F.No. 195/33-39/14-RA

REGISTERED SPEED POST

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, Cuffe Parade,
Mumbai- 400 005

F. No. 195/33-39/14-RA/2054 Date of Issue: 17.03.2021

ORDER NO. 131-137/2021 -CX (SZ) /ASRA/MUMBAI DATED 15.03.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against Order in Appeal No. 200-207/2013 dated 28.08.2013 passed by the Commissioner (Appeals), Central Excise and Service Tax Large Tax Payer Unit, Bangalore.

Applicant : M/s Biocon Limited, Bangalore

Respondent : Commissioner, Large Tax Payers Unit, Bangalore.

ORDER

These revision applications have been filed M/s Biocon Limited, Bangalore (hereinafter referred to as "the applicant") against Order in Appeal No. 200-207/2013 dated 28.08.2013 passed by the Commissioner (Appeals) Central Excise and Service Tax Large Tax Payer Unit, Bangalore.

2. The brief facts of the case is that the applicant had procured the goods from importers and thereafter cleared them as such to their SEZ Unit under ARE-1s and claimed rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 as amended. The Original authority, i.e. Assistant Commissioner, GLT-1 vide Orders in Original shown at column 4 of the Table below rejected the rebate claims mainly on the grounds that

- The goods cleared by the assessee to their SEZ vide ARE-1s are neither manufactured nor produced in India and
- The rebate claimed by the assessee is of duties paid at the time of import leviable in terms of Sec.3(1) of the Customs Tariff Act, 1975 and in terms of sub-section 5 of Section 3 of the Customs Tariff Act, 1975, which are not specified in the Explanation to Notification No.19/2004 CE(NT) dated 06.09.2004 as amended (issued under Rule 18 of the Central Excise Rules, 2002)

TABLE

Sl No	Revision Application No.	Order-in-appeal No. & Date	Order-in-original No. & Date	Amount of rebate Claim rejected(Rs.)
1	2	3	4	5
1	195/33-39/14-RA	Order-In-Appeal No. 200-207/2013 dated 28.08. 2013	91/R/2012/LTU dated 16.04.2012	21,410/-
2.	-do-	-do-	119/R/2012/LTU dated 11.05.2012	9,17,477/-
3.	-do-	-do-	146/R/2012/LTU dated 02.07.2012	9,562/-
4.	-do-	-do-	147/R/2012/LTU dated 02.07.2012	98,176/-
5.	-do-	-do-	187/R/2012/LTU dated 09.08.2012	2,36,224/-
6.	-do-	-do-	188/R/2012/LTU dated 09.08.2012	9,562/-
7.	-do-	-do-	189/R/2012/LTU dated 09.08.2012	68,297/-

3. Being aggrieved by the aforementioned Orders-in-Original the applicant filed appeals before Commissioner (Appeals), Central Excise & Service Tax, LTU, Bangalore. The Commissioner (Appeals) vide impugned orders (shown at column No. 3 of the table above) upheld the Orders in Original, rejected the Appeal filed by the applicant observing as under:

> *11. On examination, I find that the rebate is rejected on the ground that: I) the goods cleared by the assessee to their SEZ are neither manufactured nor produced in India. II) The rebate claimed by the assessee is of duties paid at the time of import in terms of Sec 3(1) of the CTA,1975 and in terms of sub-section 5 of section 3 of Customs Tariff Act, 1975 which are not specified in the explanation to Notification 19/2004 CE(NT) dated 6.9.2004, as amended.*
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> *12. On examination, I find that the appellants have filed rebate claim under Rule 18 of CER, 2002, read with Notification No.19/2004 CE(NT) dated 6.9.2004 as amended. Rule 18 of CER, 2002 provides "**RULE 18 Rebate of duty.. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be. specified in the notification.**" Whereas the appellants are claiming rebate of duty on goods cleared to SEZ as such. Further as per Section 2(d) of the CEA, 1944, excisable goods means goods specified in the first schedule and the second schedule to the CETA, 1985, as being subject to a duty of excise and include salt and as per Section 3(1)(a) of the Central Excise Act, 1944, the following duties shall be levied and collected- (a) a duty of excise to be called CENVAT on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the CETA, 1985.*
>
> *13. Further, as per Explanation 1 under the Notification No.19/2004 CE (NT), dated 6.9.2004, as amended, (issued under Rule 18 of the CER, 2002):*
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> ***Explanation I – "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:***
>
> ***(a) the Central Excise Act, 1944 (1 of 1944);***
>
> ***(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);***
>
> ***(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);***
>
> ***(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);***
>
> ***(e) special excise duty collected under a Finance Act;***
>
> ***(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);***

(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004.

