SPEED POST
REGISTERED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 198/51/WZ/2017-RA | 3448 Date of Issue: 01.05.2023
198/40/WZ/2017-RA

ORDER NO. 237-238/2023-CEX (WZ)/ASRA/MUMBAI DATED 26.04.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : The Pr. Commissioner of CGST, Surat

Respondent : M/s. DNP Instrumentation LLP

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.– CCESA-VAD(App-II)/VK-18/17-18, CCESA-VAD(App-II)/VK-19/17-18 dated 15.05.2017 passed by the Commissioner(Appeals),Vadodara(Appeals-II).

ORDER

These Revision Applications have been filed by the Pr. Commissioner of CGST, Surat (hereinafter referred to as "Applicant") against Orders-in-Appeal No.- CCESA-VAD(App-II)/VK-18/17-18, CCESA-VAD(App-II)/VK-19/17-18 dated 15.05.2017 passed by the Commissioner(Appeals),Vadodara(Appeals-II).

2. The facts of the case are that M/s. DNP Instrumentation LLP(hereinafter referred to as "Respondent") holding C.Ex. Registration No. AAKFD8432HEM001 is engaged in manufacturing of Online Water Monitoring Analyzer falling under Chapter 90 of Central Excise Tariff Act. Respondent has exported their finished goods Online Water Monitoring Analyzer under Rule 18 of Central Excise Rules 2002 read with Notification 19/2004-CE(NT) dated 06.09.2004 to M/s. Indofil Industries Limited situated in SEZ. Rebate Claim was denied by the Adjudicating Authority on the ground that goods so exported is not a manufactured product. Adjudicating Authority recorded that the process involved is merely an assembly and integration of various equipments with the imported Analyzers which does not lead to manufacture of new product or which is commercially known to be a distinct and different product. Aggrieved by the OIOs, the Respondent filed appeal with the Commissioner(Appeals),Vadodara(Appeals-II),who, vide Orders-in-Appeal No.- CCESA-VAD(App-II)/VK-18/17-18, CCESA-VAD(App-II)/VK-19/17-18 dated 15.05.2017 allowed their appeals and sets aside the OIOs.

3. Being aggrieved and dissatisfied with the impugned orders in appeal, the applicant had filed this revision Application on the following grounds:

i. The Appellate Authority has erred in considering the process followed by the Applicant as manufacturing process and that the manufacture product as excisable product. The process so described is merely that of assembly and integration of various equipments with the imported Analyzers made by M/s. Tethys Instruments, France and does not contain any process leading to the manufacture a new product or which is commercially known to be a distinct and different product, than that

what has been imported. Mere assembly of Analyzer is not a manufacture abinitio..

ii. The Appellate Authority has also not taken into consideration the case of M/s. BSNL 2015-TIOL-1018-CESTAT-DEL, relied upon by the department wherein a similar issue of whether assembly, installation and commissioning of switching system along with power plant and inverter would amounts to manufacture or otherwise was before the Hon'ble CESTAT Delhi, where it was held that Goods which have been purchased viz. Switching systems have remained switching systems only even after installation and no new commodity with distinct commercial identity or character or use has emerged. It was held that activity undertaken by assessee does not amount to manufacture. In this case also it was unassembled azalyzer which has been assembled for use, which does not amount to manufacture.

iii. Further, the Commissioner (Appeals) in his order said that, if there was no duty leviable on the exported product means that the claimant has cleared the inputs as such for export on payment of duty or can say that it had cleared the exempted goods. The Appellate authority has cited the case of Commissioner Vs Suncity Alloys Pvt. Ltd. 2007 (218) ELT 174 (Ra)) wherein it was held that if no duty is leviable and the assessee was not required to pay the duty still if he pays the duty which has been received by the petitioner they cannot retain the same on any ground. The Commissioner (Appeals) here has grossly misjudged & mistaken in equating the case of M/s. Suncity Alloys Pvt. Ltd., with the present case as in the present case claimant has paid the duty through CENVAT credit and got the rebate in cash. The contention of Commissioner (Appeals) that if there was no duty leviable on the exported Product means that claimant has cleared the inputs as such for exports on payment of duty and can say that it had cleared the exempted goods is abintio incorrect. The goods in question are imported goods and while crossing the customs barrier what has been paid is "Customs Duty" and not excise duty. The unassembled analyzer cannot be equated with inputs and no excise duty ever has been paid on such

