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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. 195/999/2013-RA/1037(a)

Date of Issue: 24/07/2018

ORDER NO. 202 /2018-CX (SZ) /ASRA/MUMBAI DATED 25.06.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s L.G. Balakrishnan & Bros. Limited.

Respondent : Assistant Commissioner of Central Excise,
Coimbatore Division.

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No. CMB-CEX-000-APP-331-13 dated 25.09.2013 passed
by the Commissioner of Central Excise (Appeals),
Coimbatore.



ORDER

These Revision applications are filed by M/s L.G. Balakrishnan & Bros. Limited, Coimbatore, (hereinafter referred to as 'applicant') against the Order-in-Appeal as No. CMB-CEX-000-APP-331-13 dated 25.09.2013 passed by the Commissioner of Central Excise (Appeals), Coimbatore.

2. Brief facts of the case are that the applicant, a 100% EOU and manufacturers of Parts and accessories of Motor Vehicles, had cleared the finished products for export on payment of duty under claim for rebate and had filed a 30 rebate claims for a total amount of Rs.1,07,06,598/-(Rupees One Crore Seven Lakh Six Thousand Five Hundred Ninety Eight only). As the applicant was 100% EOU and are fully and unconditionally exempted from payment of duty vide Notification No.24/2003-CE dated 31.03.2003 and hence the duty paid on the goods exported on their volition was not in accordance with law. Therefore, they were ineligible for rebate. The applicant had also availed Cenvat Credit of duty paid in respect of inputs purchased for the manufacture of goods that stood exempted under Notification No.24/2003. A show cause notice was issued on 12.06.2012 and after due process of law the adjudicating authority rejected all the 30 rebate claims filed by the applicant under Section 5A(1A) and Section 3 of Central Excise Act, 1944 read with Rules, 2002 read Rule 18 of Central Excise Rules, 2002 read with Notification No.24/2003-CE dated 31.03.2003 as amended.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals) who vide impugned Order in Appeal No. CMB-CEX-000-APP-331-13 dated 25.09.2013 rejected the applicant's appeal.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed a present Revision Application mainly on the following grounds:

- 4.1 **During the period of export on payment of duty, the Applicant was not a 100% EOU. Therefore, the Applicant is not governed by Notification No. 24/2003-CE.**

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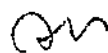
A1 . 100% EOUs are governed by Chapter 6 of the Foreign Trade Policy. A 100% EOU is allowed to function only on approval by the Development Commissioner by issue of Letter of Permission (LoP). The LoP is valid only for a period of 5 years as could be seen from the conditions. attached to the LoP itself In the Applicant's case herein, the LoP is dated 12.04.2006. The validity of 5 years ended on 11.04.2011.

A2. The Applicant in its letter dated 12.04.2011 addressed to the Development Commissioner intimated that it had decided to opt out of 100% EOU status. The Development Commissioner, in his letter dated 21.07.2011 had no objection in principle for the Applicant opting out of the EOU Scheme.

A3. Ultimately, on 16.12.2011 the Development Commissioner allowed the exit from the EOU Scheme. The Applicant submits that this acceptance of the Development Commissioner dates back to 12.04.2011 on which date the 5 year period ended. It is because, by the operation of law, the Applicant was no longer an EOU with effect from 12.04.2011. Further, the Applicant had also expressly said that the status of 100% EOU is not renewed.

A4. All happenings after 12.04.2011 namely, the 'in principle approval', asking the Applicant to pay up the duties involved on the stocks involved, the payment of duty of Rs. Rs. 33,27,725/- on 30.07.2011 in cash for the stock of goods, 'final exit order' are all procedures in furtherance to the expiry of / non-renewal of the EOU status.

A5. The intervening compliance period from 12.04.2011 to 16.12.2011 cannot give the Applicant the status of EOU as it prevailed in the 5 years period. It is because the Applicant could not have received any goods without payment of duty as a 100% EOU even when the Green Card/LoP had expired, when in principle approval to come out of EOU status has been given.




and even when the Applicant had expressed its intention to discontinue the EOU status.

A6. That in the intervening period from 12.04.2011 to 16.12.2011 the unit is considered as a 100% EOU only for technical purposes of collection of customs duty, excise duty, interest, penalty etc. for non fulfilment of NFE obligation, if any. It is only for that purpose, the unit is 100% EOU.

A7. That the unit cannot continue to obtain duty free goods and add upto its own liability as well as that of Government even when written intimation has been given as to the non-renewal of EOU status.