Explanation II – For the purpose of this notification, the expression 'electronic declaration" means the declaration of the particulars relating to the export goods, lodged in the Customs Computer System, through the data-entry facility provided at the Service Center or the data communication networking facility provided by the Indian Customs and Central Excise Gateway (called ICEGATE), from the computer of the person authorized for this purpose.

Explanation III – For the purposes of this notification, "Maritime Commissioner" means the Commissioner of Central Excise under whose jurisdiction one or more of the port, airport, land customs station or post office of exportation, is located.

14. Hence, in view of the above discussion, I find that rebate claim is filed in respect of goods which had been imported initially and exported as such to SEZ, the assessee is not eligible for rebate under Rule 18 of CER, 2002, read with Notification No.19/2004 CE(NT) dated 6.9.2004 as amended. Therefore, I agree with the findings of the lower authority.

4. Being aggrieved by Order in original No. 187/R/2012/LTU dated 09.08.2012 (Sl. No. 5 of Column No. 4 of the Table at para 2 supra) the Commissioner, Central Excise, LTU, Bangalore filed appeal before Commissioner (Appeals), Central Excise & Service Tax, LTU, Bangalore on the ground that *'rebate under Rule 18 of the CER 2002 is eligible only to excisable goods manufactured or produced in India on which duties of excise as specified under Notification No.19/2004-CE (NT) dated 6.9.2004 is paid. However the assessee claimed rebate in respect of the goods which had been imported initially and exported as such later on account of being rejected. Thus the assessee is not eligible for the rebate under Rule 18 of the CER, 2002 read with Notification No. 19/20045 CE (NT) dated 06.09.2004 as amended'.*

The Commissioner (Appeals) vide impugned orders (shown at column No. 3 of the table above) upheld the department appeal by observing as under:-

*15.....On examination I find that rebate claim is filed in respect of goods which had been imported initially and exported as such later on account of being rejected to China. The lower authority has held that the said goods had been exported to SEZ, whereas, the goods being **rejected imported goods** had been returned/exported to the supplier in China. Hence the assessee is not eligible for rebate under Rule 18 of the CER, 2002 read with Notification No. 19/20045 CE (NT) dated 06.09.2004 as amended'. Therefore, I uphold the department appeal.*

5. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these Revision applications on the following common grounds that:-

5.1 The impugned order is contrary to statutory provisions and non-appreciative of the object and scheme of SEZ. The the findings entered in the impugned order is without substance and hence not sustainable in law.

5.2. The Department has not appreciated that supply of goods to SEZ would tantamount to "export" as per Special Economic Zone Act, 2005 and when the goods are "exported" then the assessee is entitled for duty rebate/exemption/concession as per law. The impugned order denying rebate of duty actually paid by the Applicant is therefore contrary to spirit and object behind the SEZ scheme.

5.3 As per Rule 6(6)(i), cenvat credit is not required to be reversed, when goods are supplied to the SEZ unit/ developer. Denial of self-same credit, used for payment of duty on goods cleared to SEZ therefore clearly falls within the meaning of 'duty' as per Explanation I to Notification No.19/2004 CE (NT). The impugned order is therefore liable to be set aside.

5.4 The Tribunal in Commissioner v. R.F.H. Metal Castings (P) Limited, 2005 (184) ELT 194 (T-Del.) held that where the Cenvat inputs were exported the credit taken on such inputs is not required to be reversed. Further in the case of Finolex Cables Limited v. Commissioner, 2007 (210) ELT 76 (T-Mum) it was held that when inputs which were procured in excess quantity are exported, Cenvat credit taken cannot be denied on the ground that these were not used in the manufacture of final product. Further such duty would be available either as rebate or drawback. Reliance is also placed on the decisions in Bala Handlooms Exports Co. Ltd v. Commissioner, 2008 (223) ELT 100 (T-Che.) and Nov Bharat Impex v. Commissioner, 2008 (89) RLT 15 (T-Del.). The impugned order is therefore wrong in denying the rebate.

