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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/21/15-RA/453 Date of Issue: 07.02.2022

ORDER NO. 145/2022-CX (WZ)/ASRA/MUMBAI DATED 03.02.2022 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.

Applicant : M/s. Stalmec Engineering Pvt. Ltd.

Respondent: Commissioner of Central Excise, Ahmedabad-II.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 127/2008(Ahd-II)CE/ID/Commr.(A)/Ahd. dated 24.11.2008 passed by the Commissioner of Central Excise, (Appeals-I), Ahmedabad.

ORDER

This Revision Application along with an application for condonation of delay is filed by M/s. Stalmec Engineering Pvt. Ltd., Plot No. 365-368, GIDC Industrial Estate, Odhav, Ahmedabad - 382 415 (hereinafter referred to as "the Applicant"). The reason for delay being that the Applicant had filed an appeal under Section 35 B of the Central Excise Act, 1944 with CESTAT, Ahmedabad against Order-in-Appeal No. 127/2008(Ahd-II)CE/ID/ Commr.(A)/Ahd. dated 21.11.2008 passed by the Commissioner of Central Excise, (Appeals-I), Ahmedabad. The Hon'ble CESTAT vide Order No. A/12342/2014 dated 30.12.2014, found the appeal not maintainable, being a rebate matter. Government observes that the impugned Order-in-Appeal was communicated to the Applicant on 25.11.2008. They had filed the said appeal with CESTAT on 09.01.2009. The Order dated 30.12.2014 of Hon'ble CESTAT was issued on 15.01.2015 and the instant Revision Application was filed on 09.02.2015. It is well settled that the period for which the matter was pending at wrong forum is to be excluded. Thus, the Applicant had filed the instant Revision Application within the time stipulated under Section 35EE (2) of the Central Excise Act, 1944. Therefore, Government is taking up the matter for deciding on merits.

2. Brief facts of the case are that the Applicant were engaged in the manufacture of 'Rotary Screen Printing Machinery' falling under chapter heading 8443 of Central Excise Tariff Act, 1985. The Applicant was clearing these goods at Nil rate of duty in terms of Notification No. 6/2002-CE dated 1.3.2002 for home consumption. During the course of audit at the Applicant's premises it was found that they had exported said goods on payment of duty through Cenvat credit under claim of rebate. The said goods being exempted from Central Excise duty under Notfn. No.6/2002-CE dated 1.3.2002 as such no Cenvat credit was allowable for the inputs used in the manufacture of the said exempted goods. Consequently, the payment of duty on the final product cleared for export and rebate of such duty under

Rule 18 of Central Excise Rules, 2002 was inadmissible. Therefore, a SCN dated 26.04.2007 proposing recovery of wrongly paid rebate amounting to Rs.16,16,000/- and penalty was issued to the Applicant. The adjudicating authority confirmed the demand for Rs.16,16,000/- under section 11A alongwith interest under section 11AB and imposed penalty equivalent to demand under section 11AC of the Central Excise Act, 1944 vide Order-in-Original No. 6/ADC/2008/PRC dated 21.02.2008. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) rejected the appeal and upheld the order of original adjudicating authority.

3. Hence the Applicant has filed the impugned Revision Application mainly on the following grounds:

i. the demand was hit by law of limitation as the show cause notice was issued on 26-04-2007 for the rebate sanctioned in the year 2002-03 and 2003-04. The applicant also states that in this matter rebate was sanctioned by the competent authority on verification of all documents as satisfying himself that rebate is admissible, therefore, there is no suppression of facts or any willful mis-statement and as such extended period is not invokable in this case.

ii. as far as the claim of cenvat credit is concerned, it is true that in terms of sub-rule (1) of Rule 6 of Cenvat Credit Rules, the final product being exempted from duty liability, the manufacturer would not be entitled to avail credit in relation to the duty paid on the inputs procured for utilization thereof in the manufacturing process of the final product. However, sub-rule (5) of the said Rules which was in force at the relevant time, clearly provided that the provision to sub-rule (1) would not be applicable in case the exempted goods were cleared for export under bond in terms of the provision of Central Excise Rules 2002. Considering the said provision, certainly, the applicant could have availed the benefit under the said provisions and therefore, it cannot be said that the respondent would be disentitled for the rebate on the said ground.

iii. the order passed by the lower authority is without considering the submissions made by the applicant and without giving any finding on the submissions made by the applicant that how the submission is not maintainable in law, the order is not maintainable and required to be set aside in the interest of justice as the same is issued in violation of principles of natural justice.

iv. Penalty is a quasi-criminal matter and therefore, it could be resorted to only in cases where mala fide intention or guilty conscious of an assessee was established. In the fact of present case where no suggestion or allegation of malafide intention to evade payment of duty as this is a demand of amount of rebate sanctioned by the authority for export of goods, there is no justification in the imposition of penalty in law as well as in facts.

In the light of the above submissions, the applicant prayed to set aside the impugned order.

4. Personal hearing in the case was fixed for 20.10.2021. Shri Vinod Hakani, Advocate attended the online hearing on behalf of the Applicant and he reiterated the earlier submissions. He submitted that ARE-1 in the case was signed by Excise officer, period involved is prior to amendment of Section 5A of the Central Excise Act,1944, and the SCN was time barred. He requested to allow the rebate.

5. 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.

6. Government observes that the main issue involved in the instant case is whether rebate of duty paid on export of exempted goods is allowed and whether Show Cause Notice was time barred?

