REGISTERED SPEED POST

सत्यमेव जयते

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. 198/01/ 14-RA /2297
198/24/14-RA
198/59/14-RA

Date of issue :- 01.07.2021

ORDER NO.230-232/2021 -CEX (SZ) /ASRA/MUMBAI DATED29.6.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against Orders in Appeal No. 39/2006 dated 30.05.2006, 122-125/2008-C.E. dated 28.03.2008 and 64/2006-CE dated 20.11.2006 passed by the Commissioner of Central Excise (Appeals II), Bangalore.
Applicant	:	Commissioner of Central Excise, Bangalore-III.
Respondent	:	M/s Modern Process Printers, Rajaji Nagar, Bangalore 560010.

ORDER

These revision applications have been filed by the Commissioner of Central Excise, Bangalore-III Commissionerate (hereinafter referred to as "the applicant" or "the Department") against Orders in Appeal No. 39/2006 dated 30.05.2006, 122-125/2008-C.E. dated 28.03.2008 and 64/2006-CE dated 20.11.2006 passed by the Commissioner of Central Excise (Appeals-II), Bangalore passed in respect of M/s Modern Process Printers, Bangalore (hereinafter referred to as "the respondent").

2. The brief facts of the case are that the respondent is engaged in manufacture of stationery products like writing pads, note books, Xerox papers, coated printing paper etc. The respondent avails credit and also exported some of the products manufactured under claim for rebate of duty paid on the export products.

2.1 Revision Application No. 198/01/14-RA

The respondent had filed 3 rebate claims of the duty paid on the exported excisable goods. The rebate claims filed by the respondent were rejected by the adjudicating authority vide OIO Nos. 13/2006 dated 30.05.2006, on the ground that the assessee has misdeclared the activities of manufacture under taken with an intention to encash the Cenvat credit and also held that the Cenvat credit availed and utilized is irregular. Aggrieved by the said order the respondent filed an appeal before the Commissioner (Appeals) who, vide Order in Appeal No. 39/2006 dated 30.05.2006, held that the conditions of payment of duty are satisfied; that as long as the payment of correct duty and export of goods are not in doubt, rebate is eligible; that such rebate of duty on the final product is governed under Rule 18 of Central Excise Rules, 2002 subject to conditions laid down in the law that there are no restrictions under the law to procure inputs and are to be used in the manufacture of export goods; that in the absence of such restrictions the rejection of the claim is not correct and the appellant are rightly eligible for rebate. Accordingly, Commissioner (Appeals) set aside the order of the Assistant Commissioner of Central Excise and allowed the respondent's appeal with consequential relief. The said Order in Appeal was not accepted in review by the Department and an appeal was filed before CESTAT on 01.09.2006. CESTAT admitted the appeal of the department and disposed off the appeal vide F.O.No. 26379/2013 dated 20/08/2013 stating that tribunal has no jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeal) which relates to rebate of duty of Excise. Accordingly

CESTAT dismissed the case on the ground of lack of jurisdiction. Thereafter, the department filed the present Revision Application before Government of India.

2.2 Revision Application No. 198/24/14-RA

The respondent had filed 4 rebate claims of the duty paid on the exported excisable goods. The rebate claims filed by the respondent were sanctioned by the adjudicating authority vide OIO Nos. 16/2007 & 17/2007 both dated 4/5.07.2007, 26/2007 & 27/2007 both dated 17.08.2007 on the ground that the assessee has exported the goods and duty reversed in their Cenvat credit account and admitted the proof of export. Aggrieved by the said orders the Department filed appeals before the Commissioner (Appeals) who vide Order in Appeal No. 122-125/2008-C.E. dated 28.03.2008, held that the conditions of payment of duty are satisfied; that as long as the payment of correct duty and export of goods are not in doubt, rebate is eligible; that such rebate of duty on the final product is governed under Rule 18 of Central Excise Rules, 2002 subject to conditions laid down in the law that there are no restrictions under the law to procure inputs and are to be used in the manufacture of export goods; that in the absence of such restrictions the rejection of the claim is not correct and the appellant are rightly eligible for rebate. Accordingly, Commissioner (Appeals) upheld the OIOs passed by the original authority and rejected the appeals filed by the department. The said Order in Appeal was not accepted in review by the Department and an appeal was filed before CESTAT on 30.06.2008. CESTAT admitted the appeal of the department and disposed off the appeal vide F.O.No. 20162/2014 dated 31/01/2014 stating that tribunal has no jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeal) which relates to rebate of duty of Excise. Accordingly CESTAT dismissed the case on the ground of lack of jurisdiction. Thereafter, the department filed the present Revision Application before Government of India.

2.3 Revision Application No. 198/59/14-RA

The respondent had filed rebate claim of the duty paid on the exported excisable goods. The rebate claims filed by the respondent were rejected by the adjudicating authority vide OIO Nos. 48/2006 dated 17.05.2006, on the ground that the activity of cutting and sizing of coated printing paper from rolls / sheets into required sizes of coated printing paper undertaken by the assessee does not amount to manufacture as there is no change in name character as per Section 2(f) od the Central Excise Act, 1944 and the activity of cutting and packing does not amount to manufacture, that the Cenvat credit availed on

inputs under Rule 3 of Central Excise Rules, 2002 and utilization of such credit for clearance of coated printing papers for export and claim for rebate is irregular and is with an intention to encash the Cenvat Credit fraudulently by misdeclaring the activity as manufacture. Aggrieved by the said order the respondent filed an appeal before the Commissioner (Appeals) who, vide Order in Appeal No. 64/2006 dated 20.11.2006, held that the conditions of payment of duty are satisfied; that as long as the payment of correct duty and export of goods are not in doubt, rebate is eligible; that such rebate of duty on the final product is governed under Rule 18 of Central Excise Rules, 2002 subject to conditions laid down in the law that there are no restrictions under the law to procure inputs and are to be used in the manufacture of export goods; that in the absence of such restrictions the rejection of the claim is not correct and the appellant are rightly eligible for rebate. Accordingly, Commissioner (Appeals) set aside the order of the Assistant Commissioner of Central Excise and allowed the respondent's appeal with consequential relief. The said Order in Appeal was not accepted in review by the Department and an appeal was filed before CESTAT on 09.02.2007. CESTAT admitted the appeal of the department and disposed off the appeal vide F.O.No. 20935-20936/2014 dated 02.06.2014 but dismissed the case on the ground that duty / penalty involved is less than Rs. 5 Lakhs. Thereafter, the department filed the present Revision Application before Government of India claiming that the appeal was mistakenly filed before CESTAT instead of filing the same before Revision Authority as CESTAT has no jurisdiction to pass orders in respect of rebate cases.