5.5 The impugned order is opposed to the CBEC Circular No.283/117/96-CX dated 31.12.1996 wherein it was inter alia clarified that Cenvat credit (Modvat) availed inputs should be allowed to be exported under bond without any reversal of the credit. It is submitted that the above Circular though issued under the erstwhile Modvat Credit scheme but still holds goods and valid in view of rule 16 of the Cenvat Credit Rules, 2004 since there is no inconsistency in the Modvat rules and the Cenvat Credit rules. The impugned order denying rebate by way of re-credit in the Cenvat credit account of the Applicant is therefore not tenable in law.

5.6 It is well settled that the clarifications issued by the Board/CBEC is binding on the lower authorities as held by the Supreme Court in a series of cases including but not limited to in CCE v Dhiren Chemicals Industries, 2002 (139) ELT 3 (SC-Constitution Bench); CCE v Abhi Chemicals & Pharmaceuticals Pvt Ltd, 2005 (181) ELT 351 (SC); CCE v Kores (India) Ltd, 1997 (89) ELT 441 (SC) and U0I v Arviva Industries (I) Ltd, 2007(209) ELT 5 (SC).

5.7 The impugned order is opposed to the decision of this Ld. Revisional Authority in In Re: Om Sons Cookware Private Limited, 2011 (268) ELT I I 1 (G01). Further the impugned order is also opposed to the decisions in Commissioner v. Joint Secretary (Revisionary Authority), 2013 (287) ELT 177 (Del.) and in Commissioner v. Simplex Pharma Pvt Ltd, 2008 (229)ELT 504 (P&H).

5.8 The impugned order is not in consonance with the scheme of SEZ as contained in the SEZ Act, 2005 and the SEZ Rules, 2006. There must be harmonious reading of SEZ provisions and the Central Excise provisions in the facts of the case, which has not been done by the respondent. The Respondent has not appreciated section 26 of the SEZ Act, 2005 which provides that SEZ shall be entitled for exemptions, drawbacks and concessions under various enactments listed therein including the duties of customs under the Customs Act, 1962 or/and Customs Tariff Act, 1975. If the SEZ unit had imported the goods supplied by themt they would have been entitled for duty exemption of all the customs duties. However, they procured the imported goods from another importer which had suffered customs duties and the said goods were re-supplied by them to SEZ unit by paying/reversing the Cenvat credit of duties of customs availed on purchase of said goods. Hence, they are rightly entitled for rebate of Cenvat credit which was taken initially and reversed later on by mistake.

5.9 The Respondent has not appreciated the provisions of rule 30(1) of the SEZ Rules, 2006 in perspective, which reads thus:

> *"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.42/2001-CE(NT) dated 26.6.01 in quintuplicate bearing running serial number beginning from the first day of the financial year".*

It is submitted that the above rule has been misconstrued by the Respondent. What the above rule provides is that the DTA supplier shall clear the goods either under bond or as duty paid goods under claim of rebate. It is only the format of ARE1 referred to in notification No.42/2001-CE(NT) under which the goods can be supplied to SEZ on supply of duty paid goods under claim for rebate. There is nothing in the above rule to even remotely suggest the findings recorded in the impugned order.

5.10 The findings recorded in the impugned order that they are not entitled for rebate since the goods supplied by them to SEZ unit was not manufactured or produced or that the duties paid on the said goods was not specified in notification No.42/2001-CE(NT) are preposterous and is contrary to text and tenor of rule 30 of the SEZ Rules, 2006. It is submitted that the SEZ Rules, 2006 particularly rule 30 thereof does not contain any reference to the above criteria found in the impugned order on the basis of which the Respondent has rejected the just rebate claim. The impugned order is therefore not proper in law.