7. Government observes that apart from exempted goods, 'Rotary Screen Printing Machinery', the applicant also manufactured dutiable goods and

was thus regularly availing Cenvat credit. The applicant carried out two exports of 'Rotary Screen Printing Machinery' on payment of duty by reversal of Cenvat credit in the FY 2002-03 and claimed rebate of same.

8. Government observes that Rule 6 of Cenvat Credit rules, 2002 reads as follows:

> *(1) The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).*
>
> *(2) Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.*
>
> *(3) The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:-*
>
> .
>
> *(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods.....*
>
> *(5) The provisions of sub- rule (1), sub-rule (2), sub-rule (3) and sub-rule (4) shall not be applicable in case the exempted goods are either-*
>
> *i. cleared to a unit in a free trade zone; or*
> *ii. cleared to a unit in a special economic zone; or*
> *iii. cleared to a hundred per cent. export-oriented undertaking; or*
> *iv. cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or*
> *v. supplied to the United Nations.....; or*
> *vi. cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.*
> *vii. gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.*

Thus, from the sub-rule 5 ibid, the intention of policy makers is clear – to promote exports by allowing credit of input taxes to the exporters and thereby make the price of domestic goods more competitive in the International market.

9.1 Para 32 of impugned Order-in-Original dated 21/02/2008 is reproduced hereunder:

> *32. Another contention of the assessee is that they had informed the Department regarding the procedure which they were going to follow vide their letter dtd. 28/03/2002 addressed to The Deputy Commissioner and copy given to the concerned Range Superintendent. This being done, the extended period of limitation under proviso to Section 11 A(1) was not invocable. Let me study what has been contained in the said letter reproduced below:*
>
> *Dtd. 28th March, 2002*
>
> *"We hereby inform you that our products Rotary Screen Ptg. M/c. falling under S.H.No. 8443.10 is attract at NIL rate of excise duty as per Noti. No.6/2002 Dt.1.3.2002 for home consumption for financial year 2002-03.*
>
> *Further, we inform you that we will clear our products under claim of Rebate or undertaking for export. We will maintain raw material account separate for home consumption and export. We will avail the Cenvat benefit on inputs which consumed for export.*
>
> *We also avail the exemption benefit for clearance of Parts of Rotary Screen Ptg. M/c. as per Noti. No. 8/2002, dtd. 1.3.2002*
>
> *Please note and oblige.*
>
> *Thanking you"*

Thus, the applicant had revealed their intention to avail Cenvat Credit on inputs consumed in manufacturing of goods exported, by maintaining separate raw material accounts for home consumption and export, to the Department.

9.2 Ratio laid down by the judgment of the Hon'ble Gujarat High Court in the case of Arvind Ltd. vs. UOI[2014(300)ELT 481(Guj.)] which has thereafter been affirmed by the Hon'ble Supreme Court[2017(352)ELT A21(SC)] is relevant here. In that case, inspite of there being an exemption

notification which fully exempted their goods, Arvind Ltd. had availed the benefit of Notification No. 59/2008-CE dated 07.12.2008 and paid duty on the export goods. The relevant portion of the said judgment of the Hon'ble Gujarat High Court is reproduced below.

> *"9. On, thus, ...It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No. 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No. 29/2004 as amended by Notification No. 59/2008-C.E. read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.*
>
> *10. We also cannot be oblivious of the fact that in various other cases, the other assessees have been given refund/rebate of the duty paid on inputs used in exported goods. ....."*

9.3 In the above judgment, Hon'ble High Court has laid down that when there are two exemption notifications which co-exist, the assessee can avail one for domestic clearances and the other one which is beneficial to them for export so as to obtain refund/rebate of duty paid on inputs used in the exported goods(emphasis supplied). Thus, as long as, intent is to get refund/rebate of duty paid on inputs consumed in exported goods, exporter can choose to pay higher rate of duty on exported goods, even if it is an effective rate.

10. Government observes that there are many other judgments wherein the instant issue has been discussed - in the case of CCE vs. Drish Shoes Ltd. 2010 (254) ELT 417 (HP) affirmed by the Apex Court, the Hon'ble High Court of Himachal Pradesh held that *'manufacturing goods chargeable to nil duty, is eligible to avail CENVAT credit paid on the inputs under the exception clause to Rule 6(1), as contained in Rule 6(5) of CENVAT Credit Rules, 2002 and Rule 6(6) of CENVAT Credit Rules, 2004, used in the manufacture of such goods, if the goods are exported'*; in the case of *Commissioner* v. *Suncity Alloys Pvt. Limited* - 2007 (218) E.L.T. 174 (Raj.) = 2009 (13) S.T.R. 86 (Raj.), the Hon'ble High Court of Rajasthan held that exempted goods cleared for export on payment of duty, manufacturer can claim rebate.

11. Since contention of the applicant on eligibility survives the scrutiny on merit, the second point regarding SCN being time barred becomes inconsequential.

12. In view of the above discussion and findings Government sets aside Order-in-Appeal No. 127/2008(Ahd-II)CE/ID/Commr.(A)/Ahd. dated 24.11.2008 passed by the Commissioner of Central Excise, (Appeals-I), Ahmedabad and allows the Revision Application filed by the applicant.

13. The Revision Application is disposed of on the above terms.

Shrawan 3/2/22

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

ORDER No. 145/2022-CX(WZ)/ASRA/Mumbai dated 03.02.2022

To,
M/s. Stalmec Engineering Pvt. Ltd.,
Plot No. 365-368, GIDC Industrial Estate,
Odhav, Ahmedabad-382415.

Copy to:

1. Pr. Commissioner of CGST,
   Ahmedabad South,
   Central GST Bhavan,
   Near Govt. Polytechnic,
   Ambawadi, Ahmedabad 380 015.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.