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F.No. 198/182/11-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... 25/3/13

Order No. 290 /13-Cx dated 25.03.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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. M-I/AV/373/2010 dated 29.11.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I.

APPLICANT : Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Induja Traders P. Ltd., Mumbai.

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**ORDER**

This revision application is filed by the applicant Commissioner of Central Excise, Mumbai-I against the order-in-appeal No. M-I/AV/373/2010 dated 29.11.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original passed by Deputy Commissioner (Maritime), Central Excise Division K-II, Mumbai-IV (Now Mumbai-I).

2. The brief facts of the case are that the respondents M/s Induja Traders Pvt. Ltd, Mumbai had filed a rebate claim of Rs. 1,17,56,832/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 as amended, in respect of goods cleared from the factory premises of M/s. Saisons Communications, Goa (registered under Central Excise as a manufacturer), and exported through Air Cargo Complex, Sahar, Mumbai. Vide the impugned order-in-original dated 15.11.2007, the adjudicating authority allowed the rebate of Rs.1,17,56,832/-.

2.1 On perusal of the case records, the department observed that the goods exported by the respondents are manufactured by M/s. Saisons Communications, Goa by using inputs received from M/s. Platinum IT Solutions, Jammu -180 010, who are availing of area based exemption under Notification No.56/2002 dated 14.11.2002. As per para 2(b) of the said Notification, the amount of duty paid otherwise than by utilization of Cenvat Credit i.e. paid through PLA, on goods cleared from the specified area in Jammu & Kashmir is allowed as refund to the manufacturer or the manufacturer has the option under para 2A(b) of the said Notification, to take credit of such duty paid, in his account current and the amount so credited is allowed to be used for payment of duty in the subsequent months. Thus, M/s. Platinum IT Solutions, Jammu have availed refund/credit of duty paid through PLA on the goods viz. Public Address System, I. P. Enabled with Automation Gateway (SH No. 8542.00) (Gateway), which were cleared to M/s. Saisons Communications, Goa and the said goods were further

used in the manufacture of final product viz. Public Address System, I.P. Enabled with Automation (SH No. 8542.7000) [Gateway System). This final product is cleared for export by M/s. Saisons Communications, Goa, through the respondents, on payment of duty--under claim of rebate of duty.

2.2 The process of manufacture of the above finished goods at M/s. Saisons Communications, Goa, by using inputs received from M/s. Platinum IT Solutions, Jammu was examined by the officers of the department and it was alleged that the activity undertaken by M/s. Saisons Communications, Goa, does not amount to manufacture within the meanings of Section 2(f) of the Central Excise Act, 1944 as no new product with distinct character or, identification comes into being. Accordingly, it cannot be considered as manufacture within the purview of the Board's letter F. No. 209/11/2005-CX-6 dated 03.04.2007.

2.3 The department alleged that as per Rule 2 (k) of Cenvat Credit Rules, 2004, Cenvat credit is admissible only in respect of inputs used in or in relation to manufacture of final products. The process carried out by M/s. Saisons Communications, Goa, does not amount to manufacture as contemplated under Section 2(f) of Central Excise Act, 1944. Hence Cenvat credit is not admissible to M/s. Saisons Communications, Goa, on the inputs received by them. Thus the cenvat credit availed by them was irregular. They utilized such wrongly availed cenvat credit for payment of duty 'at the time of export. Therefore such payment of duty cannot be considered as duty for the purpose of sanctioning rebate under Rule 18 of Central Excise Rules, 2002. As no manufacturing activity is carried out at M/s. Saisons Communications, Goa, in respect of the so called inputs received from M/s. Platinum IT Solutions, Jammu, M/s. Saisons Communications, Goa were not entitled for Cenvat credit of duty paid thereon and therefore payment of duty on such goods at the time of export by utilizing such wrongly availed Cenvat credit is also not legal. The rebate allowed in this case is, therefore, not proper and legal as the goods exported have not suffered any duty at all. Thus in this case an amount of Rs.1,17,56,832/- sanctioned as rebate in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules,2002 is erroneously sanctioned and paid to the respondents. Even if the Cenvat credit taken on the input

received from, M/s Platinum IT Solutions, Jammu is to be allowed, then also this credit can at best be utilized for removal of input as such in terms of Rule 3(4)(b) of Cenvat Credit Rules as the said input is being removed as such without any manufacturing being done on it.

