

REGISTERED  
SPEED POST



F.No. 198/92/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue: 18/4/18...

~~ORDER NO. 208/2018 = Ex dated 17-4-2018 OF THE GOVERNMENT  
OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL  
EXCISE ACT, 1944.~~

SUBJECT : Revision Application filed under section 35EE of  
Central Excise Act, 1944, against the Order-in-  
Appeal No.61-63(VC)/JPR-II/2013 dated  
28.06.2013, passed by the Commissioner  
(Appeals) Customs and Central Excise Jaipur-II.

APPLICANT : Commissioner of Central Excise, Jaipur-II

RESPONDENT : M/s Ercon Composites

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ORDER

A Revision Application No. 198/92/13-RA dated 18.09.2013 has been filed by the Commissioner of Central Excise, Jaipur-II (hereinafter referred to as the applicant) against Order-In-Appeal No. 61-63(VC)/JPR-II/2013 dated 28.06.2013, passed by the Commissioner of Central Excise (Appeals), Jaipur-II rejecting the appeal of the applicant and upholding the order of the original adjudicating authority.

2. Brief facts of the case leading to the filing of the Revision Application are that M/s Ercon Composites (respondent) had filed rebate claims of Rs. 4,61,885/-, Rs. 2,90,007/- and Rs.2,26,109/- in terms of notification no. 19/2004-CE(NT) dated 06.09.2004 and the same were allowed by the jurisdictional Deputy Commissioner. Being aggrieved, the applicant filed an appeal with Commissioner (Appeals) with a request to set aside the Deputy Commissioner's order sanctioning the rebate claims. However, it did not succeed and as a result the applicant has filed this Revision Application before the Government mainly on the ground that the duty paid by the 100% EOU at the time of debonding of the unit cannot be treated as payment of duty on the exported goods by the applicant as envisaged in Rule 18 of Central Excise Rules and notification no. 19/2004CE(NT) dated 6.9.2006 and accordingly the Commissioner (Appeals) has wrongly upheld the O-I-O sanctioning rebate of the duty.

3. Personal hearing was held on 09.04.2018 and Sh. O.P. Agarwal, Chartered Accountant, appeared for the respondent and relied upon CESTAT's order dated 12.12.2013 in the case of Fateh Granites Ltd. He also requested for a week's time for additional submissions. But he did not furnish any other submission within specified time. Hence, this case is taken up for a decision on the basis of available case records. However, earlier the respondent had filed the reply in this matter vide their letter dated 31.01.2014 stating that the exported goods were duty paid and the rebate of duty is not a benefit extended to manufacturer.

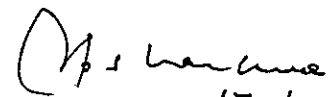
4. The Government has examined the matter and found that M/s Ercon Composites, a 100% EOU, opted out of EOU scheme for which ~~the~~ it was required to pay Central Excise duty equivalent to Customs duties on all inputs, capital goods and

finished goods etc. as a pre-condition for allowing debonding of the EOU unit. Accordingly, the 100% EOU paid Central Excise duty and the jurisdictional Assistant Commissioner issued NOC to the Development Commissioner before it was debonded and the unit was converted into DTA unit which is the respondent in this case. Thus the Central Excise duty as a condition for debonding was paid by the 100% EOU and not by the respondent DTA unit which came into existence only afterwards. Some finished goods on which Central Excise duty had been paid by the 100% EOU as a pre-condition for debonding of the goods were exported by the DTA unit and the rebate of duty was claimed by the respondent, M/s Ercon Composites, against the exported goods which were allowed by the original as well as the first appellate authority considering the exported goods as duty paid by the respondent. However, applicant has questioned the order of the Commissioner (Appeals) on the ground that duty paid by the 100% EOU at the time of debonding of the goods cannot be considered as payment of duty at the time of export of the goods by the respondent as is envisaged in Rule 18 of Central Excise Rules 2002 & notification 19/2004-CE(NT) dated 06.09.2004 and consequently rebate of duty is not admissible to the respondent

5. The above facts are not controverted by the respondent also by filing a reply or during the personal hearing and the consultant of the respondent merely relied upon CESTAT's order dated 11.12.2013 in the case of Fateh Granites Ltd. Thus, it is not in dispute that the 100% EOU had only paid Central Excise duty at the time of debonding of Custom bonded goods, but no Central Excise duty was paid by the respondent when the exported goods were cleared from its factory under ARE-1 for which rebate of duty is allowed. While no one can deny the fact that the Central Excise duty was paid by the 100% EOU earlier, the Government fully agrees with the applicant that it was a payment of Central Excise duty for DTA clearance and mainly to compensate the full exemption from duties enjoyed by the 100% EOU earlier in respect of all type of goods. Undoubtedly it was not a stage for exporting the goods and the payment of duty was also not from the respondent as is stipulated in Rule 18 and notification 19/2004. This is evident from the ARE-1 also that no Central Excise duty was paid in respect of the goods mentioned therein while cleared from the factory of the respondent for export. The fact that the respondent is different from 100% EOU

is also corroborated by the evidence that the respondent's Central Excise registration is different from the Central Excise registration of the 100% EOU. Thus, the primary condition that the Central Excise duty on the exported goods must be paid by the claimant at the time of clearance of the goods in terms of condition specified in para 2(a) of notification 19/2004 is not fulfilled in this case and accordingly the respondent is not eligible for the rebate of duty paid by the 100% EOU for DTA clearance. The respondent's reliance on CESTAT's above referred order in the case of Fateh Granites Ltd. is completely misplaced as the single Member Bench of the CESTAT did not consider the issue from the above discussed angle that the 100% EOU and DTA units are two different entities and the Central Excise duty paid by the 100% EOU at the time of debonding of the goods cannot be considered as payment of Central Excise duty by the DTA unit at the time of export of the goods. The rebate of duty in the case of Fateh Granites Ltd. was denied only for the reason that the claimant was not registered with the Central Excise department and Central Excise invoice had not been issued under Rule 11. Thus, the facts and issue involved in the present case are entirely different from the case of Fateh Granites Ltd. Moreover, the issue regarding rebate of duty is not in the domain of CESTAT as per first proviso of section 35B of the Central Excise Act and thus the said order is passed without having any jurisdiction in the matter. Hence, the said order is per incurium. Therefore, the Government is convinced that Commissioner (Appeals) has passed the above referred order in appeal erroneously.

6. Accordingly, the order in appeal is set aside and the Revision Application is allowed.



17.4.2018

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner, Central Excise,  
Jaipur -II, New Central Revenue  
Building, Statue Circle, C-Scheme, Jaipur.

ORDER NO. 208/18-Cx dated 17-4-2018

Copy to:-

1. M/s Ercon Composites, Khsra No. 1102/740/1, MIA Phase-II, Bansni, Jodhpur (Rajasthan).
2. The Commissioner (Appeals) Customs & Central Excise, Jaipur-II, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
3. The Deputy Commissioner, Central Excise Division, Jodhpur.
4. M/s Om P. Agarwal & Co., Chartered Accountant, 56, Section-7, N. Power House Road, Jodhpur (Rajasthan).
5. PS to AS(RA)
6. Guard File.

ATTESTED

(Debjit Banerjee)

STO (REVISION APPLICATION)

17.4.2018