A8. That the impugned Order holding the Applicant to be a 100% EOU, even when an express intimation was given to come out of EOU status, to deny the rebate is incorrect and merits to be set aside.

- 4.2 The exemption given under Notification Ne. 24/2003-CE dated 31.03.2003 to 100% EOU is not absolute and unconditional. The rejection of Rebate Claim on the ground of unconditional exemption is incorrect.
- 4.3 Assuming without admitting that the Applicant was a 100% EOU during the material time, even then the EOU can export on payment of duty under claim for rebate. There is no bar in law. This issue is also no longer res integra.
- 4.4 The denial of rebate is against the CBEC Circular No. 687/3/2003 -CX dated 3.1.2003
- 4.5 Denial of rebate is against the policy of the government.
- 4.6 Even if duty is paid on exempted goods, the duty so paid is to be refunded.
- 4.7 EOU is entitled for Cenvat Credit.

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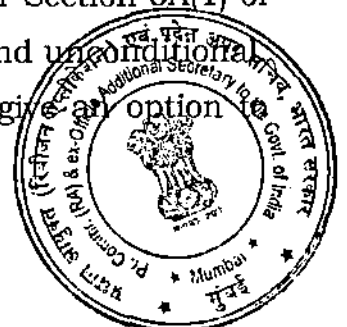
- 4.8 The findings of the Order in Original that rebate is asked by the applicant to encash accumulated Cenvat Credit is incorrect.
- 4.9 In any case, the rebate involved on exports after 30.07.2011 should be paid to the Applicant. The debit made in Cenvat Credit Account should be restored by the Department.

5. A Personal hearing was held in this case on 29.01.2018 and Ms. Anjali Hirawat, Advocate duly authorized by the applicant appeared for hearing. None appeared on behalf of the respondent department. The Advocate reiterated the submission filed in Revision Application and also the written arguments & case laws. In view of the same it was pleaded that the instant Revisions Application be allowed Order in Appeal be set aside.

6. 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. The issue before the Government for consideration is whether the applicant is eligible for rebate claimed for goods exported on payment of duty period June 2011 to December 2011 when the applicant was still considered a 100% EOU as it had not received final exit Order from the Assistant Development Commissioner of MEPZ.

7. Government observes that the rebate claims filed by the applicant for the goods exported on payment of excise duty between period June 2011 to December 2011 amounting to Rs.1,07,06,598/-(Rupees One Crore Seven Lakh Six Thousand Five Hundred Ninety Eight only) were rejected by the original authority on the grounds that the final products were exported on payment of duty during the period when the Applicant was a 100% EOU; the applicant's exit from EOU scheme was only from 16.12.2011 as per the Final Exit Order of the Development Commissioner; EOU operates under Notification No. 24/2003 CE dated 31-3-2003 issued under Section 5A(1) of Central Excise Act 1944 and this Notification is absolute and un-conditional. Section 5A(1A) of the Central Excise Act, 1944 does not give any option





EOUs to pay duty and thereafter claim rebate of the duty paid. As per Board's letter F. No. 269/26/09-CX dated 23.04.2010, in terms of Section 5A(1A) of Central Excise Act, 100% EOUs do not have an option to pay duty and thereafter claim rebate of duty paid on the final goods cleared for export. This Order in Original rejecting the rebate claims of the applicant was upheld by the Commissioner (Appeals) vide impugned Order No. CMB-CEX-000-APP-331-13 dated 25.09.2013.

8. Government further observes that the applicant in his revision application has interalia contended that is that a it was granted the Letter of Permission (LoP) to operate as an 100% EOU vide Development Commissioner's letter dated 12.04.2006 and started commercial production from 01.03.2007; they did not renew the EOU status at the end of 5 years and opted to go out of EOU Scheme; that the LoP granted was valid for 5 years; that at the end of the 5 year period (12.04.2011); they applied for opting out of 100% EOU scheme by applying to the Development Commissioner on 12.04.2011 requesting for debonding of the EOU; the 'in principle approval', for debonding was granted by the Development Commissioner on 21.07.2011; they received 'no dues' certificate from the Excise Department on 23.11.2011 and the final exit Order was given by the Assistant Development Commissioner of MEPZ on 16.12.2011.

9. Based on their aforesaid contention the applicant argued that in the intervening period between 12.04.2011 to 16.12.2011 the unit was considered as a 100% EOU only for technical purposes for collection of customs duty, excise duty, interest, penalty etc. for non fulfilment of NFE obligation, if any and the unit cannot continue to obtain duty free goods and add upto its own liability as well as that of a Government and therefore, even when express intimation was given to come out of EOU Status, denying of rebate is incorrect.