2.4 The department further alleged that the transaction between the respondents and overseas buyer M/s. Gulf Pearl, Dubai is not on commercial basis which proves that whole modus operandi has been adopted to claim the irregular rebate. Hence, the subject order-in-original is not correct, proper and legal and needs to be set aside and the rebate sanctioned is liable to be recovered from the respondents

3 Accordingly, the applicant Commissioner filed appeal on grounds mentioned above against impugned Order-in-Original, before Commissioner (Appeals) who after considering all the submissions, rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant Commissioner filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The adjudicating authority allowed the rebate of Rs.1,17,56,832/- Vide impugned order-in- original dated 15.11.2007 of M/s Induja Traders Pvt. Ltd, Merchant Exporter, in respect of goods cleared from the factory premises of M/s. Saisons Communications, Goa, However, on perusal of the case records the department observed that the goods exported by the claimant are cleared by M/s. Saisons Communications, Goa by using major ingredient received from M/s. Platinum IT Solutions, Jammu -180010, who are availing of area based exemption under Notification No.56/2002 dated 14.11.2002. As per para 2(b) of the said Notification, the amount of duty paid through PLA on goods cleared from the specified area in Jammu & Kashmir is allowed as refund to the manufacturer or the manufacturer has the option under para 2A(b) of the said Notification to take credit of such duty paid, in his current account and

the amount so credited is allowed to be used for payment of duty in the subsequent months.

4.2 As per the instruction issued vide F.NO. 209/11/2005-CX-6 Dt, 8th December, 2006 of the Board, M/s Platinum IT Solutions, Jammu is not eligible for claiming rebate. Further para 2(h) is inserted in Notfn, No. 1 9/2004 (CE)NT dtd. 6.9.2004 issued under Rule 18 of Central Excise Rules, 2002 by amendment dated 17.9.2007, as per which rebate of duty is not admissible to those manufactures who are availing notification no 56/2002.

4.3 The main product Gateway was manufactured in J & K after availing benefit of area based exemption. This product is cleared to M/s Saisons Communications Goa, M/s Saisons Communications takes cenvat credit on Gateway. M/s Saisons Communications manufactures' two minor items viz. DCU and wall panel. After that all the three items are dubbed as Gateway System and cleared on payment of duty through Cenvat which has been taken on main input Gateway. It may be seen that the main input Gateway is being cleared as such and there is no manufacturing activity on that. Even if the two products viz. DCU and wall panel are cleared in same box, they are attached to the Gateway only at the client's premises. Since no rebate claim is admissible on Gateway, the modus operandi has been adopted to claim the rebate.

4.4 This final product is cleared for export by M/s Saisons Communications, Goa, through the respondents, on payment of duty under claim of rebate of duty. The process of manufacture of the above finished goods at M/s. Saisons Communications, Goa, by using inputs received from M/s. Platinum IT Solutions, Jammu, was examined by the officers of the department and it was alleged in the SCN issued vide F.No. V/30/5/17/2007-T (DIV-I) dated. 6.3.2008 that activity undertaken by M/s. Saisons Communications, Goa, does not amount to manufacture within the meanings of Section 2(l) of the Central Excise Act, 1944 as no new product with distinct character or identification comes into being and duty paid on such goods cannot be considered as

duty as per Section 3 of C.Ex Act, 1944, as levy of duty under Section 3 is on manufactured products, Hence, it is not a duty for the purpose of sanctioning rebate .As per Notfn. No. 19/2004 (CE)NT dtd. 6.9.2004 under Rule 18 of Central Excise Rules, 2002, the main condition for the Rebate is that the duty paid goods should be exported. It is also alleged that as per Rule 2 (k) of Cenvat Credit Rules, 2004, Cenvat credit is admissible only in respect of inputs used in or in relation to the manufacture of the final products. In the present case, the inputs are as such cleared for export under rebate. As per provision. of Notification No. 19/2004 CE(N.T.) dt.06.09.2004 the main manufacturer is not eligible for rebate.

4.5 The transaction between M/s Induja Traders and M/s Gulf Pearl, Dubai is not on commercial basis as profit on sales of M/s. Induja Traders is Rs.1426/- on the purchase price of Rs.4,10,000/-. This proves that the whole modus operandi has been adopted for claiming the irregular rebate.