3. The applicant department has filed these Revision Applications mainly on the following grounds :-

3.1 Apart from the question whether the process, per se, of coating and slitting /cutting printing paper amounts to manufacture under the Central Excise Act, it is necessary to appreciate the facts in the case as the assessee was trying to hoodwink the department (common ground).

3.2.1 In OIO No. 13/2006 the original adjudicating authority has commented expressly that the assessee stated in a letter to the Range Superintendent- We wish to confirm that we are exporting coated printing paper under the Central Excise Heading 48101490 vide ARE-1 Form. Please note that since we are not claiming any rebate from Central Excise on this particular export product and also manufacturing process are not required. However, the assessee submitted the said three rebate claims after exporting coated printing paper (RA No. 198/01/14-RA).

3.2.2 In OIO No. 16/2007 & 17/2007 both dated 4/5.07.2007, 26/2007 & 27/2007 both dated 17.08.2007 JAC has sanctioned the rebate without issuing the Show Cause Notice as department is challenging it, inter alia on the ground that the process under taken by the assessee does not amount to manufacture. However, the assessee submitted the said four rebate claims after exporting of coated printing paper (RA No. 198/24/14-RA).

3.2.3 Vide letter dated 12.09.2005, the assessee stated in a letter to the Range Superintendent-*We wish to confirm that we are exporting coated printing paper under the Central Excise Heading 48101490 vide ARE-1 Form. Please note that since we are not claiming any rebate from Central Excise on this particular export product, the copy of input and output invoices and also manufacturing process are not required.* However, the assessee submitted the said three rebate claims after exporting coated printing paper (RA No. 198/59/14-RA).

3.3 The findings of Commissioner (Appeals) that the inputs were under headings 4802 as against finished goods under 4801 is not fully correct. On examination of Chapter 48 of Central Excise Tariff, 1985 and Chapter Notes it is seen that only Manufactures of Paper in Paper Mill can manufacture the goods having different quality and fibre content by weight. In this case, the exporter is only a manufacturer of stationery products and the assessee is having facilities for cutting, slitting, coating, printing, and binding in his unit. As per Section 2 (f) of the Central Excise Tariff Act, of 1985 under Chapter 48, the above said activities does not amount to manufacture and the assessee has wrongly availed Cenvat Credit on inputs with an intention of taking undue benefit of rebate on export products by wrongly classifying the product under Chapter heading 48101490 as Coated Printing Paper, with an intention to avail rebate fraudulently under Rule 3 of Cenvat Credit Rules and is liable for penal action. It is noticed that export product is classified under Chapter 48101490. The export classified by the assessee could be manufactured only by a paper mill and in the input documents it is noticed that the imported to called inputs were all coated products classified by Customs under hooding 4810. The imported goods were coated printing Paper and Coated Paper Board under sub heading 4810 2900 and 4810 1310. Therefore in the case of imported goods were already coated and no further coating was undertaken. Even if undertaken, the process would not amount to manufacture of a new product (Common ground)

3.4.1 Some of the imported inputs were paper board and it cannot be that manufacturer has turned coated board into coated printing paper. The finding of Commissioner (Appeals) that the process involved is a combination of coating, cutting or slitting and packing with wrapping paper. The resultant product is used for printing on laser jet or inkjet printers and is scratch proof, water proof and has too friendly characteristics. The product is sold in wrapped packets and is marketed for different commercial use like printing or writing. The input is in the form of Jumbo rolls, in running length. Therefore the input as such cannot be put into applications like printing on laserjet or inkjet printers for writing. All inputs were in jumbo rolls which were subjected to slitting is not correct. Therefore, the findings of the Commissioner (Appeals) are based on wrong appreciation of facts. (RA No. 198/01/14-RA & 198/24/14-RA).

3.4.2 Some of the imported inputs were paper board and it cannot be that manufacturer has turned coated board into coated printing paper. The finding of Commissioner (Appeals) that all inputs were in jumbo rolls which were subjected to slitting is not correct. All the input invoices received from M/s Seshsayee Paper and Boards Ltd., Erode, show the goods received i.e. paper under sub heading 4802.90 as being delivered in no. of reams. That shows the goods were received in sheets. The paper size is also indicated as 21.0 x 29.7, 35.0 x 50.0 etc. Therefore, the findings of the Commissioner (Appeals) are based on wrong appreciation of facts (RA No. 198/59/14-RA).

3.5 The assessee has nowhere in his reply to the show cause notice or before Commissioner (Appeals) given any evidence of the machineries he has, the details of processing undertaken or of a new products as known in the market being produced. He has merely spoken in general and not specific terms regarding a highly technical and proprietary process. He has not come out with the exact details of his inputs, his process of manufacture and the correct commercial description of his end product. It therefore appears that no processing as claimed has taken place. Even if coating, cutting / slitting and packing did take place, these are not processes amounting to manufacture in the paper industry as laid down in the following decisions (Common ground).

a. Delhi Paper Products Co. Pvt. Ltd. Vs. CCE Delhi-III-2006 (200) ELT 305 (T-Delhi)
b. CCE Vs. S.R. Tissues Pvt Ltd-2005(186) ELT 385 (SC).
c. CCE Vs. Shree Vindhya Paper Mills-1997 (94) ELT A253 (SC).

3.6. The duty was paid on the finished goods viz."Coated Printing Paper " for export only in order to complete the CENVAT chain and claim rebate of such duty paid, even though the assessee had not subjected the inputs to process amounting to manufacture. Therefore, the rebate was correctly denied by the Assistant Commissioner. Also, Penalty was imposable on the assessee in this case for misstatement of facts (Common ground).

3.7 The Board's Circular No. 155/66/95/-CX dated 17-10-1995 quoted by the assessee in support of their contention, merely deals with certain doubts w.r.t. grant of rebate under the old export rules vis-à-vis new rules where the duty paid goods cleared for home consumption are subsequently processed to make the said goods exportable whereas in the instant case, the issue involved is eligibility or otherwise of rebate, of duty paid on the goods exported and hence the same is irrelevant. Similarly, the judgment of the Hon'ble High Court, Madras in the case of M/s Madura Coats Ltd. [2001(131) E.L.T 328 (Mad.)] pertains to rebate of duty on yarns from sister concern and is irrelevant in the instant case (common ground).

In view of the aforesaid grounds the applicant department prayed for setting aside impugned Orders.