10. Government observes that as per EXIM policy a unit goes out of EOU scheme only when the final exit order is given by the Development Commissioner after obtaining a no-objection certificate.



jurisdictional Customs and Central Excise authorities on payment of applicable duties on all capital goods/raw materials/finished goods, etc., in stock and after canceling the customs licence. Further, Appendix 14-I-L of the Hand Book of Procedures of EXIM Policy states that till the date of final exit order the unit will continue to be treated as an EOU.

11. Government's aforesaid view finds support from the contents of the Final Exit Order dated 16.12.2011 issued by the Assistant Development Commissioner vide Letter F.No. A/2006/027/EOU/TN, which is reproduced below:

FINAL EXIT ORDER

Whereas Mis. L.G.Balakrishnan & Bros. Limited S.F.No.195, kondayampalayam Village, Pillaiyar Kovil Street, Near Power House, Vaiyampalayam, Coimbatore -642 110 were granted approval for setting up 100% EOU unit for manufacture and export of Flanges and Eccentric Shaft vide LOP No. A/2006/027/EOUNN dt.12.04.2006. Whereas the said unit had applied to this office NOC for in principle exit of their unit from EOU scheme to EPCG Scheme vide their letter dated 02.07.2011 and 18.07.2011. Permission was granted vide this office letter dated 21.07.2011 to obtain NOC from Central Excise, Coimbatore.

1. As per Para 6.18 (a), (b) & (d) of Foreign Trade Policy 2009-2014, with the approval: of Development Commissioner, EOU/EPZ Units may be allowed to exit subject to payment of Customs and Excise duties applicable at the time of exit and also penalty that may be imposed for non-fulfillment of the conditions of Letter of Permission referred to above. The Assistant Commissioner, Coimbatore II Division Coimbatore vide their letter.No. C.No.V111/40/02/2011- customs dated 23.11.2011 have stated that the unit has paid appropriate duty on the depreciated value of debonded goods and EPCG authorization for zero duty and thereby the unit have discharged all the duty and liabilities.

2. In view of taking the above aspects into consideration, M/s. L.G.Balakrishnan & Bros. Limited , S.F.No.195, Kondayampalayam Village, Pillaiyar Kovil Street, Near Power House, Vaiyampalayam, Coimbatore



hereby allowed for final exit from 100% EOU status in respect of Letter of Permission No. A/2006/027/EOU/IN dt.12.04.2006 and the unit have to comply with industrial, locational environment or other laws, rules and regulations in force for EPCG units.

3. This final exit order has been issued subject to the condition of Para 6.18 (a), (b) & (d) of Foreign Trade Policy 2009-14 i.e., if the unit has not achieved the obligations under the scheme, the exit shall also be subject to payment of penalty as may be imposed by the competent authority. Accordingly the company has executed LUT in Appendix 14 IL of Hand Book of Procedure with Development Commissioner MEPZ. It has been stated that as per EXIM policy a unit goes out of EOU scheme only when the final exit order is given by the Development Commissioner after obtaining a no-objection certificate from the jurisdictional Customs and Central Excise authorities on payment of applicable duties on all capital goods/raw materials/finished goods, etc., in stock and after canceling the customs licence.

4. The Legal Undertaking executed by the company as 100% EOU, and Green Card and LOP issued to them is treated as cancelled.

5. This issues with the approval of Development Commissioner, MEPZ-SEZ Tambaram, Chennai.

From the reading of the aforesaid communication (para 2) it is clear that applicant is allowed for final exit from 100% EOU status in respect of Letter of Permission No. A/2006/027/EOU/IN dtd. 12.04.2006 w.e.f. the date of this communication i.e. 16.12.2011 and not before. Hence, Government holds that the applicant was rightly considered, during the period of dispute, as EOU unit by the original authority as well as by the Commissioner (Appeals) until issuance of Final Exit Order i.e.16.12.2011 and therefore were governed by Notification No. 24/2003-C.E only.

