

**SPEED POST**



F.No. 195/28/2020-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...18/11/21.

Order No. ~~248/20~~ 2021-CX dated 18-11-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35. EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NOI-EXCUS-001-APP-1156-19-20 dated 04.12.2019 passed by the Commissioner (Appeals), CGST, Noida.

Applicants : M/s EMD Locomotive Technologies Pvt. Ltd., Noida.

Respondent : The Commissioner of CGST, Noida.

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**ORDER**

A revision application no. 195/28/2020-R.A. dated 12.03.2020 has been filed by M/s EMD Locomotive Technologies Pvt. Ltd., Noida (hereinafter referred to as the Applicant) against the Order-in-Appeal No. NOI-EXCUS-001-APP-1156-19-20 dated 04.12.2019 passed by the Commissioner (Appeals), CGST, Noida whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No. R-17/AC/DIV-VI/N/2018-19 dated 26.11.2018 of the Assistant Commissioner, CGST, Division-VI, Noida.

2. Briefly stated, the Applicant herein filed a rebate claim for Rs. 18,57,920/-, on 14.06.2007, under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE (NT) dated 06.09.2004 in respect of re-export of 13 pieces of Phase Module Inverter, as such, during the month of March, 2017. The original authority rejected the rebate claim on the grounds that rebate of duty on exported goods/re-exported goods cannot be allowed if such goods were not manufactured in India. On an appeal filed by the Applicants herein, the Commissioner (Appeals) held that the exported goods were not excisable goods rather they were imported goods and that reversal of equal amount of Cenvat Credit availed on the receipt of the goods cannot be considered as payment of duty for the purposes of Rule 18 ibid. The appeal filed by the Applicant herein was, accordingly, rejected.

3. The revision application has been filed, mainly, on the grounds that the impugned Order-in-Appeal is a non-speaking order; that export of inputs is at par with the export of final goods; that reversal of credit equal to duty amount is considered as payment of duty and rebate should, therefore, be allowed; that the Board has, vide Circular No. 283/117/96-CX dated 31.12.1996, clarified that clearance/export of inputs as such for export under bond will be treated at par with the export of final goods; and that this being a Circular issued by the Board, it is binding on the department.

4. Personal hearing, in virtual mode, was held on 17.11.2021. Ms. Purvi Asati, Advocate appeared for the Applicant and reiterated the contents of the RA. She highlighted that the subject rebate claims have been rejected on the grounds that: (i) the imported goods that have been exported 'as such' cannot be considered to be 'excisable goods' for the purposes of rebate under Rule 18; and (ii) the reversal of credit cannot be treated as payment of duty for the purposes of Rule 18. Drawing attention to the compilation filed on 16.11.2021, Ms. Purvi Asati, Advocate submitted that both these issues stand and decided in their favour, in the Applicant's own case, vide GOI Order No. 119/2021-CX dated 04.06.2021. Hence, RA may be allowed. None appeared for the Respondent department nor any request for adjournment has been received.

5. The Government has carefully examined the matter. As correctly pointed out by the Applicants, the Government has, vide Order No. 119/2021-CX dated 04.06.2021, decided the two issues based upon which their appeal has been rejected by the Commissioner (Appeals) in their favour. The relevant extracts of the Government's Order dated 04.06.2021 are as under:

*"5.2 The first issue that arises for consideration is whether the imported goods that have been exported 'as such' can be considered to be 'excisable goods' for the purposes of rebate of duty under Rule 18 of the Central Excise Rules, 2002. Rule 18 reads as under:*

*"Rule 18. Rebate of Duty. – Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on material used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification."*

*The Government observes that the rebate is admissible on 'any goods' with the condition that the goods must be 'excisable goods'. As per Section 2(d) of the Central Excise Act, 'excisable goods' are the goods specified in the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to the duty of excise. Thus, for 'any goods' to be described as 'excisable goods' requirement is that they must be specified in the First Schedule of the Central Excise Tariff Act as being subject to a duty of excise. There is no finding by the lower authorities that the subject goods are not specified in the First Schedule to the Central Excise Tariff Act as being subject to a duty of excise. The Commissioner*

(Appeals) has not accepted this position by holding that no activity amounting to manufacture was employed on the goods imported and the imported goods were exported as such, hence, goods exported were not excisable. The Government observes that the Hon'ble Allahabad High Court has, in the case of **Samsung India Electronics Pvt. Ltd. vs. Union of India {2019 (368) ELT 917 (All.)}**, which relates to re-export of imported goods, held that;

"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....."

Therefore, the view taken by the Commissioner (Appeals) cannot be sustained.....

5.3 The second issue based on which Commissioner (Appeals) has rejected the appeal is by holding that reversal of credit cannot be treated as payment of duty for the purposes of Rule 18. The Applicant has pointed out that as per Board Circular No. 283/117/96-CX dated 31.12.1996, it has been clarified that the import on 'inputs as such' in a bond or by debiting RG-23A Part II accounts will be treated as export of final goods by virtue of 'deemed manufactured clause' as if such inputs have been manufactured in the same factory. It has also been observed by the Board that, in case, such inputs are cleared by debiting of RG-23A Part II account, the manufacturer will be entitled to rebate under Rule 12(1)(a) of the Central Excise Rules, 1944. The Government observes that though this clarification has been issued with reference to the rebate under earlier Rules of 1944, the Hon'ble Bombay High Court in the case of **Union of India vs. Sterlite Industries (I) Ltd. {2017**

**(354) ELT 87 (Bom.)** has held that the aforesaid Board's Circular dated 31.12.1996 is also applicable in respect of Rule 18 of the Central Excise Rules, 2002 as Rule 12(1)(a) of the 1944 Rules is pari materia to Rule 18 of the Central Excise Rules, 2002. Accordingly, the Hon'ble High Court has held that "where the duty is paid by debiting the credit entry, rebate claim is allowable". Therefore, the order of Commissioner (Appeals) holding that reversal of CENVAT credit cannot be treated as payment of duty for the purposes of Rule 18 can also not be sustained."

6. The Government having already so decided the issues involved in favour of the Applicant in their own case, the impugned Order-in-Appeal cannot be sustained. It is also observed that the second issue viz. that the reversal of credit cannot be treated as payment of duty, was not a ground for rejection in the proceedings before the original authority and, therefore, Commissioner (Appeals) has traversed beyond the scope of appeal by rejecting the appeal on this ground. The impugned Order-in-Appeal cannot be sustained for this reason as well.

7. The revision application is, accordingly, allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s EMD Locomotive Technologies Pvt. Ltd.,  
D-149-153 & 178-182, Hosiery Complex,  
Phase-II Extension, Noida – 201 301.


G.O.I. Order No. 248 /21-CX dated 18/1/2021

Copy to: -

1. The Commissioner of CGST, Noida-I, C-56/42, Sector-62, Noida – 201 307.
2. The Commissioner (Appeals), CGST, Noida, 4<sup>th</sup> Floor, C-56/42, Renu Tower, Sector – 62, Noida – 201 301.
3. Ms. Purvi Asati, Advocate, M/s. Lakshmikumaran & Sridharan Attorneys, No. 5, Link road, Jangpura Extension, New Delhi – 110 014.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ✓ Spare Copy.

ATTESTED

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(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
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