4. The respondent company also filed cross objections/reply to the show cause notices issued under Section 35EE of the Central Excise Act, 1944 in all the three Revision Applications contending mainly therein as under:-

4.1 The orders of the Appellate Authority in OIA No. 39/2006 dated 30.05.2006 and OIA No. 122-125/2008 dated 28-3-2008 no longer subsist to file appeal before the Revisionary Authority. The order of the Appellate Authority has merged with the order of the Hon'ble CESTAT, Bangalore wherein the appeals are dismissed by reading the provisions of the Act that the Tribunal was not permitted to adjudge the issue pertaining to rebate claims. The order being a final order on merits cannot be stated to be an order dismissed at the threshold and therefore it cannot be construed that the order of the Commissioner of Central Excise (Appeals) still subsist. The proceedings are therefore without jurisdiction and the order of the CESTAT having attained finality, there cannot be re-agitation of the issue before the Revisionary Authority by the department. The proceedings are therefore untenable on this ground alone.

4.2 The appeal filed by the department against OIA No.64/2006 dated 20.11.2006 was dismissed vide Final Order No.20935/2014 on the grounds that the amount involved in Order impugned was less than the monetary limits prescribed under National Litigation policy for preferring appeal before CESTAT Bangalore.

4.2.1 Reliance is placed on the decision of the Apex Court in the case of Kunhayammed V. State of Kerala, reported in 2001(129)ELT 11(SC) wherein it was held that on the basis of doctrine of merger which is a common law doctrine the underlying logic is that there cannot be more than one operative orders governing the same subject matter at a given point of time. The Apex Court observed that when the superior court has disposed of the *lis* before it either way, whether the decree or order under appeal is set aside the order of the superior court is the final binding and operative order wherein merges with the order passed by the authority below. The Order challenged by the applicant therefore not operative and the appeal is therefore without jurisdiction.

4.3 The proceedings under section 35EE is not an appellate proceedings and is in the nature of original proceedings by issuance of show cause notice as contemplated within the time limit prescribed under section 11A of the Central Excise Act, 1944. Sub-section (6) of Section 35EE provides that where the Central Government is of the opinion that any duty of excise has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given a show cause against it within the time limit specified under section 11A of the Act. The orders having been passed by the Commissioner (Appeals) in OIA No.39/2006 on 30.5.2006, in OIA No. 122-125/2008 dated 28-3-2008 & in OIA No. 64/2006 on 20.11.2006, the Revisionary Authority should have issued show cause notice within one year from the relevant date as per the provisions of section 11A of the Central Excise Act. The show cause notice is issued by the Revisionary Authority after the time limit prescribed under the Act.

4.4. It is also submitted that the application should be preferred by the 'aggrieved person' before the Central Government for taking cognizance of the matter within 3 months and a further delay of 3 months would be condoned to file the application. The time limit specified to issue a show cause notice cannot be extended or co-terminus with the time limit for filing the application. The time limit to issue show cause notice to the opposite side is superscribed within the

time limit specified in section 11A of the Act. The time limit provided under section 11A cannot be extended by a whopping 6 years, 7 years and 6 months because the appeals were preferred by the department before the wrong forum based on the directions of the Commissioner reviewing the order of the Assistant Commissioner under section 35B(2) of the Central Excise Act. Also the order passed by Appellate Authority in OIA No.64/2006 was reviewed by Commissioner under Section 35B(2) of the Act and direction were issued to the officer to prefer an appeal before CESTAT Bangalore. When the provisions of the statute has been read wrongly by the Commissioner and the directions issued to file appeal before CESTAT this being the conscious decision, there cannot be any argument preferring an appeal before the wrong forum as the forum was chosen consciously by the department who are the functionaries of the statute.

4.5 It is further submitted that the order of the High Court of Bombay in the case of UOI Vs EPCOS Indio Pvt. Ltd., reported in 2013 (290) ELT 364 (Bom.) has not provided such extended time limit and it would lead to absurd results. The exclusion of the period spent in prosecuting the appeal before CESTAT, presuming, can be done for the purposes of preferring an application before the Revisionary Authority. The revisionary authority would not get time limit prescribed under section 11A also by excluding the period spent in prosecuting the appeal before CESTAT as it is an independent provision and such exclusion is not specifically provided in the statute. This decision of the Hon'ble High Court of Bombay runs contrary to the decision of the Apex Court in the case of India House v. Kishan N. Lalwani, reported in 2003(9) SCC 393 and affirmed again by the Apex Court in M.R. Tobacco Pet Ltd v. UOL, reported in 2007 (213) ELT A115 (SC) wherein it was categorically held that the provisions of Limitation Act would not apply to Central Excise Act. To exclude the time spent prosecuting the case before a wrong forum, section 14 of the Limitation Act has to be read. By the decision of the Apex Court, it is not permitted to read the provisions of the Limitation Act. The delay, therefore in preferring the appeal cannot be condoned by the Revisionary Authority. The revisionary authority would not get time limit prescribed under Section 11A also by excluding the period spent in prosecuting the appeal before CESTAT as it is an independent provision. The proceedings are therefore woefully time barred.

4.6 The Supreme Court in Singh Enterprises v. CCE., reported in 2008 (221) ELT 163 (SC) held that when the statute prescribed particular period of limitation, Supreme Court does not have the powers to condone the delay beyond the specific period and such stand would render specific provision providing for limitation rather otiose. The decision of the Apex Court has not been considered by the Hon'ble High Court's decision in the case of Epcos India Pvt. Ltd. The appeals when prosecuted before the wrong forum, the time limit cannot be extended beyond the statutorily prescribed upper limit. The provisions of the Limitation Act would have no application to the Statue which has specifically provided for the time limit.

4.7.1 The Constitutional Bench of the Supreme Court in the case of CC & CE v. Hongo India (P) Ltd., reported in 2009 (236) ELT 417 (SC) held that for appeal and reference application before High Court, 180 days only provided by Parliament and no further period of filing appeal or making reference to High

Court is mentioned. It was also held by the Supreme Court that section 5 of the Limitation Act is excluded in the absence of clause condoning delay by showing sufficient cause after the prescribed period. It was held by the Apex Court that time limit prescribed in section 35H of Central Excise Act 1944 is absolute and not extendable by court under Section 5 of Limitation Act, 1963. It is therefore submitted that the time spent by the department on proceeding before the wrong forum cannot be excluded to extend the time limit prescribed under section 35EE of the Act which is absolute which cannot be extended through any process or by any Court. The application is barred by time and so also the show cause notice issued under section 35EE of the Act is barred by time. Commissioner having provided authorization to file the application before the Revisionary Authority under Section 35 EE, the authorization is beyond jurisdiction as the Commissioner of Customs has no powers to take cognizance of Commissioner (Appeals) after a gap of 6/7 years to direct the authorities to file application under Section 35 EE of the Act.

