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F.No. 195/646/11-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 21.11.13

Order No. 1378 /13-cx dated 18-11-2013 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.

Subject	:	Revision Application filed, under section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No. IND/CEX/000/APP/180/11 dated 28-04-2011 passed by Commissioner of Central Excise, (Appeals), Indore
Applicant	:	M/s. Namco Steel (P) Ltd., Plot No. 11, 'Janak' New Palasia, Indore (MP).
Respondent	:	The Commissioner of Customs, Central Excise & Service Tax, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.

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ORDER

This revision application is filed by the applicant M/s. Namco Steel (P) Ltd., Indore (MP) against the Order-in-Appeal No. IND/CEX/000/APP/180/11 dated 28-04-2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division, (MP).

2. Brief facts of the case are that the applicant M/s. Namco Steel (P) Ltd., Plot Indore (MP) are engaged in trading activities and registered with the Central Excise department as registered dealer having Central Excise Registration No. AACCN5795LXD002. The applicant had exported goods to SEZ on payment of duty and thereafter filed rebate claims for Rs. 4,63,604/-. A Show Cause Notice proposing rejection of rebate claim on the ground that there is no provision for dealer to claim rebate under rule 18 and notification No. 19/2004-CE (NT) dt. 06-09-2004 and the applicant is not qualified to claim rebate in accordance to Notification No. 19/2004-CE (NT) dt. 06-09-2004 r/w rule 18 of Central Excise Rules, 2002. The Assistant Commissioner, Central Excise, Division-Indore vide impugned Order-in-Original rejected the rebate on the ground the applicant is registered under rule 9 and the warehouse means any premises registered under rule 9 and therefore the premises from where trading is done, is a warehouse, however, rebate is admissible only when the goods are exported from factory or warehouse after payment of duty; that the applicant has submitted that as per the provision of SEZ Rule, 2006 rebate is admissible even when duty paid goods are supplied by the dealer, however, in absence of any such condition or order issued by CBEC the rebate claimed by the claimant who is a trader cannot be allowed.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same. The appellate authority rejected applicant's appeal also on ground of non-preparation of ARE-1.

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 It is worth mentioning that the Assistant Commissioner in his impugned Order-in-Original has clearly admitted that it is not disputed that the claimant are holder of registration for trading under rule 9 of Central Excise Rules, 2004, therefore this premises from where trading is being done is a "warehouse". Accordingly the applicant made no submission on this issue in their appeal filed before the Commissioner (Appeals). However, the Commissioner (Appeals) surprisingly at his own construed that the premises of the applicant being a trader/dealer is not a warehouse. This was not an issue before him to decide hence such a finding is most unwarranted.

4.2 The applicant submitted that they being registered dealer supplied goods to the said SEZ unit. The applicant are entitled for the rebate claim applied for in terms of Sub-Rule 1,2 and 10 of the Rule 30 of the Special Economic Zones Rules, 2006.

4.3 The Commissioner (Appeals) has held the CBEC Circular No. 6/2010-Cus dt. 19-03-2010 is a clarification to earlier circular No. 29/2006-Cus dt. 27-12-2006. Hence procedure laid down in said circular dtd. 27-12-2006 has only to be followed. Thus he has contended that supplies from DTA to SEZ shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfilment of conditions laid there under. He further contended that the provisions relating to exports under Central Excise Act, 1944 and rules made there-under may be applied mutaties mutandies, in case of procurement by SEZ units & SEZ developer from DTA for their operations. The Commissioner (Appeals) appears not to have gone through the wordings of said circular dtd. 19-03-2010 properly as at para 4. The para 4 of Circular dt. 19-03-2010 clearly spells out that even if rule 18 does not mention such supplies in clear terms, rebate under rule 18 of the central Excise Rules, is admissible for supplies from DTA to SEZ units. It is also emphasised that the field formations are required to follow the circular No. 29/2006 accordingly. Therefore, the circular dt. 19-03-2010, very much concerns justifying the admissibility of the subject rebate claim to the applicant.

4.4 The Commissioner (Appeals) has also strongly contended that submission of application for removal of export goods to SEZ in form ARE-1 is a must as such leniencies lead to possible fraud of claiming an alternatively available benefit which may lead to additional/double benefit. The Commissioner has failed to notice that the issue raised in this case is in respect of clearances of goods under ARE- No. 1/13-11-2008, 02/17-11-2008, 3/20-11-2008 and 4/24-11-2008. There was no allegation either in the subject show cause notice or in the Order-in-Original regarding non-filing of ARE-1. Hence, his finding that leniency for not filing ARE-1 would lead to possible fraud of claiming an alternative available benefit is baseless and beyond jurisdiction.

