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F.No. 198/153-154/10-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue 18.12.13

Order No. 1407-1408/2013-CX dated 13.12.2013 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 Act, 1944 against orders-in-appeal No. 45 to 46/2010/Commr(A)/RAJ dated 03.02.2010 passed by the Commissioner of Central Excise (Appeals), Rajkot.
Applicant	:	Commissioner of Central Excise, Rajkot
Respondent	:	M/s J.K. Group of Industries (Unit-II) Rajkot.

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ORDER

These revision applications are filed by the Commissioner of Central Excise, Rajkot against orders-in-appeal No. 45 to 46/2010/Commr(A)/RAJ dated 03.02.2010 passed by the Commissioner Central Excise (Appeals), Rajkot with respect to orders-in-original passed by the Assistant Commissioner of Central Excise, Division-I, Rajkot. M/s J.K. Group of Industries (Unit-II) is the respondent in this case.

2. Brief facts of the case are that the Respondent M/s J.K. Group of Industries (Unit-II) a manufacturer of a excisable goods have filed a rebate claim of Rs. 1,01,058/- of duty paid on goods exported by them. It is fact on the record that the Noticee cleared their own manufactured goods for export vide ARE-1 No. 52/2008-09 dated 06.03.09 valued at Rs.5,46,248/- attracting total duty of Rs.45,010/-. In addition in same ARE-1, they also cleared Inputs as such valued at Rs.4,61,400/- for export on payment of an amount of Rs. 56,047/- in terms of Rule 3(5) of cenvat credit rules, 2004. The claimant subsequently filed total claim of Rs.1,01,058/- for rebate of duty and amount paid under the provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. The Adjudicating Authority vide these Orders-in-Original had sanctioned the amount of Rebate Claim of Rs.45,010/- pertaining to the export of goods manufactured by the assessee and rejected the balance amount of the rebate claim of Rs. 56,047/- in respect of inputs cleared as such after reversal of equal amount of cenvat credit availed on such inputs. The Adjudicating Authority while rejecting the Rebate Claims had held that the reversal of equal amount of cenvat credit in terms of Rule 3(5) of

the cenvat credit Rules, 2004 is not covered as duty as per explanation in Notification No. 19/2004-CE/(NT) dated 06.09.2004, as amended, for the purpose of granting rebate.

3. Being aggrieved by said Order-in-Original, the respondent filed appeal before Commissioner (Appeals), who set aside impugned Order-in-Original and allowed appeal their in favour.

4. Being aggrieved by said Orders-in-Appeal, applicant department has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 It appears that the Appellate Authority while passing the Appellate Order has not considered the Adjudicating Authority's findings that as per the provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 the rebate can be granted in respect of duties of excise only, and as the amount paid by the assessee in terms of rule 3(5) of cenvat credit rules, 2004 for the inputs exported as such is not covered under the definitions of duty specified in the said Notification, the rebate is not admissible.

4.2 It appears that the Appellate Authority while passing the appellate order has not considered the various judgements relied upon by the Adjudicating Authority to arrive at the findings that terms "amount" cannot be equated with the term "duty" for all purposes. The judgment of Hon'ble Tribunal in the case of Mahindra and Mahindra Vs. Collector of Central Excise, Bombay-II reported at 1994 (70) ELT 423 (Tri.), and in the case of M/s Grasim Industries Ltd. Vs. Commissioner of Central Excise, Indore reported at 2003(155) ELT 200 (Tri.Delhi), relied upon by the Appellate Authority do not appear to be applicable in the facts and circumstances of the present case. In none of the judgments supra, issue of rebate of duty paid on inputs has been discussed. Moreover, the

judgment of Hon'ble Tribunal in the case of Grasim Industries Ltd. Vs. Commissioner of Central Excise, Indore reported at 2003(155) ELT 200 (Tri.Delhi) has been challenged before the Hon'ble High Court by the Commissionerate concerned.

5. A Show Cause Notice was issued to the respondent under section 35EE of the Central Excise Act, 1944 to file their counter reply. The respondent vide their counter reply dated 13.11.2013 placed reliance on GOI Revision order NO. 1710-1711/2011-Cx dated 23.12.2011 in the case of M/s Jayson Export, Rajkot.

6. Personal hearing held in this case on 28.11.2013 was attended by Shri Vinod Kumar, Deputy Commissioner on behalf of applicant department, who reiterated grounds of Revision Application. Nobody attended hearing on behalf of respondent.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. Government notes that original authority rejected the rebate claim on the grounds that inputs are cleared for export as such on reversal of Cenvat Credit under rule 3(5) of Cenvat Credit Rules 2004 and such reversal of Cenvat Credit can not be treated as payment of duty for granting rebate under Rule 18 of the Central Excise Rules, 2002. Commissioner (Appeals) also allowed the appeal in favour of respondent. Now applicant department has filed this revision application on the grounds stated in para (4) above.

9. Government notes that completion of impugned exports as per details in the relevant orders are not in dispute and the sole basic point of the issue involved in the case matter is that whether reversal of equal amount of cenvat credit in terms of Rule 3(5) of the cenvat credit rules 2004, on clearance of inputs removed/exported as such can be treated as payment of duty of excise

for the purpose of grant of rebate under Rule 18 of the Central Excise Rules, 2002.