12. Government in this regard, also relies on Government of India Order No. 1604/2012-CX. dated 20-11-2012 in RE: Ginni International Ltd. (313) E.L.T. 913 (G.O.I.)]. In this case, while deciding the identical issue of



denial of rebate of duty paid on finished goods exported under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. on the ground that the clearances made by the applicants were not liable to duty in terms of Notification No. 24/2003-C.E., since the clearances made prior to issue of debonding certificate shall be deemed to have been made by a 100% EOU, Government, in its above referred Order observed as under :

9.4 As per Para 6.18 of FTP 2004-09 it is clearly mandated that after deposit of duties and obtaining 'No Dues Certificate' the unit would apply to Development Commissioner for final debonding and thereafter the Development Commissioner shall issue the final debonding order. As per Para 6.18 of FTP 2004-09 the unit got debonded on 31-3-2008 vide Development Commissioner (SEZ) final debonding order No. 4-211/94-100% EOU/2009, dated 31-3-2008. Applicant has also declared their status as 100% EOU in the relevant Shipping Bill. Government does not find much force in the contention of the applicants that issuing debonding order is procedural formality only. As such Government agrees with the findings of Commissioner (Appeals), that said 100% EOU got converted into DTA unit on 31-3-2008 after issuance of final debonding order by Development Commissioner, SEZ.

10. Government further notes that the Notification No. 24/2003-C.E., dated 31-3-2003 issued under Section 5A(1) of Central Excise Act, 1944, exempts goods manufactured by 100% EOU and cleared for export from whole of duty unconditionally. Therefore in view of provisions of sub-section (1A) of Section 5A, the applicant manufacturer has no option to pay duty. Applicant has contended that the said notification is conditional as the duty is payable on DTA clearances. Government notes that there is no condition for availing exemption from payment of duty on goods cleared for exports. Normally the 100% EOU has to clear all the goods manufactured by them for exports as per the EOU scheme. Such units can clear the goods in DTA with prior permission of Development Commissioner. Since there is no condition



the notification for availing exemption to goods manufactured by 100% EOU and cleared for export, the provisions of sub-section (1A) of Section 5A are applicable and no duty was required to be paid on such exported goods. The duty paid without authority of law cannot be treated as duty paid on the exported goods. As such rebate claim is not admissible in terms of Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Government finds support from the observations of Hon'ble Supreme Court in the cases of M/s. ITC Ltd. v. CCE reported as 2004 (171) E.L.T. 433 (S.C.), and M/s. Paper Products v. CCE reported as 1999 (112) E.L.T. 765 (S.C.) that the simple and plain meaning of the wordings of statute are to be strictly adhered to. CBEC has also clarified vide letter F.No. 209/26/09-CX.6, dated 23-4-2010 (para 2) as under:

"The matter has been examined, Notification No. 24/2003-C.E., dated 13-3-2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A (1A) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

13. Government relying on EXIM Policy and also applying the rationale of the aforesaid GOI Order, holds that the applicant was 100% EOU till 16.12.2011 and was fully and unconditionally exempted from payment of duty vide Notification No.24/2003-CE dated 31.03.2003 and hence the duty paid on the goods exported on their volition was not in accordance with law and hence rebate of the same is not admissible to the applicant in terms of Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

14. Further, notwithstanding the above Government observes that when the goods are absolutely exempted from payment of duty, the assessee cannot pay duty as per Section 5A(1A) proviso wherein it has been provided "that where an exemption under sub-section (1) in respect of any excisable goods from the whole of duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty




of excise on such goods". The Notification No. 24/2003 CE dated 31-3-2003 issued under Section 5A(1A) of the Act, grants exemption from whole of duty of excise absolutely. So applicant was required not to pay duty. The amount so paid cannot be treated as duty under Section 3 of the Central Excise Act and therefore, not admissible as rebate under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-1-2004. Moreover when goods are exempted from payment of duty, no Cenvat credit is permissible under Rule 6(1) of Cenvat Credit Rules, 2004. Therefore, no recredit is permissible in such cases where excise duty payable was nil.

15. In the above circumstances, Government does not find any infirmity in impugned Orders-in-Appeal and hence, upholds the same.

16. Revision application is thus dismissed being devoid of merit.

17. So, ordered.


25/11

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

ORDER No. 202 /2018-CX (SZ) /ASRA/Mumbai Dated 25.06.2018

To,
M/s. L.G.Balakrishnan & Bros. Limited,
S.F.No.195,
Kondayampalayam Village,
Pillaiyar Kovil Street, Near Power House,
Vaiyampalayam, Coimbatore -642 110.

ATTESTED


24/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST Coimbatore, No. 6/7, A.T.D. Street, Course Road, Coimbatore-641 018.



2. The Commissioner of CGST (Appeals-I) Coimbatore, Central Revenue Building, Bibikulam, Madurai -625002
3. The Deputy / Assistant Commissioner of CGST ,Coimbatore Division-II 1441, ELGI Building, Trichy Road, Coimbatore 641 018.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

ATTESTED

24 MARCH 2014
(A.F.) (Additional Secretary)

