F.NO.195/857/10-RA

REGISTERED
SPEED POST

F.NO.195/857/10-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: 25/2/13

ORDER NO. 152 /2013-R.A. DATED 25.2.13 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 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 the Order-in-Appeal No.RKS/026/Bel/2010 dated 4.8.2010 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-III
Applicant	:	M/s Uni Deritend Limited, Thane
Respondent	:	Commissioner of Central Excise, Mumbai-II

****

ORDER

This revision application is filed by M/s. Uni Deritend Ltd., Thane against the order-in-appeal No.RKS/026/BEL/2010 dated 4.8.2010 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II with respect to order-in-original passed by Assistant Commissioner Central Excise, Mumbai-III.

2. Brief facts of the case is that the applicant have filed rebate claims amounting to Rs.2,41,380/- on export of goods covered under ARE1. On scrutiny of these claims, it was found that die cost charges of Rs.8,80,000 and Rs.5,59,146 which were not shown in impugned ARE1, have been added in the assessable value shown on invoices to arrive at value of exports. It was observed that the rebate is allowed only on the value of the goods exported on which duty was paid and they were not eligible for rebate on die cost charges. A show cause notice dated 12.2.2009 was issued seeking to deny part rebate claim. The original authority vide impugned order-in-original rejected part of rebate claimed of the applicant to the tune of Rs.2,07,525/- out of total Rs.2,41,380/- claimed.

3. On being aggrieved the applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Then on further being aggrieved by the applicant had filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Order-in-appeal is beyond scope of show cause notice/order in original. The ground urged in the impugned order-in-appeal for rejecting the Applicants claim for rebate is that they had not paid duty as per the provisions of section 4 of the Central Excise Act 1944, hereafter referred to as Act in as much as die cost had to be included in the transaction value, but the value of the die had to be apportioned over the number of goods that would be likely to be manufactured from the said die and not the entire value of the die on the quantity being dispatched. Whereas the ground urged for denying their rebate in the Notice was that the die cost was not shown in the

assessable value of the castings exported in the ARE-1, whereas duty was calculated by them and paid on the price of the castings including the value of the die and as per the rule 18 read with CBEC's Excise Manual of supplementary instructions, 2005 rebate of duty of excise paid on excisable material exported out only is allowed. Thus rebate is allowed on the value of goods exported on which duty is paid. The duty paid on die cost is not allowed as rebate as the said die cost is not appearing in the Shipping bills and items are not exported. The ground urged in the order for denying their claim for refund was that the description of the die as well as its cost/value was not included in the ARE-1s hence it did not form part of the transaction value and therefore it could not be considered as export value. The applicants were never called upon to show cause as to why the assessable value on which duty was paid was not arrived at in accordance with the provisions of section 4 of the Act or that duty paid was in excess of value determined under section 4 of the Act and hence rebate of excess duty paid could not be granted under the provisions of section 11B read with the provisions of rule 18 of the Rules. It is well settled that grounds to which the applicants had not been called to show cause, and did not form any part of the order in original could not be used to the detriment of the noticee. It is well settled that any order which goes beyond the scope of the notice is bad in law and void, in as much as it violates the principle of natural justice. The applicants rely on the decisión of the Hon'ble Supreme Court in the case of Godrej Industries Vs. Commissioner of Central Excise, Mumbai reported 2008 (229) ELT-484 in support of their contentions.

4.2 Instructions of Circular No.210/06/2000-Cx dated 3.2.2000 relied on capriciously. The Commissioner has in para 6 of the order in appeal capriciously relied on the part of the instructions given in circular No.210/06/2000-Cx dated 3.2.2000. The circular was issued to answer the doubts on the issue as to once duty was paid should rebate be reduced and if the rebate is reduced, can the manufacturer be allowed to take recredit of the duties paid through debits in RG-23A Part-II or RG-23C Part-II on the relevant export goods? The instructions make it clear that there was no case for reducing rebate and hence the question taking recredit in RG 23A Part-II or RG 23C Part-II did not arise. The applicant has relied upon some case laws.

4.3 Impugned orders are contrary to the provisions of rule 12 of the Central Excise Rules, 2002. The provisions of rule 12 provide that 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 fulfillment of such procedure, as may be specified in the notification. The provisions of rule 12 of Rules or Notification 19/2004-CE (NT) dated 6.9.2004 issued by the Central Government stipulate rebate of the duty paid and not rebate of duty payable on excisable goods should be refunded. The Applicants rely on the decision of the Hon'ble Customs Excise & Service Tax Appellate Tribunal in the case Bharat Chemicals Vs. Commissioner of central excise, Thane reported 2004 (170) ELT 568 in support of their contentions.

4.4 Excess duty paid has to be refunded and cannot be appropriated by the Central excise Authorities. If duty has been paid in excess of what is payable then applicants should have been refunded the amount due to them in as much as the refund claim filed was for refund of duty under section 11B of the Act. The Applicants rely on the decisions of the Hon'ble Customs Excise & Service Tax Appellate Tribunal in the case CCE, Delhi Vs. M.F.Rings and Bearing Races Ltd., reported 2000(119) ELT 239 (T) and the decision of the Hon'ble Govt. of India – Revisionary Authority in the case Sri Bhagirath Textiles Ltd reported 2006 (202) ELT 147-GOI.