10. Government notes that this issue was decided by Hon'ble High Court of Bombay in the case of Commissioner of Central Excise Raigad Vs. Micro Inks Ltd. in W.P. No. 2195/2010 vide order dated 23.3.2011 reported as (3) 2011 (270) ELT 360 (Bom.). In the said writ petition Commissioner of Central Excise, Raigarh had challenged the GOI order No. 873/10-CX dated 26.07.2010 passed in the case of M/s Micro Inks with respect to Order-in-Appeal No. SKS/244/RGD/2008 dated 30.4.2008 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II. Government had held in the said order dated 26.5.2010 that amount reversed under rule 3(4)/3(5) of cenvat credit rules, 2004 is a payment of duty of excise for the purpose of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. The views of the Government are upheld by Hon'ble High Court of Bombay in the above said judgment. The operative portion of High Court's order is reproduced below:-

"10. Under the Central Excise law the manufacturer of a final product is entitled to take credit of specified duties paid on inputs or capital goods used in the final product (called Cenvat credit) and utilize the said credit to pay the excise duty payable on the final products by reversing the input credit. Mode and manner of availing/utilizing the credit of duty paid on inputs/capital goods were set out in Cenvat Credit Rules 2002 which are now replaced by Cenvat Credit Rules 2004.

Since the provisions relating to availment and utilization of credit of duty paid on inputs/capital goods under the Cenvat Credit Rules 2002 as well as Cenvat Credit Rules 2004 are identical, for the sake of convenience, we refer to the rules under the Cenvat Credit Rules 2002 (2002 Rules for short).

11. Rule 3(1) of 2002 Rules sets out the categories of duties paid on any input or capital goods the credit of which can be taken when received in the factory of manufacturer of final product.

12. Rule 3(4) & Rule 3(5) of the 2002 Rules to the extent relevant read thus:-

Rule 3(4) ..... When inputs or capital goods, on which CENVAT credit has been taken, are removed a such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in rule 7.

Rule 3(5) .....The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4).

13. Thus, under the 2002 Rules, a manufacturer who takes credit of duty paid on inputs or capital goods, subsequently removes the inputs/capital goods from the factory without utilizing the same in the manufacture of final product then, such manufacturer, is required to pay under Rule 3(4) an amount equal to the duty of excise leviable on such inputs/capital goods and under Rule 3(5) the amount paid under Rule 3(4) is liable to be treated as duty paid on clearance of inputs/capital goods.

14. Even under the Modvat Scheme (now Cenvat Scheme) similar provisions were contained in Rule 57F(1)(ii) of the Central Excise Rules 1944. Doubts had arisen under the Modvat Scheme as to whether a manufacturer who has taken credit of duty paid on inputs/capital goods, when clears said inputs/capital goods (without utilizing the same in the manufacture of final products) for export on payment of an amount equal to duty payable on such inputs/capital goods at the time of clearance for export is entitled to claim rebate of that amount.

15. The Central Government considered the dispute and by its Circular No.286/1996 dated 31st December 1996 held that when duty paid inputs/capital goods credit of which is taken are cleared for export as inputs/capital goods on payment of the amount as specified under Rule 57F(1)(ii) as amended, then such manufacturer shall be deemed to be the manufacturer of the exported inputs/capital goods and consequently entitled to claim rebate of the amount paid under Rule 57F(1)(ii) of the Central Excise Rules 1944.

16. Since Rule 3(4) of the 2002 Rules is pari materia with Rule 57(1)(ii) of the Central Excise Rules 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India that the assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.

17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does loose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No. 283/1996 dated 31st December 1996 has held that amount paid under Rule 57 F (1)(ii) of Central Excise Rules 1944 (which is analogous to the Cenvat Credit Rules 2002/ Cenvat Credit Rules 2004) on export of inputs/capital goods by debiting RG 23A part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.

18. The argument of the Revenue that identity of the exported inputs/capital goods could not be correlated with the inputs/capital goods brought in to the factory is also without any merit because, in the present case the goods were exported under ARE 1 form and the same were duly certified by the Customs Authorities. The certificate under the ARE 1 form is issued with a view to facilitate grant of rebate by establishing identity of the duty paid inputs/capital goods with the inputs/capital goods which are exported.

19. For all the aforesaid reasons, we see no infirmity in the order passed by the Joint Secretary to the Government of India. Accordingly rule is discharged with no order as to costs."

11. The ratio of the above said High Court order is squarely applicable to this case as the facts of these are exactly similar. Government therefore while

following the above said order of Hon'ble High Court, holds that the reversal of cenvat credit under rule 3(4) and 3(5) is nothing but payment of duty on the goods exported. Rule 3(6) of cenvat credit rules 2004 clearly stipulates that the amount paid under rule 3(5) shall be eligible as cenvat credit as if it was a duty paid by the person who removed such goods under rule 3(5) of cenvat credit rules 2004. The fundamental requirement of export of duty paid goods gets satisfied in these cases for claiming rebate claim under Rule 18 of the Central Excise Rules, 2002. Therefore, Government observes that rebate claim is admissible to the applicant under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004.

12. In the light of above discussion, Government finds the impugned Order-in-Appeal as legal and proper and therefore upholds the same.

13. Revision applications are therefore rejected being devoid of merit.

14. So ordered.

(D.P Singh)
Joint Secretary(Revision Application)

Commissioner of Customs & Central Excise,
Central Excise Bhavan,
Race Course Ring Road,
Rajkot

ATTESTED

16/12

(भागवत शर्मा) Bhagwat Sharma
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (वित्तीय विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

GOI Order No. 1407-1408 /13-CX dated 13.12.2013

Copy to:

1. The Commissioner (Appeals), Customs & Central Excise, 2nd Floor, Central Excise Bhavan, Race Course Ring Road, Rajkot- 360 001.

2. The Assistant Commissioner, Central Excise, Division- I, Rajkot, 2nd Floor, Central Excise Bhavan, Race Course Ring Road, Rajkot- 360 001.

3. M/s J.K. Group of Industries (Unit-II), Mavdi Plot, Navrangpara Main Road, Rajkot (Gujarat).

4. Guard File.

5. PS to JS (RA)

6. Spare Copy

16/12

(Bhagwat P. Sharma)
OSD(Revision Application)