REGISTERED SPEED POST

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. 195/622/13/RA/151 Date of Issue: 12/02/20

ORDER NO. 163 /2020-CX /ASRA/MUMBAI DATED 03.02.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Black Rose Industries Ltd. Mumbai.

Respondent : The Commissioner of Central Excise, Mumbai-I.

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 against the Order in Appeal No. BR/41/MI/2013 dtd.13.03.2013 passed by the Commissioner Appeals-I Central Excise, Mumbai Zone-I

ORDER

1. This Revision Application has been filed by M/s Black Rose Industries Ltd, Mumbai (hereinafter referred to as "the applicant") against Order-in-Appeal No. BR/41/ MI/2013 dated 13.03.2013 passed by the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I.

2. The brief facts of the case are that the applicant, a registered dealer-exporter had exported goods procured from SEZ which had cleared the goods as DTA clearance on payment of Customs duties under Bill of Entry. The applicant after exporting the goods claimed rebate of Rs.45,614/- (Rupees Forty Five Thousand Six Hundred and Fourteen only) of Additional Duty of Customs pid on good by SEZ unit and reversed in RG-23D register.The original authority sanctioned the said rebate claim vide Order in Original No. A(Rebate)3/2012-13 dated 26.08.2012 on the bsis of certification of the DTA Bill of entry and the duty payment on the goods therein by the officers in charge of the SEZ unit.

3. The respondent department filed appeal against the aforesaid Order in Original dated 26.08.2012 on the grounds that

- as per Notification No. 19/2004 CE(NT) dated 06.09.2004, the Customs duties are not eligible for rebate under Rule 18 of Central Excise Rules,2002;
- duty paid on the clearances are customs duties and rebate of Additional Duty of Customs is not covered under Notification No, 19/2004 dated 06.09.2004 hence cannot be granted;
- the goods manufactured by the SEZ are not leviable to excise duty, rebate on the same cannot be granted under Rule 18 of Central Excise Rules, 2002;
- reversal of duty in RG-23D Register is only passing on of Cenvat credit by a dealer and cannot be construed as payment of any duty;
- the dealer has not followed the condition laid down in Notification No. 19/2004 CE(NT) dated 06.09.2004 in as much as goods were not exported directly from factory nor did they follow procedure prescribed vide Board Circular No.294/10/97-CX dated 30.01.1997, the godds have also not been cleared under Central Excise Supervision.

4. Vide Order-in-Appeal No. BR/41/ MI/2013 dated 13.03.2013, the Commissioner(Appeals)-I, Central Excise, Mumbai Zone-I by observing that the Additional Duty of Customs not being not covered under Notification 19/2004 CE (NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules,2002 cannot be granted as rebate, allowed the appeal filed by the respondent department.

5. Being aggrieved by impugned Order-in-Appeal the applicant has preferred the present Revision Application mainly on the following grounds:

5.1 the SEZ is to be treated as import for the domestic tariff area. Therefore, all the applicable duties of customs need to be borne by the buyer of goods in the DTA. Further as per Cenvat Credit Rules, 2004, Rule 3 sub-rule (1) (vii) Cenvat can be availed. Further as per CBEC Circular and Notification No. 19/2004- CE (NT) read with Rule 18 of Central Excise Rules, 2002, the input cleared as it is against which the Cenvat has been availed can be cleared as it is by debiting the equal amount of credit availed. Export is also allowed by debiting the equal amount of cenvat amount availed and under claim of Rebate. Same is the case with the Registered dealer who is registered with Central Excise, he can pass on the CVD availed as per the Bill of Entry cleared from the SEZ which is on par with import and can pass the CVD to the indigenous manufacturer when sold in India under Central Excise Invoice or can export under claim of rebate on export. When the said goods are cleared to DTA unit they can avail the Cenvat whereas the same goods exported why the Registered dealer should not claim the rebate of CVD;

5.2 They have cleared the goods under ARE-1 following the procedure of export from the Registered Dealer's premises on debiting the CVD on the Bill of Entry showing as sale in RG-23D register;

5.3 All the sale from SEZ is treated as import. In such cases if he is a manufacturer in terms of the Cenvat Credit Rules, 2004 on receipt of the Customs duty' paid goods from the SEZ unit, the DTA buyer is entitled to take a credit of the CVD duty paid and use this CVD to pay the duty on the finished goods cleared of his own manufactured goods (or output services). The credit is admissible to the extent of the Additional Duty of Customs only. For this purpose Rule 9 of the Cenvat Credit Rules,2004 recognizes Bill of Entry as a valid documents for claiming Cenvat credit;

5.4 CBEC Circular has clarified on 15.4.2008 that in respect of goods cleared to DTA from SEZs, the duty to be charged would be the aggregate of duties of Customs and as such for the purposes of levy of CVD as per Section 3 of

the Customs Tariff Act,1975, the same would be levied as per the effective rate of excise duty on similar goods manufactured in India;