4.7.2 As regards CESTAT Order against OIA No.64/2006 (RA No.195/59/14-RA), Hon'ble Tribunal has not stated that they do not have the jurisdiction to decide the *lis* on merits but has rejected the appeal based on National Litigation Policy. The decision of the Bombay High Court in UOI Vs EPCOS India Pvt. Ltd. cannot be applied when there is specific bar on application of provisions of Section 14 of the Limitation Act, 1963 to Central Excise Act, 1944.

4.8 The respondent also relied on the following case laws on the said issue.

- RE: Indian Oil Corporation Ltd., reported in 2013 (297) ELT 472 (G.O.I)
- Kirloskar Pneumatics Co., reported in (1996) 84 ELT 401 (SC)
- Ketan Parekh Vs Special Director, Directorate of Enforcement 2012(275) ELT 3(SC)
- IVP Ltd. V CCE 2011 (22) STR 374(T)
- Delta Impex v. CC., reported in 2004 (173) ELT 449 (Del)

4.9 The order of the Commissioner (Appeals) is well reasoned and has recorded a clear finding that the classification of the input goods are different from the output final product and therefore there is a process of transformation of the goods from one heading to another which would also assist in confirming that the activity tantamount to manufacture within the meaning of section 2(f) of the Central Excise Act, 1944. The Commissioner (Appeals) also makes a clear finding that the process involves a combination of coating, cutting or slitting and packing with wrapping paper and the resultant product is used for printing on laser jet or inkjet printers and it is scratch proof, water proof and has eco-friendly characteristics and they being products for different commercial use, it would amount to manufacture and the benefits of rebate should be available to the exporter. The order is impeachable and has the support of statutory provisions. The application to annul the order of the Commissioner (Appeals) is therefore untenable in law and the notice deserves to be set aside on this ground alone.

4.10 In the case of Grasim Industries Ltd v. CCE., reported in 2011 (271) ELT 164 (SC) Hon'ble Supreme Court held that when refund was erroneously granted, filing of appeal is not an appropriate remedy as section 11A of the

Central Excise Act, 1944 provides for issue of show cause notice and therefore the question of filing an application for revision before the revisionary authority is without jurisdiction and untenable on this ground alone.

4.11 The proviso to section 35B(1) categorically debars orders which are in the nature of a rebate of duty of excise on goods exported out of India and the question of therefore claiming bona fides by the department does not arise at all. The issue being clear of doubt and the appeals having been statutorily debarred, the question of the appeal being filed before the Hon'ble Tribunal was without the authority of law and was being specifically provided under the Act. The question of the department claiming bona fides does not arise at all. The issue of condoning the delay under section 14 of the Limitation Act, 1953 does not also arise in law.

4.12 There is no averment in the notice that they were trying to hoodwink the department and it was an issue of interpretation as to whether the activity undertaken by them by brining into existence a completely new product viz., stationery products out of varieties of paper and other products used in producing books and other materials. The issue being a debatable one cannot be construed to be an act of hoodwinking by them. The department is highly vindictive in refunding an amount which is accepted as duty and paid to the credit of the government at the time of export. These allegations in the grounds does not behove of the government authority which should instill confidence in the assessee and try to harass and indulge in such protracted litigation for a small amount of refund claimed by them after fulfilling ail the conditions imposed under law.

4.13 The stationery products are manufactured from varieties of paper procured from the mills and also various thicknesses of paper boards procured to secure the papers and the complete the finished product. The issue being technical as to what types of coating that can be done on the paper that is manufactured by the mills unknown to the department. The department is unaware of the technological advancement in printing technology and also the manner in which paper is treated and coated after they are received from the mills. The categorical assertion by the department that coating can be done only by the mills and none else is absolutely opposed to facts. The averments are therefore opposed to law.

4.14 The averment of the department that the imported goods were already coated and no further coating was required is an argument unsupported by facts and evidence. It is the argument of the manufacturer/exporter that they undertake various coating on the paper as per their requirement and for the end use intended. Such factual assertion cannot be set aside by the department by stating that only the manufacturer at the mill can coat the paper and none other. The order of the appellate authority is therefore legally correct.

4.15 There is complete lack of understanding of the process and facts by the department. The exporter had never represented that the paper board was converted into coated printing paper. The boards were used for packing of finished product which is secondary packing for transportation of paper sheets which are also packed in primary packing. The board was also printed with the

specification of the product, content etc., as per the international standards. The new product being different from the input which is a generic product, the process, as understood in law amounted to manufacture on a simple understanding of facts. The appellate authority has accepted these facts and the decision rendered in favour of the respondents. The order of the appellate authority has narrated correct facts and those facts were also not in dispute. The only dispute is as to whether the integrated processes undertaken by them amounted to manufacture or not. The process undertaken by them was made known to the department. It is not something which was hidden by them. The averment that the processes are not made known to the department cannot also permit the department to presume that there was no manufacturing activity. The primary fact remains that various ingredients required for producing stationery products are procured and the final products are made and cleared outside India. The issue is completely revenue neutral. The inputs procured in processing the goods could be eligible as credit, if such final product is cleared for exports and such credit was available as refund to the respondent. The issue is also completely revenue neutral and there is nothing to allege mala fides on the part of the exporter.

4.16 The Board Circular No.155/66/95/-CX dated 17.10.1995 clearly provides the intention of the legislature to provide benefit of rebate on any processing activity undertaken by the exporter. The circular has not been rescinded. This circular clearly provides the intention of the legislature to provide the benefit to such exporters. The finding of the appellate authority is therefore in accordance with law. The appeals preferred by the department are therefore untenable on this ground also.

5. Personal hearing in this case was held on 18.02.2021 through video conferencing which was attended online by Shri B.G. Chidananda URS, Advocate, on behalf of the respondent. No one appeared on behalf of the applicant department. The Advocate for the respondent reiterated earlier submissions on all three matters. He said delay in filing Revision Applications by the Department cannot be condoned in view of Hon'ble Supreme Court Judgement in Commissioner of Central Excise and Service Tax Kolkata Vs S.K. Samanta and Company Pvt. Ltd. [2011-TIOL-88-SC-CX-LB]. On merits he submitted that Tribunal has allowed credit, therefore rebate cannot be denied. He requested to maintain Orders in Appeal passed by Commissioner (Appeals).

6. Government has carefully gone through the relevant case records available in case files, perused Orders-in-Original and the impugned Orders-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application as well as cross objections/written submissions/Synopsis along with the synopsis of case laws filed/submitted by the respondent company.