4.5 There is no dispute in this case that excisable goods were supplied by the applicant to one SEZ unit, which has to be construed as deemed export. No doubt has been raised in regard to use of duty paid inputs in the manufacturing of the subject goods supplied (exported) to a SEZ unit. Therefore, apparently the rebate claim was rejected on account of procedural infractions of notification/circular only. In the various judgments it has been emphatically held that when export have taken place substantive benefit should not been denied only due to procedural infections.

4.6 The applicant is also entitled to interest under section 11BB of the Central Excise Act, 1944 for the delay in sanctioning the rebate beyond three months from the date of filing the rebate claim.

5. Personal hearing was scheduled in this case on 20-02-2013 and 14-10-2013. Hearing held on 14-10-2013 was attended by Shri Rabrindra Kumar Dash, consultant from M/s. R.K.Sharma and Associates Pvt. Ltd. on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant, is engaged in trading activities and are registered with Central Excise as registered dealer under rule 9 of Central Excise Rules, 2002. They supplied the goods to SEZ on payment of duty and filed rebate claim under rule 18 r/w Notification No. 19/2004-C.E (NT) dt. 16-09-2004. The rebate claims were rejected by the original authority on the ground that there is no provision for grant of rebate when goods are exported by a dealer. Commissioner (Appeals) upheld impugned Order-in-Original. Commissioner (Appeals) also held that the applicant failed to supply the goods under cover of ARE-1 and this non-compliance of said requirement rendered the rebate claims inadmissible. Now, the applicants has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that as per para 5 of CBEC circular No. 29/06-Cus dt. 27-12-2006 (F.No. DGEP/SEZ/331/2006), the supplies from DTA to SEZ on payment of duty shall be eligible for claim of rebate under rule 18 of Central Excise Rules, 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004 subject to fulfilment of conditions laid therein. Further rule 30 (1) of DEZ Rules, DTA unit may supply goods to SEZ, as in the case of exports either under bond or as duty paid goods under claim of rebate on cover of ARE-1.

9. Government finds that in this case, the original authority has stated that supplies to SEZ is eligible for rebate claim. However, there is no order/instruction issued from CBEC to the effect such rebate claims are admissible to dealer also. Government notes that as per condition 2 (a) of Not. No. 19/04-CE (NT) dt. 06-09-2004 the excisable goods shall be exported after payment of duty directly from a factory or warehouse except as otherwise permitted by CBEC by general or special order. Further CBEC vide circular No. 204/10/94-Cx dt. 30-01-97 (Para 8) prescribed the procedure for export of excisable goods from a place other than factory. So, the original authority has erred in rejected the claim on the ground that there was no provision for rebate if goods are exported from place other than factory or warehouse. Original authority has recorded in his findings that the first stage dealer's registered premises is a warehouse as defined in rule 2 (e) of Central Excise Rules 2002. So it cannot be disputed that goods are not exported from warehouse.

In this case, the dealer who exported the goods is to be treated as merchant exporter. The manufacture exporter is extended the facility of self sealing procedure for export goods whereas merchant exporter has to get the goods examined and sealed from jurisdictional Central Excise Officers. In this case, the applicant is a merchant exporter who was required to follow the procedure laid down in the above said circular. The Commissioner (Appeals) has observed that applicant had not prepared ARE-I form and failed to follow ARE-I procedure and therefore upheld the rejection of claim. In this regard applicant has stated that they had filed ARE-I and followed the procedure. The copies of ARE-I are submitted by applicant. So this observation of Commissioner (Appeals) is factually incorrect.

10. Government notes that original authority has not examined the case in the light of above said CBEC circular. If the export of duty paid goods is established from the document submitted by exporter the rebate cannot be denied. It is a settled legal position that substantial benefit of rebate cannot be denied for minor procedural technical lapses. Therefore, the matter is required to be remanded for fresh consideration of case.

11. Government therefore sets aside the impugned orders and remands the case back to original authority for denovo consideration of matter in accordance with law taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties.

12. Revision application thus disposed off in terms of above.

13. So, ordered.

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

M/s. Namco Steel (P) Ltd.,
Plot No. 11, 'Janak'
New Palasia, Indore (MP).

ATTESTED

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner

Order No. 1378 /13-Cx dated 18.11.2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.
2. The Commissioner (Appeals-I), Customs and Central Excise, 4, Inderlok Colony, Kesar Bagh Road, Indore (MP).
3. The Asstt. Commissioner of Central Excise, Division-MP.
4. Shri Rabrindra Kumar Dash, consultant from M/s. R.K.Sharma and Associates Pvt. Ltd. 157, 1st Floor, DDA Office Complex, C.M Jhandewalan Extension, New Delhi-110055.
5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)