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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.195/157-166/SZ/2018-RA 1947 Date of Issue: 10 .02.2022

ORDER NO. 146-155 /2022-CX (SZ) /ASRA/Mumbai DATED 08 .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 R.L. Fine Chem Pvt. Ltd., No.15, KHB Industrial Area, Yelahanka, Bangalore – 560 064.
Respondent	:	Commissioner of Central Tax, Bengaluru – North Commissionerate, HMT Bhavan, Bellary Road, Bangalore – 560 032.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal no.254-263/2018-CT dated 30.05.2018 passed by the Commissioner of Central Tax (Appeals -II), Bangalore.

ORDER

The subject Revision Applications have been filed by M/s R.L. Fine Chem Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal dated 30.05.2018 passed by the Commissioner of Central Tax (Appeals-II), Bangalore which decided four appeals filed by the Department and six appeals filed by the applicant against ten Orders-in-Original passed Assistant Commissioner of Central Tax, North Division-8 Commissionerate, Bangalore. The details of the Orders-in-Original and the disputed rebate amount are as per the table below:-

Sl. No.	Order-in-Original No. & Date	Amount of Rebate disputed (Rs.)
A	**B**	**C**
1	06/2017-18 (R) dated 10.08.2017	1,42,448/-
2	07/2017-18 (R) dated 24.08.2017	1,23,731/-
3	01/2017-18 (R) dated 14.07.2017	33,045/-
4	20/2017-18 (R) dated 27.10.2017	28,867/-
5	27/2017-18 (R) dated 24.11.2017	32,776/-
6	26/2017-18 (R) dated 24.11.2017	88,764/-
7	23/2017-18 (R) dated 03.11.2017	1,34,474/-
8	25/2017-18 (R) dated 08.11.2017	88,246/-
9	39/2017-18 (R) dated 29.01.2018	48,020/-
10	42/2017-18 (R) dated 12.02.2018	31,524/-

2. Brief facts of the case are that the applicant is a unit manufacturing excisable goods falling Chapter Heading 29 of the Central Excise Tariff Act, 1985 and hold Central Excise registration. The applicant filed ten

applications under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE (NT) dated 19.06.2004 claiming rebate of the Central Excise duty paid on the product 'Bulk drugs' exported by them. The Central Excise duty was paid through their Cenvat account. The original authority found that the applicant had paid excess Central Excise duty on the said export consignments inasmuch as the applicant had discharged duty on the CIF value which included the components of insurance, freight etc. The original authority re-determined the values in terms of Section 4 of the Central Excise Act, 1944 and found that the applicant had paid Central Excise duty in excess of what was required to be paid, as reflected at Column 'C' of the Table above. The original authority found that the rebate claim to the extent of the Central Excise duty paid on the re-determined values was admissible to the applicant and the duties paid in excess of the same is liable to be rejected. Having held so, the sanctioning authority held that as the entire Central Excise duty had been paid through Cenvat and as there was no Cenvat credit in the GST regime, the entire duty paid, including the excess duty paid, should be refunded to the applicant in cash. Thus, the original sanctioning authority vide the Orders-in-Original at Sl.No.1 to 4 of the above Table allowed the entire rebate claimed. However, in the Orders-in-Original from Sl. No.5 to 10 the rebate sanctioned was limited to the amount of Central Excise duty found payable on the re-determined values; the differential excess duty paid was held to have lapsed in terms of the provisions of Section 142(3) of the CGST Act, 2017.

3. The Orders-in-Original from Sl. No. 1 to 4 were appealed against by the Department on the grounds that as per Section 142(3) of the CGST Act, 2017 the original sanctioning authority should have restricted the rebate sanctioned in cash to the extent of the duty payable on the re-determined values and the differential excess duty paid should have been treated as lapsed; that the original authority had erred in interpreting Section 142(3) of the CGST Act, 2017 resulting in the excess duty paid being refunded in cash to the applicant. As regards the Orders-in-Original from Sl. Nos.5 to 10, the applicant filed appeals against the same as they were of the opinion

that as per Section 142(3) of the CGST Act, 2017, the were eligible to claim rebate of the entire amount of Central Excise duty paid by them and the Order of the sanctioning authority restricting the same to the amount found payable on the re-determined assessable values and holding the balance amount to have lapsed in terms of Section 142(3) of the CGST Act, 2017 was incorrect.

4. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 30.05.2018 examined the valuation of the exported goods and found that the assessable values re-determined by the original sanctioning authority in terms of Section 4 of the Central Excise Act, 1944 was proper and that the original sanctioning authority had correctly rejected the amounts paid in excess on the higher assessable values by the applicant. The Commissioner (Appeals) further held that since the duty was paid through Cenvat credit such rejected amounts cannot be given/returned to the Cenvat credit account and would hence lapse in terms of the first proviso to Section 142(3) of the CGST Act, 2017. In light of this finding, the Commissioner (Appeals) allowed the four appeals filed by the Department and rejected the six appeals filed by the applicant.