5.11 The claim of rebate envisaged in the SEZ provisions is that of the duties which are paid but which are entitled for exemption/concession as envisaged in section 26 of the Act. in other Word% both the provisions of section 26 of the SEZ Act, 2005 should be harmoniously read and construed with rebate provisions envisaged in SEZ Rules, 2006. Accordingly, since the SEZ is entitled to procure imported goods without payment of any customs duties under the Customs Act, 1962 and the Customs Tariff Act, 1975, the rebate entitlement to DTA supplier should also cover the same duties of customs. The manner in which the impugned order has denied the rebate is contrary to text and tenor of the SEZ provisions. The impugned order is opposed to the decision in U0I v. Suksha International and Nutan Gems, 1989 (39) ELT 503 (SC).

5.12 The Respondent has not appreciated the Circular No.6/2010-Cus dated 19.3.2010 in perspective. In para-3 of the said circular it is clarified that

> "....*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".*

It is clear from this clarification that procedure followed under rule 18 or 19 of the CER, 2002 is only to give effect to section 26 of the SEZ Act, 2005. Section 26 of the SEZ Act provides for exemption from payment of various duties/taxes including the duties of customs and hence if any customs duty paid goods are supplied to SEZ, the DTA supplier is entitled to claim rebate of the said duties as well. Holding otherwise would tantamount to not giving effect to section 26 of the SEZ Act, 2005 and would be untenable. Hence, the findings in the impugned order rebate of duty on supply of goods to SEZ can be granted only strictly according to rule 18 and notification issued thereunder i.e. only to manufactured goods and only in respect of duty of excise leviable under the Central Excise Act, 1944 is contrary to section 26 of the SEZ Act, 2005 read with rule 30 of the SEZ Rules, 2006 and also the CBEC Circular dated 19.3.2010. The impugned order is therefore improper in law.

5.13 Further the findings in the impugned order that substantial conditions of notification No.19/2004-CENT) read with rule 18 of 2002 CER, 2002 were not complied by them is not proper inasmuch as the said notification cannot be applied in totality and it is only the procedure prescribed for export in terms of the above notification which needs to be followed by DTA supplier while supplying goods to DTA. The conditions cannot be imported into SEZ rules and there is warrant to do that in the law. The impugned order is therefore not justified. Reliance is placed on the decisions in UOI V. Inter-Continental (India), 2008(226) ELT 16(SC) and Tata teleservices Limited V. CC 2006(194) ELT 11(SC). The impugned order is therefore not tenable.

6. As regards the appeal filed by the department against Order in original No. 187/R/2012/LTU dated 09.08.2012 (Sl. No. 5 of Column No. 4 of the Table at para 2 supra) which was upheld by the Commissioner (Appeals) vide impugned Orders, the applicant made following ground in the Revision Application:-

6.1 The Respondent while passing the impugned order has not taken cognizance of the following crucial facts:

(i) They had directly imported goods in question on payment customs duties. This fact is evidenced by BOE dated 26.11.2010. (ii) They took Cenvat credit of specified duties of customs paid on the input. (iii) Part quantity i.e. 63.25kgs of the above imported goods was re-exported vide S.B.No.2311/4.8.2011. (iv) They have re-exported the Cenvat credit availed inputs on reversal of credit, though rule 3(5) of the Cenvat Credit

Rules, 2004 is inapplicable when the inputs were exported "as such". (v) When the they had reversed the Cenvat credit or paid duty thereon it was as good as payment of duty on the goods which were re-exported. They are only asking the Department to refund/rebate the amount of credit which was reversed or paid on actual export of goods. They should not have reversed the credit on export of inputs. Having reversed/paid the credit, they filed the refund application or rebate of duty actually paid on the goods exported. Therefore, the Respondent is wrong in rejecting the refund of amount actually paid on goods exported.

6.2 In the present case they have not supplied any goods to SEZ but they have exported the goods in terms of section 2(18) of the Customs Act. 1962 on payment or reversal of Cenvat Credit. Hence, it is submitted that duty paid goods have been exported out of india and the claim for rebate in terms of rule 18 of Central Excise Rules,2002 is just and proper. The impugned order holding to the contrary is therefore bereft of legality.

6.3 The Department has not appreciated the crucial fact that duty paid goods have been exported out of India in terms of section 2(18) of the Customs Act, 1962 and when the goods "exported" then the assessee is entitled for duty rebate/exemption/concession as per law. The impugned order denying the rebate of duty actually paid by them is therefore contrary to law.