7. Government observes that the applicant department initially filed appeals against the impugned Orders before Tribunal, Bangalore. The Tribunal Bangalore, vide Final order No. 26379/2013 dated 20/08/2013 and 20162/2014 dated 31/01/2014 respectively dismissed the appeals filed against Orders in Appeal No. 39/2006 dated 30.05.2006 and 122-125/2008-C.E. dated 28.03.2008 on the ground of non-maintainability. The appeal filed against Order in Appeal No. 64/2006-CE dated 20.11.2006 was dismissed vide Final Order No.20935/2014 on the grounds that the amount involved in Order impugned was less than the monetary limits prescribed under National Litigation policy for preferring appeal before CESTAT. On receipt of the said CESTAT order, Department filed the instant Revision Applications and pleaded therein that since the appeals were inadvertently filed before the Tribunal, there was a delay in submitting the Revision Application, which may be condoned.

8. Government first proceeds to discuss issue of delay in filing Revision Applications where the Tribunal Bangalore, vide Final orders No. 26379/2013 dated 20/08/2013 and 20162/2014 dated 31/01/2014 dismissed the appeals filed against Orders in Appeal No. 39/2006 dated 30.05.2006, 122-125/2008-C.E. dated 28.03.2008 respectively, on the ground of non-maintainability. The chronological history of events is as under:-

Sl. No.		Order in Appeal No.39/2006 dated 30.05.2006 (R.A.No.198/01/14)	Order in Appeal No. 122-125/ 2008-C.E. dated 28.03.2008 (R.A.No.198/24/14)	Order in Appeal No.64/2006-CE dated 20.11.2006 R.A.No.198/59/14)
1.	Date of Receipt of Order in Appeal by the Deptt.	05.06.2006	03.04.2008	24.11.2006
2.	Date of filing of appeal before Tribunal	01.09.2006	30.06.2008	09.02.2007
3.	Time taken in filing appeal before Tribunal	2 months & 27 days	2 months & 27 days	2 months & 16 days
4.	Date of receipt of Tribunal order	22.10.2013	28.02.2014	25.06.2014
5.	Date of filing of Revision application	15.01.2014	25.03.2014	02.09.2014
6.	Time taken between date of receipt of Tribunal order to date of filing of Revision application	2 Months & 24days.	25 days	2 months & 8 days
7.	Time taken for filing Revision Applications when the time period spent in proceedings before CESTAT is excluded.	5 months & 20 days.	3 months and 21 days.	4 month and 24 days.

As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of the communication of Order-in-

Appeal and the delay up to another 3 months can be condoned provided there are good reasons to explain such delay.

9. Government notes that Hon'ble High Court of Gujarat in the case of M/s. Choice Laboratory [2015 (315) E.L.T. 197 (Guj.)] , Hon'ble High Court of Delhi in the case of M/s. High Polymers Ltd. [2016 (344) E.L.T. 127 (Del.)] and Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. in [2013 (290) E.L.T. 364 (Bom.)] have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. The ratio of above said judgements is squarely applicable to these cases.

10. The respondent in its cross objections has contended that the decision of the Hon'ble High Court of Bombay in the case of M/s. EPCOS India Pvt. Ltd. runs contrary to the decision of the Apex Court in the case of India House v. Kishan N. Lalwani, reported in 2003(9) SCC 393 and affirmed again by the Apex Court in M.R.Tobacco Pet Ltd v. UOL, reported in 2007 (213) ELT A115 (SC) wherein it was categorically held that the provisions of Limitation Act would not apply to Central Excise Act. To exclude the time spent prosecuting the case before a wrong forum; section 14 of the Limitation Act has to be read. By the decision of the Apex Court, it is not permitted to read the provisions of the Limitation Act into the Central Excise Act. The delay, therefore in preferring the appeal cannot be condoned by the Revisionary Authority

11. Government observes that in the judgement of Delhi High Court in M.R. Tobacco Pvt. Ltd. v. Union of India, 2004 (178) E.L.T. 137, the Division Bench of the Court reiterated its view in M/s. Delta Impex v. Commissioner of Customs, 2004 (173) E.L.T. 449 that the Commissioner (Appeals) has no power to condone the delay beyond a further period of 30 days from the expiry of the time within which the appeal ought to have been filed, that the Central Excise Act, 1944 is a complete code and the provisions of Section 35 of the Central Excise Act, 1944 clearly indicate that the provisions of the Limitation Act were to apply only to the extent and during the extended period of 30 days and not beyond. The Hon'ble Delhi High Court relied upon India House v. Kishan N. Lalwani, (2003) 9 SCC 393 wherein Hon'ble Supreme Court observed that the limitation periods specified by special or local laws must be strictly applied. The above decision of the Delhi High Court in M.R. Tobacco case was also affirmed by the Hon'ble Supreme Court [2007(213) ELT A115(SC)]. Government observes that the afore-

discussed judgments were rendered in different background. The question there was - whether Commissioner (Appeals) has power to condone the delay beyond a further period of 30 days from the expiry of the time within which the appeal ought to have been filed whereas the issue in the present cases is different and relates to condonation of delay on account of the applicant prosecuting remedy before a wrong forum under bona fide belief.

12. In case of Commissioner of Central Excise and Service Tax Kolkata Vs S.K. Samanta and Company Pvt. Ltd. [2011-TIOL-88-SC-CX-LB], also relied upon by the respondent, the Hon'ble Supreme Court did not accept the Department's plea that delay occurred was due to wrong filing of appeal in High Court, as even after excluding period spent in High Court, there was substantial unexplained delay. Accordingly, Hon'ble Apex Court dismissed the appeals filed by the Revenue on the ground of delay. This case is also distinguishable from the facts of the cases in hand as there is no substantial or unexplained delay in the instant cases.

13. Thus, the two judgement [M/s *M.R. Tobacco Pvt. Ltd.* and M/s. S.K. Samanta] discussed above are rendered in different context. In the circumstances, M/s. EPCOS India Pvt. Ltd., supra would be squarely applicable to the facts of the present case. Government also observes that Apex Court in M.R.Tobacco Pet Ltd v. UOL, had held that the Central Excise Act, 1944 is a complete code and the provisions of Section 35 clearly indicate that the provisions of the Limitation Act were to apply only to the extent and during the extended period of 30 days and not beyond. Further there are numerous occasions where Hon'ble courts have held that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing appeals till recently, and therefore, the contention of the respondent that the provisions of Limitation Act would not apply to Central Excise Act, is unacceptable. Government therefore keeping in view the above cited judgments holds that revision applications R.A.No.198/01/14 and RA No. 198/24/14 filed after a delay of 2 months & 20 days and 21 days respectively (Table at par 8 supra) are within condonable limit. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up these Revision Applications for decision on merit.