5. Aggrieved, the applicant has filed the present Revision Applications against the impugned Order-in-Appeal on the following grounds:-

(i) The issue involved in the instant case was whether they were entitled to rebate by way of cash on excess duty paid by them in view of excess value or the same will get lapsed in terms of Section 142(3) of CGST Act, 2017; that however, the Commissioner (Appeals) instead of going through the said issue, had unnecessarily discussed only the valuation aspect, which was not at all in dispute;

(ii) The Commissioner (Appeals) had failed to appreciate that in this case the rebate sanctioning authority had rightly sanctioned the refund in cash

by applying the transitional provision of Section 142(3) of the CGST Act, 2017; that it was clear from the said provision that any refund claim filed by any person before or on or after the appointed day i.e. 01.07.2017 seeking refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law should be disposed of in accordance with the provisions of existing law and consequent to said refund claim, if any amount was payable to such person it had to be paid in cash subject to Section 11B(2) of the Act and irrespective of anything contrary contained under the existing law for sanctioning such refund in cash; that as per the first proviso it was also clear that where any refund claim of Cenvat credit was fully or partially rejected, the amount so rejected would lapse and as per the second proviso, as on the appointed day i.e. 01.07.2017 the balance amount of Cenvat credit, if any, carried forward under CGST Act, 2017, the same should not be allowed to be refunded under the existing law.

(iii) The Commissioner (Appeals) had erred in invoking the first proviso to Section 142(3) of the CGST Act, 2017, which would become applicable only in the event of any claim for refund of CENVAT credit was fully or partially rejected; that in this case, neither was the claim for refund of any cenvat credit nor was any part of the refund claim rejected and hence the proviso itself was inapplicable.

(iv) The Commissioner (Appeals) failed to appreciate that in the instant case it was not the case of the Department that the applicant was not entitled for the refund of excess duty paid on the value of goods exported; that the issue before the Sanctioning Authority was whether in terms of Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Act, they were entitled for rebate of excess duty in cash or in the form in which it had been paid; that once it was decided that in terms of Rule 18 of the Central Excise Rules, 2002 that they were entitled for the refund of excess duty, it had to be refunded to them; that however by virtue the transitional provisions of Section 142(3) of CGST Act, 2017, irrespective of Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Act the refund

accruing to them had to be refunded in cash only and hence the quantum of refund of credit or lapsing of credit did not arise in the instant case.

(v) The Commissioner (Appeals) had misconstrued the provisions of Rule 18 of the Central Excise Rules, 2002 and Section 142(3) of the CGST Act, 2017 inasmuch as he ought to have appreciated that whatever may be the means i.e. cash or credit, what was paid in respect of export clearances and claimed as rebate was duty and not cenvat credit; that in respect of duty paid on export clearance, a right accrues to the exporter under Rule 18 of the Central Excise Rules, 2002 to claim rebate and Section 142(3) of CGST Act, mandated that such amount accruing to a claimant/exporter should be paid in cash and that the same was fully in conformity with the letter and spirit of Rule 18, the GST scheme and the provisions relating to transition; that the invocation of the first proviso to Section 14(3) of the CGST Act, 2017 was erroneous and the Commissioner should have instead confined to the provisions of Rule 18 under the existing law and hence they were rightly entitled to cash refund.

(vi) The Commissioner (Appeals) ought to have appreciated that when the rebate sanctioning authority had re-determined the transaction value of the goods exported in terms of Section 4 of the Act and held that they had paid excess duty on the excess value, in all fairness such excess duty should have been refunded and relied upon the decision of the Revisionary Authority in the case of Technocraft Industries Ltd. reported in 2014 (312) ELT 908 (GON) in support of their case.

(vii) They relied on the following cases to submit that the excess duty paid on the goods exported has to be returned/refund to the assessee and cannot be returned to the Government.

(a) Somson Exports reported at [2016 (344) ELT 709 (GOT)]

(b) Narendra Plastic Pvt. Ltd. reported at [2014 (313) ELT 833]

(c) Aarati Industries Ltd. reported at [2014 (312) ELT 872 (GOT)]

(d) Nahar Industrial Enterprises Ltd. Rep. atv[2009 (235) ELT 22]

(viii) They further submitted that even after introduction of CGST Act, 2017 in their own case the Department for the period October 2016, December 2016, January 2017 & February 2017 vide Order-In-Original No.01/2017 (R) dated 14.07.2017, No.06/2017 (R) dated 10.08.2017 and No.07/2017 (R) dated 24.08.2017 re-determined the transaction value of the goods exported by excluding the entire freight element (including local freight), insurance & commission from the transaction value and sanctioned not only the rebate of duty paid on such re-determined value in cash, but also the duty determined as excess on account of redetermination of value; that therefore in keeping with the provisions of Rule 18 of the Central Excise Rules, 2002 and the above decisions, the duty paid on export accrues to the claimant as rebate and the entire amount thus becomes refundable to them in cash; that the Commissioner (Appeals) had erred in holding that rest of the amount as lapsed inasmuch as the first proviso to Section 142(3) of the CGST Act, 2017 was not applicable in the present case.