6.4 When they exported or re-exported Cenvat credit availed inputs they should not have reversed the credit at the first place. This is because when any Cenvat credit availed input is "exported", there is no requirement of reversal of credit availed and they are entitled for Cenvat credit in respect of input exported "as such". The Respondent has not appreciated the issue in perspective and hence wrongly denied the rebate.

6.5 The impugned order is contrary to the decision of the Madras High Court in Ford India Private Limited v. Assistant Commissioner, 2011 (272) ELT 353 (Mad.) which is squarely on the issue and it was held that when the assessee had reversed Cenvat credit and exported the inputs, the Department cannot deny the rebate claim and the question whether the assessee was a manufacturer or not was unnecessary. It is submitted that the order impugned is opposite to the above decision of the Madras High Court and hence is liable to be quashed on this ground alone.

6.6 The Tribunal in Commissioner v. R.F.H. Metal Castings (P) Limited, 2005 (184) ELT 194 (T-Del.) held that where the Cenvat inputs were exported the credit taken on such inputs is not required to be reversed. Further in the case of Finolex Cables Limited v. Commissioner, 2007 (210) ELT 76 (T-Mum) it was held that when inputs which were procured in excess quantity are exported, Cenvat credit taken cannot be denied on the ground that these were not used in the manufacture of final product. Further such duty would be available either as rebate or drawback. Reliance is also placed on the decisions in Bala Handlooms Exports Co. Ltd v. Commissioner, 2008 (223) ELT 100 (T-Che.); Commissioner v. Dr. Beck & Co (India) Ltd, 2000 (116) ELT 627 (T); Zydex Industries v. Commissioner, 2007 (219) ELT 602 -(T-Ahmd.) and Nav Bharat Impex v. Commissioner, 2008 (89) RLT 15 (T-Del.). The impugned order is therefore wrong in denying the rebate.

6.7 The impugned order is opposed to the CBEC Circular No.283/117/96-CX dated 31.12.1996 wherein it was inter alia clarified that Cenvat credit (Modvat) availed inputs should be allowed to be exported under bond without any reversal of the credit. It is submitted that the above Circular though issued under the erstwhile Modvat Credit scheme but still holds goods and valid in view of rule 16 of the Cenvat Credit Rules, 2004 since there is no inconsistency in the Modvat rules and the Cenvat Credit rules. The impugned order denying rebate by way of re-credit in the Cenvat credit in their account is therefore not tenable in law.

6.8 It is well settled that the clarifications issued by the Board/CBEC is binding on the lower authorities as held by the Supreme Court in a series of cases including but not limited to in CCE v Dhiren Chemicals Industries, 2002 (139) ELT 3 (SC-Constitution Bench); CCE v Abhi Chemicals & Pharmaceuticals Pvt Ltd, 2005 (181) ELT 351 (SC); CCE v Kores (India) Ltd, 1997 (89) ELT 441 (SC) and UOI v Arviva Industries (I) Ltd, 2007(209) ELT 5 (SC).

7. A Personal hearing in the matter was held through video conferencing on 28.01.2021 which was attended online by Shri Ananad Nagaraj, Advocate on behalf of the applicant and made submissions in respect of all 7 Revision Applications. In respect of one case (involving order in Original No. 187/R/2012/LTU dated 09.08.2012) he submitted that part of inputs were re-exported with reversal of Cenvat Credit, therefore, rebate should be granted. In remaining six cases he submitted that the supplies were made to SEZ and all other facts being similar, rebate should also be

allowed in these cases. Prior to the date of personal hearing, the Advocate for the applicant submitted compilation of case laws relied upon by them in all these cases vide email dated 27.01.2021.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. The issue involved in all these Revision Applications (except one) being common, they are taken up together and are disposed off vide this common order.

9. Government observes that the claim for rebate in these cases was rejected on the ground that the goods cleared by the assessee to their SEZ were neither manufactured nor produced in India and that the rebate claimed by the assessee is of duties paid at the time of import in terms of Sec 3(1) of the CTA,1975 and in terms of sub-section 5 of section 3 of Customs Tariff Act, 1975 which are not specified in the explanation to Notification 19/2004 CE(NT) dated 6.9.2004, as amended. Hence, the questions to be decided in these cases are (i) whether goods to be eligible for rebate must be manufactured in India and (ii) whether the rebate of duty can be granted in case of reversal of Cenvat credit of CVD paid on imported capital goods at time of their export subsequently.