14. As regards Revision Application No.198/59/14 the impugned Order No.64/2006 dated 20.11.2006 was dismissed By CESTAT, Bangalore vide Final

Order No.20935/2014 on the grounds that the amount involved in Order impugned was less than the monetary limits prescribed under National Litigation policy for preferring appeal before them. The respondent has relied on the decision of the Apex Court in the case of Kunhayammed V. State of Kerala, reported in 2001(129)ELT 11(SC) wherein it was held that on the basis of doctrine of merger which is a common law doctrine the underlying logic is that there cannot be more than one operative order governing the same subject matter at a given point of time. The Apex Court observed that when the superior court has disposed of the *lis* before it either way, whether the decree or order under appeal is set aside the order of the superior court is the final binding and operative order merges with the order passed by the authority below. In view of this the respondent has contended that the Order challenged by the applicant (in RA 198/59/14) is not operative and the appeal is therefore without jurisdiction.

15. In Deepak Agro Foods Versus State Of Rajasthan [2008 (228) E.L.T. 510 (S.C.)], the Hon'ble Apex Court observed that where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, *non-est* and *void ab initio* as defect of jurisdiction of an authority goes to root of matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. In Shree Dhanversha Steel Pvt. Ltd. Vs CCE, Meerut, 2010 (261) E.L.T. 851 (Tri. - Del.), CESTAT, New Delhi also observed *"The issue in relation to nullity of the order, the same having been passed without jurisdiction, can be raised at any stage before any authority and in any proceeding. The law in that regard is well settled and the Department is justified in placing reliance in that regard in the decision of the Apex Court in Deepak Agro Food case (supra)". In* Rivaa exports Vs CCE, Surat-I [2009 (236) E.L.T. 576 (Tri. - Ahmd.)], on being pointed out that the subject matter in the appeal relates to claim of rebate against the exported goods and that the Tribunal has no jurisdiction as per Section 35B of the Central Excise Act, 1944 to decide the appeal, the Tribunal recalled its earlier Order and the Revenue was directed to present the appeal before the Joint Secretary, Govt. of India, who is vested with the jurisdiction, and dispose of the same on merits.

16. Respectfully following the aforesaid judgments, Government holds that the Final Order No.20935/2014 of CESTAT, Bangalore dismissing the appeal of the Department on the grounds that the amount involved in Order impugned was less than the monetary limits prescribed under National Litigation policy having been passed without jurisdiction, is null, *non-est* and *void ab initio* and

therefore, the contention of the respondent that Order challenged by the applicant (in RA 198/59/14) is therefore not operative and the appeal is therefore without jurisdiction is misplaced. Government therefore keeping in view the above cited judgments considers that revision application R.A No. 198/59/2014 filed after 1 Month and 24 days (Table at par 8 supra) is within condonable limit. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up this Revision Application 198/59/14 for decision on merit.

17. As the issue involved in all these 3 Revision Applications is the same, they are disposed off vide this common order.

18. Government observes that the applicant department in its Revision Application has interalia contended that the respondent-exporter is only a manufacturer of stationery products and is having facilities for cutting, slitting, coating, printing, and binding in his unit; that as per Section 2 (f) of the Central Excise Tariff Act, of 1985 under Chapter 48, the above said activities does not amount to manufacture and the respondent has wrongly availed Cenvat Credit on inputs with an intention of taking undue benefit of rebate on export products by wrongly classifying the product under Chapter heading 48101490 as Coated Printing Paper, with an intention to avail rebate fraudulently under Rule 3 of Cenvat Credit Rules and is liable for penal action; that export product is classified under Chapter 48101490; that the export classified by the assessee could be manufactured only by a paper mill and in the input documents it is noticed that the imported so called inputs were all coated products classified by Customs under heading 4810; that the imported goods were coated printing Paper and Coated Paper Board under sub heading 4810 2900 and 4810 1310; therefore the imported goods were already coated and no further coating was undertaken and even if undertaken, the process would not amount to manufacture of a new product; that no processing as claimed by the respondent has taken place and even if coating, cutting / slitting and packing did take place, these are not processes amounting to manufacture in the paper Industry; that the duty paid was on finished goods viz. "Coated printing Paper" for export only in order to complete the CENVAT Chain and claim rebate of such duty paid even though the respondent had not subjected the inputs to process amounting to manufacture and therefore, the Orders in appeal allowing the rebate be set aside. Whereas the respondent in reply to show cause notice has claimed that they are manufacturers of dutiable final products and that the Cenvat Credit of

such inputs are allowed; that their product was not exempt and all types and forms of paper are clearly dutiable and not exempt as per chapter 48 of the Central Excise Tariff; that demand for reversal of Cenvat Credit when the duty payment has been accepted by the department is wholly unjust and revenue neutral.

19. Hon'ble High Court of Bombay in the case of Ajinkya Enterprises [(2013 (294) E.L.T. 203 (Bom.)] has held that in case of activity does not amount to manufacture, the payment of duty shall amount of reversal of Cenvat credit. The issue involved in this case was that the applicants were manufacturing various press parts required in automobile industry and engineering industry. They were also availing CENVAT credit. For manufacture of press parts, the applicants procured jumbo coils of Hot Rolled (HR) Steel and subject the same to de-coiling, cutting, and slitting and thereafter carry out pickling and oiling operations. It was the view of the department that in terms of Board's Circular 811/08/2005 - CX dated 02.03.2005 the processes did not amount to manufacture, there was no question of the applicant availing Cenvat credit and paying Excise duty. The applicant was issued show-cause notices for the period from 2.3.2005 onwards till August 2007 in order to deny the credit of Cenvat. For the said reasons, rebate of duty paid on the goods supplied to SEZ unit was also denied. The applicant filed total 7 appeals before CESTAT, Mumbai against Orders-in-Appeal upholding the denial of Cenvat credit by the adjudicating authorities on the ground that credit of Cenvat was not admissible since the activity of de-coiling of HR/CR coils and cutting & slitting thereof into specific sizes as per the design of M/s. Twin Metal Products Pvt. Ltd. (SEZ Unit) and carrying out pickling and oiling did not amount to manufacture. One appeal was against Order-in-Appeal upholding the rejection of refund claim of Cenvat credit, attributable to supplies made to the said units in SEZ, by adjudicating authority on the ground that the activities undertaken by the appellants did not amount to manufacture. Other four appeals were against separate Orders-in-Appeal upholding separate Orders-in-Original rejecting rebate of duty paid on the said goods supplied to the said Unit in SEZ on the same ground.

