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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.195/223/WZ/2018-RA /1862

Date of Issue: 29.03.2023

ORDER NO. 196 /2023-CX (WZ) /ASRA/Mumbai DATED 29.03.2023
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 Mercedes-Benz India Pvt. Limited,
Plot No.E-3, Chakan Indl. Area, Phase -III,
Khed, Pune - 410 501.

Applicant : The Pr. Commissioner of CGST & Central Excise,
Pune - I Commissionerate.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.PUN-EXCUS-
001-APP-0267/18-19 dated 03.08.2018 passed by
Commissioner of Central Tax (Appeals - I), Pune.

ORDER

The subject Revision Application has been filed by M/s Mercedes-Benz Private Limited, Pune (here-in-after referred to as 'the applicant) against the subject Order-in-Appeal dated 03.08.2018 which decided an appeal filed by the applicant against the Order-in-Original dated 06.12.2017 passed by the Deputy Commissioner, Central Tax, Division IV, Pune - I, which in turn, had rejected the rebate claim filed by the applicant.

2. Brief facts of the case are that the applicant are manufacturers of 'motor vehicles' and hold Central Excise registration. They imported certain inputs to be used in the manufacture of final products, however, the applicant exported the same back to their supplier as the said inputs were found to be defective. While doing so, they paid excise duty on the exported goods in terms of Rule 3(5) of the Cenvat Credit Rules, 2004 which was equivalent to the amount of Cenvat credit availed by them on the same. Thereafter, the applicant filed a rebate claim for Rs.1,21,632/- in respect of duty paid on the goods exported under Rule 18 of the Central Excise Rules, 2002. The original authority rejected the said claim on the grounds that -

- the goods, i.e. motor vehicle parts were exported on a 'free of cost basis' and hence did not involve any transaction of foreign remittance; and
- the rebate claim included the component of SAD amounting to Rs.32,333/- and that there was no provision for refund of such Additional duty;

Aggrieved, the applicant filed appeal with the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 03.08.2018. The Commissioner (Appeals) found that since the goods exported were 'free of cost', the rebate claim had failed to satisfy condition 2(e) of notification no. 19/2004-CE(NT) dated 06.09.2004 which required the market price of the excisable goods at the time of exportation to be not lesser than the amount of

rebate of duty claimed. The Commissioner (Appeals) rejected the appeal of the applicant on this ground alone.

3. Aggrieved, the applicant has filed the subject Revision Application on the following grounds: -

(a) They had fulfilled all the conditions laid down under notification no.19/2004-CE(NT) dated 06.09.2004 and that the Commissioner (Appeals) had erred in holding that they had violated the condition prescribed at 2(e) as he failed to appreciate that the term 'market price' mentioned therein was not to be interpreted as 'transaction value'; that the market price of the goods was Rs.3,67,770.37, which was much higher than the rebate claimed.

(b) That they had in any event received free of cost replacement in lieu of the defective goods exported by them; that in such situation the question of foreign exchange realization did not arise; they placed reliance on the decision of the Hon'ble Tribunal in the case of CCE, Raipur vs Simplex Engg. & Foundary Works P. Ltd [2016 (333) ELT 112 (Tri.-Del)] in support of their argument;

(c) That there was no requirement to receive consideration in foreign exchange in the case of export of goods in the notification no. 19/2004-CE(NT) dated 06.09.2004;

(d) That the duty paid by them was in terms of Rule 3(5) of the Cenvat Credit Rules, 2004 at the time of export of goods and that the same was eligible for rebate under Rule 18 of the Central Excise Rules, 2002; they sought to place reliance on the several decisions of the higher Courts including the decision of the CCE Raigad vs Micro Inks Limited [2011 (270) ELT 360 (Bom.)] which had been upheld by the Hon'ble Supreme Court;

(e) That the impugned Order-in-Original departed from earlier decisions on the same issue in their own case and cited a decision of the Commissioner (Appeals) and two decisions of the original authority wherein they were allowed the rebate claims in similar situations; they submitted that the

impugned Order-in-Appeal had been passed without any change of facts or the law and is thus passed in pursuance to a mere change of opinion, which was not sustainable in law; they again cited several decision in support of this argument.

In view of the above, the applicant submitted that the impugned Order-in-Appeal is liable to be quashed and set aside.

4. Personal hearing in the matter was held on 29.12.2022 and Shri Arun Jain and Ms Dhruv Shah, both Advocates appeared on behalf of the applicant. They submitted that goods were sent for replacement by debiting credit of CVD and SAD availed on the same. They contended that goods had inherent value and were exported on payment of duty, therefore rebate was admissible. They submitted additional submission in the matter, which was a compilation of the Rules and case laws referred to them in their application.

5. Government has carefully gone through the relevant case records, the written and oral submission and also perused the said Order-in-Original and the impugned Order-in-Appeal.

6. Government notes that in the present case the goods exported were 'inputs' for the applicant which were imported by them earlier, on which they had paid CVD and SAD at the time of import and had subsequently availed Cenvat credit of the same. Government notes that the respondent, on finding that the said inputs were defective, exported the same and while doing so, reversed the quantum of credit, which included SAD, availed by them on such inputs; the present issue pertains to the rebate/refund claim of such duties paid by the applicant.

