under said rules or Central Excise Act, 1944 that the rebate would be allowed only if the export proceeds are realised in convertible foreign exchange. It is submitted that the Commissioner (Appeals) has erred in rejecting the appeal solely on the basis that the applicants have not produced any evidence of fulfilling the conditions specified in Foreign Trade Policy 2009-14 (FTP) and has erroneously interpreted the provisions of FTP stating that the rupee payment should be through Vostro account of the applicant. Further, it is submitted that both the original authority as well as Commissioner (Appeals) have rejected the rebate claim on the basis of the assumption that the foreign exchange receipt is mandatory for grant of rebate claim without considering the applicable provisions under FTP. Further, it is submitted that realisation of Indian Rupees from foreign customer by the applicant amounts to receipt of 'foreign exchange' under the provisions of FEMA, 1999 read with FEMA (Manner of Receipt and Payment) Regulations, 2000 as the amounts are routed through Vostro account of the Foreign Bank. Further, receiving the export proceeds in

Indian Rupees is also permitted under Foreign Trade Policy 2009-14 which specifically provide that where Indian Rupees received through Vostro Account of non-resident banks would be taken as export realisation under export promotion schemes of FTP. On this ground alone, the order of the respondent may be set aside and refund be granted.

4.2 The applicant submit that the order of the respondent is legally untenable in as much the respondent has erroneously rejected the rebate on the ground of non receipt of consideration in foreign exchange. The applicant submit that there is no provision under Rule 18 of Central Excise Rule, 2002 or notification issued under said rule which provided the condition that the rebate would be allowed only if the exports are realized in foreign exchange. The applicant submits that in terms of Rule 18 which provides powers to issue notification to prescribe conditions procedures and safeguards, the Central Government has issued notification No. 19/2004-C.E.(N.T.), dated 06.09.2004. The applicant submits that even under the above said notification there is no condition prescribed that the benefit of rebate on export of goods under Rule 18 would be allowed only if the export proceeds are realized in convertible foreign exchange.

4.3 The applicant submits that even Central Excise Manual issued by CBEC for the reference of Central Excise department, does not specify that export realization is a precondition for granting of rebate. The applicant submits even though the CBEC's Manual is not law or rules framed there under, reference could be drawn there from for the purpose of the understanding procedural aspects of the Central Excise law. The applicant submits that that it is clear from the above that even the Central Excise manual does not prescribe that the rebate is dependent on realization of export proceeds. On this ground also, the order of the respondent may be set aside and rebate be granted.

4.4 The applicant submits that the order of the respondent is erroneous and legally untenable in as much as there is no condition that rebate of duty on exports would be allowed only if the export proceeds are realized in convertible foreign exchange. The applicant submits that the Foreign Trade Policy(FTP) 2009-14 which governs the provisions relating to export and import of goods and services, provides that in case of export by Indian exporter, the invoice could be denominated in Indian Rupees or in freely convertible foreign exchange. Further, FTP also provides for realization of export proceeds in Indian Rupees in certain cases. The applicant submits that the provisions permit the Indian exporter to invoice in Indian Rupees and also realize the sale proceeds in Indian Rupees from Vostro account of non-resident bank. In this context, it is relevant to understand the term 'Vostro Account' which is referred to in the FTP.

4.5 Vostro/Nostro account is nothing but a foreign exchange account of one bank held by another bank. The Applicant submits that they have followed the procedure prescribed under FTP and have realised the export proceeds in Indian Rupees the ultimate realisation of which will take place in foreign exchange into the country. The foreign customer of the Applicant has instructed their bank to remit the export proceeds in INR and based on such instructions, their banker has transferred the INR held in Vostro Account to the banker of the Applicant. This clearly establishes that there is a receipt of foreign exchange into India and therefore, there is no contravention as to realisation of exports proceeds

4.6 The applicant submits that the order of the respondent is erroneous and legally untenable in as much as there is no condition that rebate of duty on exports would be allowed only if the export proceeds are realised in convertible foreign exchange. The Applicant submits that the Foreign Exchange Management ACT, 1999 (FEMA) which governs the provisions relating to external trade and inward and outward payment in foreign exchange, provides that in certain cases exports could be realised in Indian Rupees in certain cases.

4.7 It is submitted that under this mechanism, which is permitted under Foreign exchange laws, the Indian bank would hold foreign exchange bank account with foreign bank (Nostro account) and correspondingly, the foreign bank would hold a Indian rupee account with Indian bank (Vostro account). The provisions of FTP as well as FEMA refer to these Vostro Accounts of non-resident banks which remit the Indian Rupees which they are holding and such receipt of INR from Vostro Account of non-resident bank by the Indian bank on behalf of Indian exporter would be equivalent of receipt of foreign exchange and should be taken as export realisation under export promotion schemes of FTP.