The final order of the Bench [2013 (288) E.L.T. 247 (Tri. - Mumbai)] was -

> *"9. We have seen from the facts of this case where as per Circular dated 7.9.2001, the activity of slitting of HR/CR coils into strip was amounted to manufacture. It is admitted fact that the said Circular was withdrawn on 2.3.2005. Thereafter, the appellants sought clarification through various letters to the department to clarify whether the composite activity of de-coiling of HR/CR coils, cutting and slitting into*

specific sizes and thereafter pickling and oiling amounting to manufacture or not. That was clarified only on 24.6.2010. In the case of Resistance Alloys (supra) and P.V.Sanghvi (supra), wherein it was held that process of pickling and oiling would not amount to manufacture, but in the case in hand before us, the appellants were undertaking composite activity of de-coiling of HR/CR coils thereafter cutting and slitting into specific sizes and after that pickling and oiling taken place, which was clarified by the department only on 24.6.2010 saying that the said activity does not amount to manufacture. Therefore, following instructions issued through Circular no. 911/1/2010-CX dated 14.01.2010, the appellants approached to the Commissioner for issuance of appropriate rectification for regularization of the CENVAT credit availed as their activity does not amount to manufacture and they have paid duty on clearance of the goods more than the credit availed. The Commissioner has also considered the representation of the appellant and forwarded to the Board for issuance of the required notification. The Board has neither rejected the proposal of the Commissioner, nor issued the notification for regularization of such credit availed. In that situation, we are of the view that the benefit of the Circular no. 911/1/2010-CX dated 14.1.2010 is available to the appellants.

10. Further, it is the admitted fact that the appellants are the manufacturer of excisable goods also. Therefore, as per rule 3(5) of the Cenvat Credit Rules, 2004, if the activity in question of the appellants does not amount to manufacture, the appellants are required to pay duty equal to credit taken on clearance of such inputs under cover of Central Excise invoices. As in this case, the activity of the appellants does not amount to manufacture, therefore, these inputs are cleared as such. In that event, as per rule 3(5) of CENVAT Credit Rules, 2004 the appellants are required to pay duty equal to the credit taken thereon and the appellants have paid duty more than the credit availed.

11. The learned Advocate also relied on several case laws, wherein it was held that when duty paid at the time of clearance equal to or higher than the credit availed, the same is to be treated as reversal of credit. Therefore, no further reversal of credit is required as held by this Tribunal in the case of Repro India Ltd. (supra), Punjab Stainless Steel Industries (supra), Drish Shoes Ltd. (supra), SAIL (supra). In this case, it is admitted fact that the department has accepted duty paid by the appellants on their clearances and as per judicial pronouncement in the case of Ashok Enterprises (supra), Super Forgings (supra), SAIL (supra), M.P.Telelinks Ltd. (supra), Creative Enterprises (supra) which was upheld by the Hon'ble Apex Court that once duty on final products has been accepted by the department in the case, CENVAT credit cannot be denied even if the activity does not amount to manufacture.

12. Therefore, in view of the above discussion, we find that the duty paid by the appellants has been accepted by the department which is admittedly more than the CENVAT credit availed by the appellants. Therefore, following the various judicial pronouncements as discussed hereinabove, we hold that the appellants are not required to reverse the credit. Accordingly, the appeals are allowed with consequential relief."

Being aggrieved with the said Order Commissioner Central Excise, Pune-III filed a Central Excise Appeal before the Hon'ble Bombay High Court. While dismissing the Central Excise Appeal filed by the Department Hon'ble High Court also observed as under: -

10. Apart from the above, in the present case, the assessment on decoiled HR / CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR / CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises 2008(221) ELT 586 (T), Super Forgings - (2008-TIOL-312-CESTAT-MAD), S.A.I.L. 2007 (220) ELT 520 (T), M.P. Telelinks Limited - (2004-TIOL-77-CESTAT-DEL) and a decision of the Gujarat High Court in the case of CCE V/s. Creative Enterprises reported in 2009 (235) ELT 785 (Guj) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity does not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court (see 2009 (243) E.L.T. A121) by dismissing the SLP filed by the Revenue.

11. Therefore, in the facts of the present case, in our opinion, no fault can be found with the decision of the CESTAT in passing the impugned order.

Pune-III Central Excise Commissionerate vide their letter No. P-III/LC-26/Rev.Status/2012, dated 10-8-2012 has accepted the judgment of the Hon'ble High Court of Bombay (supra) and no appeal has been filed.

20. Further, while dismissing the appeal filed by the Commissioner of Central Excise, Bangalore-V against Order dated 06.08.2015 of CESTAT Bangalore, in the case of Vishal Precision Steel Tubes & Strips Pvt. Ltd. [(2017(349) ELT 686 (Kar.)] Hon'ble Karnataka High Court relying on *Ajinkya Enterprises* [2013 (294) E.L.T. 203 (Bom.)], & *Creative Enterprises* - 2009 (235) E.L.T. 785 (Guj.) [supra] held that "*Once duty is paid by assessee treating activity as manufacturing activity, Cenvat credit available - No question of reversion of credit* " .

21. Government also observes that Appeal filed by the Commissioner, Central Excise Bangalore-III against the Order in Appeal No. 38/2006-CE dated 30.05.2006 which allowed the Cenvat Credit taken by the respondent in this case, has also been dismissed by CESTAT, Bangalore vide Final Order No. 26382/2013 dated 20.08.2013 relying on Ashok Enterprises v. Commissioner - 2008 (221) E.L.T. 586 (Tri-Chennai) and holding that if subsequently a view is taken that the process did not amount to manufacture, credit cannot be required to be reversed by the respondent.

22. Moreover, when the Department's case is that the process undertaken by the respondent does not amount to manufacture, it amounts to saying that the respondent have cleared the Cenvat credit availed inputs as such and this is something which is not prohibited, if at the time of removal of Cenvat credit availed inputs, in terms of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, an amount equal to the Cenvat credit availed is paid under an invoice issued under Rule 9 of the Central Excise Rules, 2002. Even assuming that the

process carried out by the respondent does not amount to manufacture, the payment of amount equal to the Cenvat Credit availed on the inputs exported as such in terms of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004 also qualifies as duty payment in terms of deeming provisions under Rule 3(6) of the Cenvat Credit Rules, 2004.