10. Government observes that the similar issue came up for consideration before Hon'ble Allahabad High Court in the case of Samsung India Electronics Pvt. Ltd. Vs UOI [2019(368) E.L.T. 917(All).] wherein, the Hon'ble High Court while holding that *"since before causing export, petitioner had reversed credit availed on these goods, rebate cannot be denied"*, made following observations:

11. *Thus, it emerges that under Rule 18 there is no direct specification that the goods eligible to rebate must have been manufactured inside the country. In fact the requirement under that Rule is with respect to 'any goods'. The word 'any' would clearly include both goods that may have been manufactured inside the country or may have been received from outside the country. The eligibility to rebate does not hinge on the fact that the goods may have been manufactured inside the country but on the fact whether the Central Government had notified the rebate on such goods, that goods must also be 'excisable goods'. For any goods as to be described as 'excisable goods', the definition given to that term under Section 2(d) of the Act would have to be read as the Central Excise Rules 2002, do not define the word 'excisable goods'. However, under Rule 2(i) of the Central Excise Rules 2002, words and expressions used under the Rules but not defined, shall carry the same meaning as has been assigned to under the Act.*

Therefore, the definition of the word excisable goods given under Section 2(d) is clearly applicable. It reads :

"2(d) "excisable goods" means goods specified in [the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;"

12. *Clearly for any goods to be described as 'excisable goods', the requirement is that they must be such as have been specified in the First Schedule or the Second Schedule (prior to the amendment made in 2017). LCD panels and parts were admittedly so specified. Therefore, the goods in question were clearly 'excisable goods' and therefore entitled to rebate. What then arises for consideration is whether there was any duty paid on such 'excisable goods'.*

13. *Undisputedly, the goods had suffered countervailing duty and therefore by virtue of Rule 3(1)(vii) of the CENVAT Rules, 2004, it was eligible to CENVAT credit. It cannot therefore, be said that goods did not suffer any duty for the purpose of Rule 18. Thereafter, only the conditions and limitations provided under the Excise notification remained to be fulfilled. Here, in view of the fact that it is again undisputed that the CENVAT credit availed had been reversed in entirety under Rules of 2004, the goods that were excisable goods clearly came to be exported after payment of duty. There is no dispute to the fact that they were exported directly by the petitioner to its other manufacturing units outside the country.*

14. *The objection raised by the revenue-respondent that the export must have been made after manufacture, is not substantiated by the statutory provisions. The words a 'factory' used in clause 2(a) of the rebate notification only refers to the fact that the goods must be exported from a premises that is a 'factory'. Again, the term 'factory' has not been defined under Rules under Section 2(e) of the Act. It reads :-*

"(e) "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

15. *Thus, it being undisputed that petitioner was carrying out, manufacturing activities at it's 'factory' premises and that the goods had been exported from such premises, the removal of the goods (LCD panels and parts of coloured televisions etc.) was made in compliance of the rebate notification i.e. from it's 'factory'.*

16. *Thus, there found to exist no stipulation under the Rule or a condition under the rebate notification that the eligible goods must have been actually manufactured inside the country. The consequence that arises is that goods that may even be deemed to have been manufactured upon payment of excise duty would remain eligible to rebate on their export. The above construction also appears to be plausible as otherwise it may only*