In view of the above the applicant submitted that the sanction of cash rebate in full by the Original authority was just and proper and the impugned Order-in-Appeal holding that same as lapsed was contrary to Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Act and also to transitional provision of Section 142(3) of CGST Act, 2017. They prayed for the impugned Order-in-Appeal to be set aside.

6. Personal hearing in the matter was granted to the applicant on 25.11.2021. Shri H.S. Srinivasa, Advocate appeared online on behalf of the applicant. He reiterated their submissions and requested to allow rebate of duty paid or allow credit to their Cenvat account.

7. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Orders-in-Original and Order-in-Appeal.

8. Government notes that the short issue involved in the instant case is whether the amount of Central Excise duty which was paid in excess on the exaggerated assessable values of the goods which were exported, is required to be refunded to the applicant in cash. Government notes that the applicant has not disputed the assessable values arrived at by the original sanctioning authority which were lower than the values at which Central Excise duty was paid by them. In fact, Government finds that they have expressed their displeasure with the Commissioner (Appeals) for having examined the valuation of the exported goods and have stated that the same was not in dispute and hence the Commissioner (Appeals) should have not discussed the same. In light of the same, Government refrains from examining the valuation of the goods in question, as the assessable values re-determined by the original authority is not in dispute.

9. Government notes that in all the above ten cases the original authority had re-determined the assessable values, which, were lower than the values at which Central Excise duty was paid. Of these ten cases, in four cases the original sanctioning authority held that even the duty paid in excess was required to be refunded in cash. In the rest of the six cases the original authority held that the duty paid in excess would lapse in terms of Section 142(3) of the CGST Act, 2017. While deciding the Department's appeals against the first four Orders-in-Original and the applicant's appeals against the rest of the six Orders-in-Original, the Commissioner (Appeals) held that the said excess amounts paid, having being paid through Cenvat credit in the first place, if refunded, would have be treated as refund of Cenvat credit; and since rebate of such excess amounts was rejected, the same would lapse in terms of Section 142(3) CGST Act, 2017.

10. Government finds that it is not in dispute that applicant would be eligible to claim rebate of such quantum of Central Excise duty that was paid as per Section 4 of the Central Excise Act, 1944. The fact that the original authority carried out the exercise of determining the correct assessable value under Section 4 of the Central Excise Act, 1944 and

finding that the applicant had paid excess Central Excise duty is a clear indication that the original authority while determining the correct amount to be sanctioned also determined the amount that required to be rejected. In light of such action by the original sanctioning authority, Government finds the plea of the applicant that the original authority had not rejected the rebate of the excess amount paid, to be incorrect. Admitting this plea of the applicant would render the entire exercise of re-determination of the assessable values carried out by the original authority meaningless and would also be contrary to the stand of the applicant wherein they have accepted such re-determined assessable values. Further, it is also not disputed that the entire duty was paid by utilizing Cenvat credit. Thus, in this case, as the law stood prior to the enactment of the CGST Act, 2017, such excess amounts were required to be credited to the Cenvat credit account from which it was paid. Thus, it is also not in doubt that such refund of excess duty paid, would tantamount to refund of Cenvat credit and hence the submission of the applicant that the same could not be categorized as refund of Cenvat credit, is incorrect. In light of the above, Government finds that the original authority and the Commissioner (Appeals), both have indeed rejected the rebate claims of the applicant to the extent of the excess payments of central excise duty. The only question that is now left to be answered is whether such excess payments made through the Cenvat credit account is required to be refunded in cash in terms of Section 142(3) of the CGST, 2017. The first proviso to the said Section reads –

> *"Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse"*

The first proviso is unambiguous and clearly states that when refund of Cenvat credit has been rejected the same shall lapse. In this case, the rebate of excess amounts paid has been rejected and in terms of the first proviso to Section 142(3) of the CGST Act, 2017, such rejected amounts would lapse, as no refund of Cenvat credit is permissible in such cases. Further, Government finds that the case laws cited by the applicant would

not be applicable to the present case, as they pertain to the period prior to the enactment of the CGST Act, 2017.

11. In view of the findings recorded above, Government finds that there is no infirmity in the impugned Order-in-Appeal and finds no reason to annul or modify the same.

12. The subject Revision Applications are disposed of in the above terms.

8/2/22

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

ORDER No. 146-155 /2022-CX (SZ) /ASRA/Mumbai dated 08.02.2022

To,

M/s R.L. Fine Chem Pvt. Ltd.,
No.15, KHB Industrial Area,
Yelahanka, Bangalore – 560 064.

Copy to:

1. Commissioner of Central Tax, Bengaluru – North Commissionerate, HMT Bhavan, Bellary Road, Bangalore – 560 032.
2. Commissioner of Central Tax (Appeals -III), Bangalore, Traffic Transit Management Centre, NMTC Building, 4th floor, above BMTC Bus Stand, Domlur, Off Airport Road, Bangalore – 560071.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Notice Board.