unassembled Analyzer it is made out to be. The argument preferred by Commissioner(Appeals) is non factual, and in-appropriate and hence in acceptable. The Appellate Authority is also mistaken in citing the case of Satish Agarwal Vs Commissioner of Central Excise Thane-1 2013 (927)ELT 586(Tri-Mumbai) since in that case only there was waiver of pre deposit and no final decision has been given by the CESTAT. Thus was only a Interim order and should not have been taken under consideration as a citation. The case is still pending and cannot be relied upon. Moreover in the present case vide order in original 30/ADC-OP/Dem/Div-II/SRT-11/2016-17 dated 31.03.2017 the department has already disallowed and order for recovery of wrongly availed Cenvat Credit on the goods not used in the process of manufacturing by the claimant. The amount shown as payment of Central Excise duty in the sales invoices and records and collected from the buyers of the goods was ordered to be treated as deposited with Central Govt. Under section 11D of Central Excise Act 1944.

iv. The Commissioner (Appeals) in his order at para 5.6 held that the situation is revenue neutral but in the instant case the CENVAT credit has already been denied and therefore availability of credit is not there and the credit has been wrongly utilized.

v. In view of above, Applicant requested to set aside the impugned Orders-in-Appeal.

4. Personal hearing in this case was fixed for 16.10.2022, 19.10.2022, 08.12.2022 and 22.12.2022. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions. Therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original, Orders-in-Appeal and the Revision Applications.

6. Government notes that the issue to be decided in the instant case is whether rebate is admissible under Rule 18 of Central Excise Rules 2002 read with Notification 19/2004-CE(NT) dated 06.09.2004.

7. Governments observes that both revision applications involve identical issue. Adjudicating Authority had denied the rebate to the respondent on the ground that goods so exported is not a manufactured product. Respondent filed appeals before Appellate Authority, who allowed their appeals considering the process followed by them as a manufacturing process. Ongoing through the letter dated 15.12.2015 submitted by the respondent, Government finds that following process has been undertaken:

i. As soon as the assessee receive the purchase order from the customer, the assessee design the sampling system according to site requirements like sample take off to analyzer distance and required sample flow 85 pressure for instrument.

ii. Design the panel for mounting of the Analyzer 85 sampling system.

iii. Prepare the drawings,

iv. Take the drawing approval from and user for manufacturing clearance.

v. Purchase the Raw materials like sample pump, Tubing's fittings(sample take off to Analyzer), Filters, pressure regulators, Flow meters, Mounting Plates, nut & bolts, cables, switches, pipes, fittings etc. from local suppliers.

vi. Import the Analyzers made M/s. Tethys Instruments, France.

vii. Manufacturing the panel for mounting of the Analyzer and Components.

viii. Integration of the sampling systems as per the site requirements.

From the above, Government notes that respondent had carried out various activities such as designing of the sampling system, drawings, procurement of raw materials from local suppliers, manufacturing panel for mounting the Analyzer and its components, integration of the sampling systems as per the site requirements. Government finds that analyzer imported by the respondent was not functional in itself and required a proper system for mounting and integration in order to make it functional. Therefore, process followed by the Applicant was not merely an integration and assembly but incidental/ancillary to make the Analyzer functional. Government reproduces section 2(f) of the Central Excise Act,1944:

" (f) "manufacture" includes any process,

i) incidental or ancillary to the completion of a manufactured product;

ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

iii) which, in relation to the goods specified in the Third Schedule, involves-packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;....."

From the above, it is clear that any process incidental/ancillary to the completion of manufactured product amounts to manufacture. Therefore, in the instant case, the good in question qualifies as a manufactured product. Further, Applicant had placed reliance on case law of M/s. BSNL reported at 2015-TIOL-1018-CESTAT-DEL, where merely an assembly or integration of the different parts procured locally had taken place. However, present case involves various activities including the manufacturing of mounting panel before the imported product i.e. analyzer was put to use by the respondent. Therefore, the case law relied upon by the Applicant is different from the case in hand.

8. Government finds no infirmity with the impugned OIAs and upholds the same.

9. The subject Revision Applications is/are rejected.

26/4/23

(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 237-238/2023-CEX (WZ) /ASRA/Mumbai Dated 26.4.23

To,

1. M/s. DNP Instrumentation LLP, 3, Piramal Nagar Housing Society, B/H Kaniya Timber Mart, Jahangirpura, Surat.
2. The Pr. Commissioner of CGST & C.Ex., Surat, New Central Excise Building, Chowk Bazar, Surat -395001.

Copy to:

1. The Commissioner of Central Tax (Appeals-II), Vadoadara, 4th Floor, Central Excise Building, Opp. Gandhi Baugh, Chowk Bazar, Surat-395001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.