lead to a situation where, the goods that may have been received during transit. In that regard, the interpretation placed by the Central Government itself in the context of the MODVAT scheme, is also pertinent. Under that scheme, in similar circumstances, the Central Government itself allowed for rebate on re-export of such goods. In absence of any change to the statutory scheme that view of the Central Government appears to relevant to the present CENVAT Rule as well. In the case of Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra), that manufacturer was engaged in manufacture of printing inks. It had purchased various inputs/capital goods from domestic suppliers and manufactures. It exported the same on payment of duty by reversing the CENVAT availed on those inputs/capital goods. However, no manufacturing activity had been performed by that manufacturer on the inputs thus purchased. It then claimed rebate under Rule 18 of the Rules read with (amongst others) Notification No. 19 of 2004, dated 6-9-2004. The Bombay High Court reasoned under the Central Excise law, manufacturer of final product is entitled to take credit of specified duties paid on inputs/capital goods used in the final product and utilize the said credit to pay excise duty on final product by reversing the input credit. Taking note of Rule 3 of the CENVAT Credit Rules, 2002, that Court further reasoned that a manufacturer who takes credit of duty paid on inputs/capital goods, and subsequently, removes such inputs/capital goods without utilizing the same in manufacture of any final product, is required to pay an amount equal to the duty of excise leviable on such inputs/capital goods, in view of Rule 3(4) and (5) of the CENVAT credit Rules. Once that duty is paid, it is liable to be treated as duty paid on clearance of inputs/capital goods. Then referring to Circular No. 283 of 1996 issued under the MODVAT scheme and considering the pari materia provisions of Rule 57F(1)(ii) of the Central Excise Rules, 1944 and Rule 3(4) of the CENVAT Credit Rules, 2004, the rebate of duty on exported inputs/capital goods was held allowable treating the exporter to be the deemed manufacturer. It was clarified that reversal of CENVAT credit amounted to duty payment. The same reasoning was adopted by the Bombay High Court in the case of Union of India v. Sterlite Industries (I) Limited, 2017 (354) E.L.T. 87 (Bom.), in that case the assessee had imported used aluminium casting machine as capital goods, CENVAT credit was taken by the assessee on countervailing duty. However, those capital goods were subsequently exported on payment of duty by debiting the credit of input duty. The said claim was also held to be allowable on the similar reasoning as was offered in the decision of Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra). Similar view appears to have been taken by the Madras High Court in the case of Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise, Chennai (supra).

17. *I find myself in complete agreement with the view taken by the Bombay high Court in Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra) and Union of India v. Sterlite Industries (I) Limited (supra).*

11. Government observes that both the judgments of Hon'ble Bombay High Court referred to and relied upon by Hon'ble High Court Allahabad at para 16 of its judgment supra, viz. CCE, Raigad V. Micro Inks Ltd.[2011(270)E.L.T. 360(Bom.) and

CCE, Raigad V. M/s Sterlite Industries (I) Ltd. [2017(354)E.L.T. 87 (Bom.) which decided the issue in the favour of the assessee / claimant had not been accepted by the department and the Special Leave petitions (Civil) were filed against these orders before Hon'ble Supreme Court.

12. Government further notes that the Special Leave to Appeal (C) No. 6120/12 against Hon'ble Bombay High Court order dated 24.3.2011 in the case of M/s Sterlite Industries (I) Ltd. and Special Leave to Appeal (C) No. 5159 of 2012 filed against Hon'ble Bombay High Court order dated 23.03.2011 in the case of M/s Micro Inks Ltd. filed by the Department were dismissed by Hon'ble Supreme Court vide Judgment dated 14.09.2012 [2017(354)E.L.T.A26 (SC)] and 25.11.2013 [2017(351)E.L.T. A 180 (S.C)] respectively.

13. Since the fundamental requirement of export of duty paid goods (to SEZ) gets satisfied in these cases for claiming rebate under Rule 18 of Central Excise Rules, 2002, Government observes that rebate claims at Sl. No. 1,2,3,4, 6 & 7 of column No. 5 of Table at para 2 supra are admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

14. As regards upholding of rejection of rebate claim for Rs. 2,36,224/- (Sl. No. 5 of Column No. 5 of the Table at para 2 supra) by the Commissioner (Appeals) on account of the goods being rejected imported goods had been returned/exported to the supplier in China, the applicant has relied upon various case laws and CBEC Circular No.283/117/96-CX dated 31.12.1996 (referred at paras 6.5,6.6 and 6.7 supra) in support of their claim that denying rebate by way of re-credit in the Cenvat credit in their account is therefore not tenable.

15. The applicant at para 4 of the *'Statement of Facts'* of the Revision Application stated as under :-

> 4. *"Part of the above imported quantity i.e.63.25 Kgs was rejected and the said quantity was returned to the supplier abroad and the above rejected quantity was re-exported under Section 74 of the Customs Act,1962 vide Shipping Bill No. 002311 dated 04.08.2011. The total customs paid which is attributable to above rejected quantity of 63.25 Kgs works out to Rs.3,56,398/- and out of this the Applicant claimed duty drawback under*

Section 74 of the Customs Act, 1962 to a sum of Rs.1,20,175/- which claim is still pending settlement with the Customs department".