Hon'ble Allahabad High Court in the case of Samsung India Electronics Pvt. Ltd. Vs UOI [2019(368) E.L.T. 917(All).] while holding that "*since before causing export, petitioner had reversed credit availed on these goods, rebate cannot be denied*", made following observations:

13. *Undisputedly, the goods had suffered countervailing duty and therefore by virtue of Rule 3(1)(vii) of the CENVAT Rules, 2004, it was eligible to CENVAT credit. It cannot therefore, be said that goods did not suffer any duty for the purpose of Rule 18. Thereafter, only the conditions and limitations provided under the Excise notification remained to be fulfilled. Here, in view of the fact that it is again undisputed that the CENVAT credit availed had been reversed in entirety under Rules of 2004, the goods that were excisable goods clearly came to be exported after payment of duty. There is no dispute to the fact that they were exported directly by the petitioner to its other manufacturing units outside the country.*

14. *The objection raised by the revenue-respondent that the export must have been made after manufacture, is not substantiated by the statutory provisions. The words a 'factory' used in clause 2(a) of the rebate notification only refers to the fact that the goods must be exported from a premises that is a 'factory'. Again, the term 'factory' has not been defined under Rules under Section 2(e) of the Act. It reads :-*

> *"(e) "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"*

15. *Thus, it being undisputed that petitioner was carrying out, manufacturing activities at it's 'factory' premises and that the goods had been exported from such premises, the removal of the goods (LCD panels and parts of coloured televisions etc.) was made in compliance of the rebate notification i.e. from it's 'factory'.*

16. *Thus, there found to exist no stipulation under the Rule or a condition under the rebate notification that the eligible goods must have been actually manufactured inside the country. The consequence that arises is that goods that may even be deemed to have been manufactured upon payment of excise duty would remain eligible to rebate on their export. The above construction also appears to be plausible as otherwise it may only lead to a situation where, the goods that may have been received during transit. In that regard, the interpretation placed by the Central Government itself in the context of the MODVAT scheme, is also pertinent. Under that scheme, in similar circumstances, the Central Government itself allowed for rebate on re-export of such goods. In absence of any change to the statutory scheme that view of the Central*

Government appears to relevant to the present CENVAT Rule as well. In the case of Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra), that manufacturer was engaged in manufacture of printing inks. It had purchased various inputs/capital goods from domestic suppliers and manufactures. It exported the same on payment of duty by reversing the CENVAT availed on those inputs/capital goods. However, no manufacturing activity had been performed by that manufacturer on the inputs thus purchased. It then claimed rebate under Rule 18 of the Rules read with (amongst others) Notification No. 19 of 2004, dated 6-9-2004. The Bombay High Court reasoned under the Central Excise law, manufacturer of final product is entitled to take credit of specified duties paid on inputs/capital goods used in the final product and utilize the said credit to pay excise duty on final product by reversing the input credit. Taking note of Rule 3 of the CENVAT Credit Rules, 2002, that Court further reasoned that a manufacturer who takes credit of duty paid on inputs/capital goods, and subsequently, removes such inputs/capital goods without utilizing the same in manufacture of any final product, is required to pay an amount equal to the duty of excise leviable on such inputs/capital goods, in view of Rule 3(4) and (5) of the CENVAT credit Rules. Once that duty is paid, it is liable to be treated as duty paid on clearance of inputs/capital goods. Then referring to Circular No. 283 of 1996 issued under the MODVAT scheme and considering the pari materia provisions of Rule 57F(1)(ii) of the Central Excise Rules, 1944 and Rule 3(4) of the CENVAT Credit Rules, 2004, the rebate of duty on exported inputs/capital goods was held allowable treating the exporter to be the deemed manufacturer. It was clarified that reversal of CENVAT credit amounted to duty payment. The same reasoning was adopted by the Bombay High Court in the case of Union of India v. Sterlite Industries (I) Limited, 2017 (354) E.L.T. 87 (Bom.), in that case the assessee had imported used aluminium casting machine as capital goods, CENVAT credit was taken by the assessee on countervailing duty. However, those capital goods were subsequently exported on payment of duty by debiting the credit of input duty. The said claim was also held to be allowable on the similar reasoning as was offered in the decision of Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra). Similar view appears to have been taken by the Madras High Court in the case of Ford India Pvt. Ltd. v. Assistant Commissioner of Central Excise, Chennai (supra).

17. *I find myself in complete agreement with the view taken by the Bombay high Court in Commissioner of Central Excise, Raigad v. Micro Inks Ltd. (supra) and Union of India v. Sterlite Industries (I) Limited (supra).*

23. Government observes that both the judgments of Hon'ble Bombay High Court referred to and relied upon by Hon'ble High Court Allahabad at para 16 of its judgment supra, viz. M/s Micro Inks Ltd.[2011(270)E.L.T. 360(Bom.) and M/s Sterlite Industries (I) Ltd. [2017(354)E.L.T. 87 (Bom.) were challenged by the Department by filing Special Leave to Appeal (C) No. 6120/12 and No. 5159 of 2012 respectively. However, both these appeals filed by the Department were dismissed by Hon'ble Supreme Court vide Judgements dated 14.09.2012 [2017(354)E.L.T.A26 (SC)] and 25.11.2013 [2017(351)E.L.T. A 180 (S.C)] (reported in ELT later) respectively.

24. Government observes that the Judgements cited hereinbefore further fortify the observations recorded at para 22 supra. Since the fundamental requirement of export of duty paid goods gets satisfied in these cases for claiming rebate under Rule 18 of Central Excise Rules, 2002, and following the ratio of the judgements discussed at para Nos. 18 to 21 supra, Government holds that rebate claims are admissible to the respondent under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

25. In view of the foregoing discussion, Government does not find any reason to interfere with or modify the Orders in Appeal No. 39/2006 dated 30.05.2006, 122-125/2008-C.E. dated 28.03.2008 and 64/2006-CE dated 20.11.2006 passed by the Commissioner of Central Excise (Appeals II), Bangalore and uphold the same.

26. The Revision Applications are rejected being devoid of merits.

29/06/21

(SHRAWAN KUMAR)
Principal Commissioner (RA) &Ex-Officio
Additional Secretary to the Government of India

230-232
ORDER No. /2021-CX (SZ) /ASRA/Mumbai DATED 29.6.2021

To,

The Principal Commissioner of Central Goods & Services Tax,
Bengaluru West, 1st Floor, BMTC Bus Stand Building,
Banashankari, Bengaluru-560070.

Copy to:

1. M/s Modern Process Printers Pvt. Ltd.,No. 73, SSI Area, 5th Block, Rajaji Nagar, Bangalore, 560010
2. Commissioner of CGST, Mysuru Appeals, S-1 & S-2, Vinaya Marg, Siddartha Nagar, Mysuru-570011.
3. The Deputy Commissioner , Division-II , CGST,Bengaluru West, 1st Floor, BMTC Bus Stand Building, Banashankari, Bengaluru-560070.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.
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