4.8 The applicant submits that the order of the respondent is erroneous and legally untenable in as much as there is no condition that rebate of duty on exports would be allowed only if the export proceeds are realized in convertible foreign exchange. The applicant submits that Rule 18 or notification issued under the said rule does not prescribe any condition that the rebate is dependent on realisation of export proceeds. The applicant submits that even under Duty drawback scheme under Rule 16 of Drawback Rules 1995, which prescribes the condition of realisation of export proceeds shall have to be realized only in convertible foreign exchange.

5. Hearing in this case was fixed on 01.06.2015, 22.06.2015 and 07.07.2015, nobody attended hearing on behalf of either parties but vide letter dated

27.05.2015 the applicant informed that the proceedings be concluded based on pleadings, information and documentary available in revision application. The department also vide letter dated 03.06.2015 informed that case be decided based on findings in the Order-in-Original/Order-in-Appeal.

6. Government has gone through the relevant case records/available incase files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that part rebate claim of the applicant was rejected on the ground of non-realization of the remittance in foreign exchange. 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 part rebate claim was rejected by the original authority on ground of non-realization export proceeds in foreign exchange. Commissioner (Appeals) discussed the issue in light of provisions contained in para 2.40 of Foreign Trade Policy (FTP) 2009-14 and held that the applicant failed to comply with the condition of said provisions of FTP. The applicant on the other hand has stated that they have complied with the condition of FTP. Now, in view of rival contention, Government proceeds decide the issue in limit of above said provision of FTP.

8.1 The said provision 2-40 of FTP reads as under:-

" All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

However, export proceeds against specific exports may also be realized in rupee, provided it is through a freely convertible Vostro account of a non resident bank situated in any of ACU or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank (after deducting the bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.

Contracts [for which payments are received through Asian Clearing Union (ACU)] shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and Invoices can be denominated in Indian rupees against EXIM Bank/ Government of India line of Credit."

8.2 From above perusal of said FTP, it is implied that export proceeds may be realized in rupees, provided it is through a freely convertible vostro account of a non-resident bank situated in any country other than a member country of A(I) or Nepal or Bhutan. This is subject to condition that rupees payment

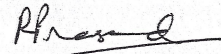
through vostro account must be against payment in free foreign currency by a buyer in this non-resident bank account.

8.3 Government notes that the applicant has contended that they have made inward remittance in the instant case in Indian Rupees through Vostro Account through Vostro Account with Deutsche Bank. On perusal of copies of some documents, Government finds that an amount of INR 10,14,000/- has been shown in the Bank statement of M/s. Standard Chartered Bank. Applicant has given his submission before Commissioner (Appeals). However, there is no findings of Commissioner (Appeals) on this point while drawing the conclusion that applicant did not comply with provision contained in para 2-40 of the FTP. Under such circumstances, Government finds that it would be the interest of justice to remand the case back to appellate authority to reconsider the submission of the applicant on basis of documents submitted by them and then give considered findings based on such documentary evidence.

9. In view of above discussion, Government sets aside impugned Order-in-Original and remands the case back to appellate authority to decide the same afresh in view of above observation. Sufficient opportunity of hearing be afforded to concerned parties.

10. Revision Application is disposed off in above terms.

11. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. Dynamatic Technologies Ltd.
Dynamatic Park, No. 11, II Phase
Peenya Industrial Area,
Bangalore-560058

Attested.



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(Rimjhim Prasad, Joint Secretary to the Government of India)
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CE
MA
Ministry of Finance
New Delhi

ORDER NO. 13/2016-CX Dated 25.01.2016

Copy to:

1. Commissioner of Central Excise, Bengaluru-II, C.R.Building, Queen's Road, P.B.No. 5400, Bengaluru-560001.
2. Commissioner of Central Excise (Appeals-I), No.16/1, 5th Floor, S.P. Complex, Lalbagh Road Bangalore.
3. The Assistant Commissioner of Central Excise, 'E1' Division, No. 161, I main Road Sheshadripuram, Bangalore-560020.
4. Shri V. Raguraman, Advocate, M/s. Raghuraman & Chythanya, No.32, 1st floor, Patalamma Temple Street, near South End Circle, Basavanagudi, Bangalor-560004.
5. PA to JS(RA)
6. Guard File.
7. Spare Copy

Attested.


(B.P.Sharma)
OSD_c(RA)
Ministry of Revenue, Government of India
New Delhi