16. Government observes that Section 74 of the Customs Act, 1962 states that any goods which were earlier imported and then re-exported (whether used or unused), the importer can claim the duty paid at the time of import as Drawback on the fulfillment of certain condition as specified under Section 74 of Customs Act 1962. Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 have been formulated in exercise of the powers conferred by Section 74 of the Customs Act, 1962. The applicant in this case has very much exercised this option which was available to them as is evident from the copy of "SHIPPING BILL FOR EXPORT OF GOODS UNDER CLAIM FOR DUTY DRAWBACK" enclosed to Revision application along with other related documents such as ARE-1 No. H11000031 dated 26.07.2011, Invoice, Packing List both dated 26.07.2011, Air way Bill dated 04.08.2011 and Bill of Entry No.354967 dated 26.11.2010. From the copy of "Shipping Bill For Export Of Goods Under Claim For Duty Drawback" it is observed that the applicant has exercised the option of claiming Drawback of entire amount of duty paid at the time of import, involved in the rejected quantity of 63.25 Kgs which is shown as Rs,3,56,398/- on the said Shipping Bill for Drawback. The fact that the applicant has claimed Drawback under Section 74 of Customs Act 1962 for the rejected material sent back to the supplier has also been verified by the Supdt. of Customs, ACC, Bangalore on the reverse side of the said Shipping Bill For Export Of Goods Under Claim For Duty Drawback. As the entire duty of Rs.3,56,398/-(as appearing on the Shipping Bill for Drawback) involved on the rejected material has been rightly claimed by the applicant as drawback under Section 74 of Customs Act 1962 vide Shipping Bill For Export Of Goods Under Claim For Duty Drawback, applicant's simultaneous claim for rebate of duty involved on the rejected quantity cannot be considered in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Although, apparently, the case laws relied upon by the applicant appeared to squarely cover the issue, there is factual difference (of simultaneous availment of drawback and rebate) which serve to distinguish the said decisions from the facts in the instant case. Government therefore holds that the rebate claim of Rs. 2,36,224/- at Sl. No. 5 of Column No. 5 of the Table at para 2 supra, has been correctly rejected by Commissioner (Appeals) by allowing the appeal filed by the department.

17. Hence, in light of above discussion Government upholds the Order in Appeal No. 200-207/2013 dated 28.08.2013 passed by the Commissioner (Appeals) Central Excise and Service Tax Large Tax Payer Unit, Bangalore to the extent it has upheld department appeal for rejection of rebate claim of Rs. 2,36,224/- on account of rejected imported goods re-exported to the supplier in China and the Revision Application filed against the same by the applicant is rejected being devoid of merits.

18. Further, in view of discussion at paras 9 to 13 supra, Government modifies and sets aside the Order in Appeal No. 200-207/2013 dated 28.08.2013 passed by the Commissioner (Appeals) Central Excise and Service Tax Large Tax Payer Unit, Bangalore to the extent it has upheld the rejection of rebate claims at Sl. No. 1,2,3,4, 6 & 7 of column No. 5 of Table at para 2 supra, and the corresponding 6 Revision Applications filed against the same are allowed.

15/03/21

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

ORDER No. 131-137 /2021-CX (SZ) /ASRA/Mumbai DATED, 15·03·2021

To,

Biocon Limited,
20th KM, Hosur Road,
Electronic City post,
Bangalore – 560 100

Copy to:

1. Commissioner Of Central Goods & Services Tax, Bengaluru South, C.R. Building, Queen's Road, Bengaluru-560001.
2. Commissioner Of Central Goods & Services Tax, Bengaluru Appeals-I, Traffic & Transit Management Centre : Bmtc Bus Stand : Hal Airport Road, Dommaluru, Bengaluru-560071.
3. The Assistant Commissioner, Central Goods & Services Tax, Bengaluru South Division 8, Kendriya Sadan, VII Floor'A' wing, Koramangala, Bengaluru-560034.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.