4.5 It cannot be argued that amount received by applicants toward development of the die used to manufacture the casting exported. It is not an amount received towards or in connection with the sale of castings exported. It is additional consideration for the sale of the goods, which is not included in price of the goods, in as much as, the definition of transaction value includes price actually paid or payable for the goods when sold and any amount the buyer is liable to pay in or in connection with the sale whether payable at the time of sale or at any other time. If any amounts received other than the price charged, were to be considered to additional consideration then the definition of transaction value would become redundant, in as much as, amounts such as sales promotion expenses etc., paid by the buyer which are not

invoiced in the per piece price of goods would be termed as additional consideration and would have to be considered under rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. The provision of rule 6 of said Central Excise Valuation Rule, 2000 cover a situation where consideration other than money is received, in as much as the rule states that money value of such additional consideration has to be determined. It does not cover a situation where money is received in as much as there is no need to determine the money value of such additional consideration.

4.6 The decision of the Hon'ble Customs Excise & Service Tax Appellate Tribunal in the case Fled Industries Ltd Vs Commissioner of Central Excise in 1997(91) ELT 120 relied on by the Commissioner is not applicable to law applicable to this matter in as much as the said decision decides law based on the provisions of section 4 as it was applicable in the year 1987 and the Central Excise Valuation Rules 1975 because section ~~4 has been substituted by Act 10 of 2000, Section 94 (w.e.f. 1.4.2000) and the Central~~ Excise Valuation Rules 1975 have been superseded w.e.f. from 1.7.2000 with the Central Excise Valuation (Determination of Price Excisable Goods) Rules 2000. Also there is considerable difference between the old section 4 and the substituted section 4 and the Valuation Rules issued under the powers conferred under it and it is well settled that the ratio decindi of any decision is the principle of law applied to a particular set of facts. If the law has changed it is inappropriate to apply it to any set of facts similar or varied. Further the said decision relies on the circular No.170/4/96-Cx, dated 23.1.1996 issued by the Central Board of Excise & Customs. The said circular does not have the force of law. It is well settled the benefit of any such circular can be claimed by an assesse and the revenue department cannot take a stand to the contrary. The said decision only grants the benefit of the circular to the assesse on claiming it. Thus the said decision cannot be a binding precedent in as much it does not enunciate how the provisions of section 4 and the valuation rules have been applied to that matter.

5. Personal hearing was scheduled in this case on 28.6.2012, 8.8.2012, 12.10.2012, & 20.12.2012 Shri Anthony Mathias, Sr. Manager, Commercial appeared on behalf of the applicant who reiterated the ground of revision application. The respondent

department vide their written submission dated 28.5.2012 reiterated the contents of impugned orders.

6. Government observes that the applicant filed rebate claims of Rs.2,41,380/- on export of goods. On scrutiny of claims, it was observed that die cost charges which were not shown in ARE-1 form, have been added in impugned export invoices; and that the rebate was admissible only on value of the goods exported on which duty was paid which does not include duty of rebate paid on die cast charges. Accordingly, original authority partly sanctioned the rebate claim and disallowed rebate of Rs.2,07,525/-. Commissioner (Appeals) upheld impugned order-in-original.

7. Government observes that the rebate claim was partly allowed of duty paid on value involved in goods actually exported excluding duty paid on die cost charges. The applicant has contended that they should be allowed rebate of whole duty paid by them in terms of Board's Circular No.203/37/96-Cx dated 26.4.1996. Government observes that the appellate authority has discussed in detail the aspect of apportioning of whole value of die cost over the number of goods likely to be manufactured by such die. Government finds the observation of the appellant authority logical that the applicant has not apportioned the value of die cost and therefore Commissioner (Appeals) has rightly held that said nature of die cost cannot be added in the transaction value of present export consignment.

8. The Government observes that in terms of Board's Circular No.203/37/96-Cx dated 26.4.1996 and 510/06/2000-Cx dated 3.2.2000, AR 4 value should be determined under Section 4 of the Central Excise Act 1944. The lower authorities have determined the value in terms of Section 4 and allowed the rebate of duty paid on said value. The additional value of die cost was not taken as part of transaction value and therefore duty was not paid on said value in terms of Section 3 of Central Excise Act 1944.

9. Government notes that excess paid duty on one own volition cannot be treated as duty and it has to be treated as voluntary deposit with the Government which is required to be returned to the assesse in the manner in which it was paid. Applicant has also requested during hearing that the said excess paid duty on the value of die

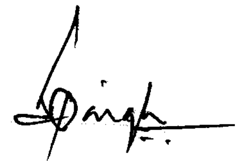
cost may be allowed to be recredited in Cenvat credit account in case rebate is found inadmissible. Government observes that said excess paid amount of duty cannot be retained without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP No.2235 & 3358 of 2007 in the case of M/s Nahar Industrial Enterprises Ltd. Vs UOI reported as 2009 (235)ELT-22(P&H) has decided as under:

> *"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."*

Hon'ble High Court has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in cenvat credit is appropriate. As such the said excess paid amount may ~~be allowed to be recredited in the Cenvat Credit Account of applicant.~~

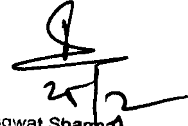
10. The revision application is disposed off in terms of above.

11. So ordered.



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

M/s. Uni Deritend Ltd.,
S.V.Road, Manpada,
Thane-400610



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

F.NO.195/857/10-RA

Order No. 152 /2013-Cx dated 25.2.2013

Copy to:

1. Commissioner of Central Excise, Mumbai-III Commissionerate, 4th Floor, Vardan Trade Sankul, MIDC Wagle Industrial Estate, Thane (West) – 400 604
2. Commissioner of Central Excise(Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra Kurla Complex, B
3. Assistant Commissioner of Central Excise, Division Wagle-II, B-91, New Central Excise Building, Wagle Industrial Estate, Thane (West) – 400 604
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(B.P.SHARMA)
OSD (Revision Application)