7. Government notes that one of the grounds on which the original authority had rejected the rebate claim was that the export did not involve any transaction in foreign exchange and also notes that the Commissioner (Appeals) is silent on this issue. Government finds that the applicant has submitted that the goods exported were defective goods and that they had

received replacements against these goods free of cost. Government finds that the applicant had submitted this explanation before the lower authorities and the same has not been negated by either the original authority or the Commissioner (Appeals). Given the nature of this transaction it is clear that the same will not involve any monetary transaction, involving foreign exchange or otherwise. Government further notes that notification no.19/2004-CE(NT) dated 06.09.2004, which prescribes the conditions and limitations for claiming rebate, does not prescribe any condition that such exports should involve a transaction in foreign exchange. Government finds support in the decision of the Hon'ble Tribunal in the case of CCE, Raipur vs Simplex Engineering & Foundry Works P. Limited [2016 (333) ELT 112 (Tri.-Del.)] wherein, in a case where the exporter had supplied goods free of cost in lieu of defective goods exported earlier, the Tribunal had held that the question of foreign exchange would not arise as the export goods were free replacement for defective goods and that the refund claim could not be denied. Thus, Government finds that this ground, on which the original authority rejected the rebate claim of the applicant, to be erroneous and without any legal basis.

8. Further, Government finds that the Commissioner (Appeals) had upheld the order of the original authority on the sole ground that the rebate claim had failed to satisfy condition 2(c) of notification no.19/2004-CE(NT) dated 06.09.2004, which required the market price of the excisable goods at the time of exportation to be not lesser than the amount of rebate of duty claimed, as the goods being exported were 'free of cost' and hence its value would be NIL. Government finds that this a blinkered view of the condition specified at Condition 2(c) as it merely states "that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed". As stated above, in this case the applicant had received free replacement in lieu of the defective goods they exported and hence the value of the goods exported cannot be held to be 'NIL' as held by the Commissioner (Appeals). The applicant has submitted that the market price of the goods in question was Rs.3,67,770.37, which the Government finds is higher than the rebate claimed and hence Government finds that the condition at 2(c) of the said notification stands satisfied. In view of the above, Government finds the

ground on which the Commissioner (Appeals) upheld the order rejecting the rebate claim filed by the applicant to be erroneous and sets the same aside. Further, Government finds the reliance placed by the Commissioner (Appeals) on the decision of the Revisionary Authority in the case of Ranbaxy Laboratories Limited [2013 (293) ELT 137 (GOI)] to be incorrect, as the said case involved export of samples which were not meant for sale and hence had no commercial value, which as discussed above, is not true in the present case.

9. Further, Government finds that the second ground on which the original authority had rejected the rebate claim was that the same involved a component of SAD and that rebate of SAD was not allowed in terms of Section 11B of the Central Excise Act, 1944, as it only provided for refund of duty of excise and interest. In this connection, Government finds that the respondent had paid duty on the goods cleared for export in terms of Rule 3(5) of the Cenvat Credit Rules, 2004, which lays down that when inputs on which credit has been availed are removed from the factory, the manufacturer shall pay an amount equal to the Cenvat credit taken on such inputs. Government notes that the said Rule uses the word 'amount' and the same cannot be construed to be 'duty of excise'. Government notes that when like goods are cleared in the DTA, the duty of excise payable is equal to the quantum of CVD payable on such goods. Thus, Government finds that in the present case the applicant will be eligible to the rebate of the quantum of CVD paid by them on the said goods and they will not be eligible to claim the rebate of the amount paid towards the SAD component and accordingly holds so.

10. Having held so, Government finds that it is not in dispute that the goods in question have been exported and that duty on the same has been paid by the applicant. Given these facts, Government finds that Revenue cannot retain the amount paid by the applicant towards SAD on the goods which have been exported and the same needs to be paid back to the applicant in the manner in which it was paid by them. Government finds that the Hon'ble High Court of Punjab and Haryana in the case of Nahar Industrial Enterprises Limited vs UOI [2009 (235) ELT 22 (P&H)] had held that such amounts cannot be retained by the Government without authority of law and that the same

has to be paid back in the manner paid by the exporter. In view of the same, Government holds that the amount of duty paid by the applicant on the said export consignment should be refunded to them in the manner paid by them, under the existing law.

11. The Revision Application is disposed of in the above terms.

Shrawan Kumar
29/3/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 36/2023-CX (WZ) /ASRA/Mumbai dated 29.03.2023

To,

M/s Mercedes-Benz India Pvt. Limited,
Plot No.E-3, Chakan Indl. Area, Phase -III,
Khed, Pune - 410 501.

Copy to:

1. The Pr. Commissioner of CGST & Central Excise, Pune - I,
GST Bhavan, ICE House, Opp. Wadia College, Pune - 411 001.
2. Commissioner of Central Tax (Appeals -I), Pune, 41/A, F-Wing, 3rd floor,
GST Bhavan, Sassoon Road, Pune - 411 001.
3. M/s Lumiere Law Partners, 23/24, Mittal Chambers, 2nd floor, Nariman
Point, Mumbai - 400 021.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.