5.5 Since they are Registered with Central Excise as a Dealer, they have taken credit and receipt of the goods under Bill of Entry in their R.G.23D register. The Cenvat Credit Rule -9, Sub section (a) (iii) and (iv) is also applicable in this case if the same is being passed on to the manufacturer in India. The buyer can avail the Cenvat credit on the same. The Explanation -1 to Notification No. 19/2004-C.E: (N.T.) dated 6.9.2004 is in respect of payment of duty by the Indigenous Manufacturers and Dealers who are registered under Central Excise. They also paid duty as per Explanation -1 (a) (i) at the time of clearance for export as per Central Excise Act,1944 from the credit availed in the RG 23 D register of the Additional Duty of Customs (Countervailing duty equal to Central Excise duty). The Commissioner (Appeals) did not pass any order on the grounds of cross objections filed by them;

5.6 The deficiencies noticed in this case like declarations by the exporter on the body of the ARE-1 duty payment particulars pertaining to the original supplier have been clarified by them. As regards endorsement of the jurisdictional Range Supdt on the backside of the RAE-1, the exporter has admitted that the mistake was due to filing of refund claim for the first time and this lapse is more of a technical nature;

5.7 They have followed the proper procedure and procedural mistake if any has been condoned by the Adjudicating authority. The mandatory condition of export (i) Physical Export of goods, (ii) Duty payment on the goods exported and (iii) Remittances received from abroad needs to be certified. All these three Mandatory conditions have been verified and found correct by the Adjudicating authority

6. A personal hearing in this case was held on 23.10.2019 and was attended by Mr. C.P. Vyas, Chartered Accountant and Company Secretary on behalf of the applicant. He reiterated the grounds of revision application and pleaded to set aside the impugned order and restore the Order in Original granting the rebate.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original and Order-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application.

8. Government observes that the applicant had procured goods from SEZ unit which had cleared the goods as DTA clearance on payment of Customs duties under

DTA Bill of Entry. The applicant on exporting the goods so procured from the SEZ unit claimed the rebate of the amount of Additional Duty of Customs of Rs. 45,614/- paid on the goods by SEZ unit. The rebate claim was sanctioned by the Adjudicating Authority on the basis of certificate of genuineness of the DTA Bill of Entry and the duty payment of goods therein by the officers in charge of the SEZ Unit. However, the Commissioner (Appeals) while allowing the appeal filed by the department observed that duty paid on the DTA clearances are Customs Duties and rebate of Additional duty of Customs is not covered under Notification No. 19/2004CE(NT) dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002 cannot be granted.

9. Regarding the issue involved i.e. whether the Additional duty of Customs levied under Section 3 of the Customs Tariff Act can be claimed as rebate under Notification 19/2004-CE dated 06.09.2004, Government notes that there are specific provisions for granting refund/rebate of duty of excise paid on the exported goods as well as the inputs used in the manufacture of export goods under the Central Excise Act, 1944, Central Excise Rules, 2002 and Cenvat Credit Rules, 2004 read with the relevant Notifications issued thereunder. Rule 18 of Central Excise Rules, 2002 provides for rebate of excise duty paid on the export goods as well as the duty paid on materials used in the manufacture of export goods subject to the procedure, limitation and condition specified in the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and 21/2004-C.E. (N.T.), dated 6-9-2004.

10. Government observes that vide Notification No. 12/2007-C.E. (N.T.), dated 1-3-2007 additional duty of Customs (CVD) levied under Section 3 of Customs Tariff Act, 1975 has been added in the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. As such, by virtue of said amendment, the rebate of CVD paid on imported materials has been allowed as rebate, as per the statute. However, this amendment is only in respect of Notification No. 21/2004 -C.E. (N.T.), dated 6-9-2004 which deals with the matter relating to sanctioning of rebate of duty paid on inputs which are used in the manufacturing of the exported goods. However, till date there is no amendment made in Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 to incorporate the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise, for granting rebate on finished goods. Government observes that in the instant case the applicant has filed the rebate claim in respect of finished goods

exported under Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and not a rebate of duty paid on inputs used in the manufacture of final products exported, under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. Therefore, the applicant is rightly held ineligible for rebate of Additional Duty of Customs under Notification 19/2004 CE (NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules,2002, by the appellate authority.

11. In view of the forgoing discussion, Government upholds the Order-in-Appeal No. BR/41/ MI/2013 dated 13.03.2013, passed by the Commissioner (Appeals)-I, Central Excise, Mumbai Zone-I.

12. The revision application is thus rejected being devoid of merits.

13. So, ordered.

( SEEMA ARORA )
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.163/2020-CX (WZ) /ASRA/Mumbai Dated 03.02.2020.

To,

M/s Black Rose Industries Ltd.,
145/A Mittal Towers, Nariman Point,
Mumbai- 400 021

Copy to :

1. Commissioner of CGST & CEx. Mumbai South, 13th Floor, Air India Building, Nariman Point Mumbai 400 021.
2. The Commissioner of CGST & CEx. (Appeals-I) , Mumbai, 9 Th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400012.
3. The Deputy / Assistant Commissioner, of CGST, & CEx. Division-II, Mumbai South, 13th & 15th Floor, Air India Building, Nariman Point Mumbai 400 021.
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.