4.6 In case of M/s. Saisons Communications, Goa, no manufacturing activity is taking place within the meaning of Section 2(j) of the Central Excise Act, 1944. This is because no new product with distinct character or identification comes into existence and the duty paid on such goods cannot be considered as duty as per Section 3 of Central Excise Act, 1944, as levy of duty under Section 3 is on manufactured products only. Therefore, such payment of duty cannot be considered as duty for the purpose of sanctioning rebate under rule 18 of the Central Excise Rules, 2002, read with Notfn, No. 19/2004(CE)NT dtd. 6.9.2004 .The rebate allowed in this case is, therefore, not proper and legal as the goods exported have not suffered any duty at all. Thus in this case the amount of Rs.1,17,56,832/- sanctioned as rebate in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules , 2002 is erroneously sanctioned and paid to M/s. Induja Traders Pvt. Ltd., Mumbai 400068.)

5. Show Cause Notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. The respondent vide their written submission dated 29.08.2011 mainly stated as under:-

5.1 M/s. Platinum IT Solution Jammu availed of area based exemption under Notification No. 56/2002 CE dated 14.11.2002. As per the said notification the manufacturer has the option to take credit the amount of duty paid through PLA in his account current. The said credited amount can be used for payment of duty in the subsequent month. All the above narration confirm the facts & this is not at all a ground for denying the rebate.

5.2 In this ground there is no application of mind by the Applicant Commissioner in as much as the instruction contained in Board's instruction F. No. 209/11/2005-CX-6 dated 08.12.2006 have been repeated verbatim. Subsequently it has also been said that Notification No. 19/2004-(CE) NT dated 06.09.2004 was amended by Notification dated 17.09.2007 prohibiting rebate of duty to the manufacturer availing of Notification No. 56/2002-CE dated 14.11.2002. As per the Board's letter, the Ministry of Law opined that the term duty paid used in Rule 18 did not include that portion of duty which is subsequently refunded to the manufacturer & the Applicant Commissioner had simply relied on the same. However, denial of rebate on this ground is not sustainable for the following reasons:-

(a) M/s. Induja or M/s. Saisons, the Merchant Exporter & manufacturer have not availed of Notification No. 56/2002 & therefore, the above said Board's instructions are not applicable to them.

(b) It is a settled law that mere opinion of the Board although based on advice of Ministry of Law shall not alter the provisions of the rule or Notification. To translate the opinion into certainty Notification 19/2004 was amended clearly debarring manufacturers from claiming rebate if Notification 56/2002 has been availed of. This

amendment was effective from 17.09.2007 & can not be made applicable retrospectively.

5.3 The Applicant Commissioner had clearly stated that M/s. Saison manufactured two items. The cost of these two items is just 1% of the total cost of Gateway. The Applicant Commissioner had erroneously assumed that the said two items can be shipped to the purchaser independently. The Gateway & these two items are complementary to each other & can not be used independently. Therefore, it is patently wrong to assume that the Merchant Exporter engineered modus operandi to circumvent the provisions of notification no. 19/2004 CE (NT) dated 06.09.2004.

5.4 The applicant presumption will not hold water because the Gateway is being exported along with other his components admittedly manufactured by M/s. Saisons. A complete system has been manufactured & exported. Therefore, there can not be any room for doubt for payment of rebate of the duty paid on the system when cleared for export. It is immaterial whether the three components are shipped independently or in one pack. It is everybody's knowledge that many a times a particular machine or component is disassembled for ease of packing & reducing the volume of package for export. For example the manufacturers of 'Pump Set' may export the Motor & the Pump in separate packing, but export pertains to Pumpset & not the individual item.

5.5 The Applicant Commissioner had relied upon the SCN dated 06.03.2008 issued by Commissioner Goa alleging that the activity undertaken by M/s. Saison did not amount to manufacture within the meaning of section 2f of the Central Excise Act, 1944. However, the Applicant Commissioner in Ground C of Appeal had admitted that M/s. Saisons were manufacturing two items which are attached to the Gateway to make a complete system. Section 2(f) of the Act provides inclusive definition of the term "Manufacture". It specifically includes any process ancillary or incidental for completion of the manufactured product. The activities undertaken by M/s. Saisons are within the definition of manufacture. As such, the duty paid by M/s. Saison is appropriate. Notwithstanding the above, the fact remains that goods have



been exported & duty had been paid on such goods at the time of its removal & M/s. Saison have not availed of notification 56/2002. Therefore, no provisions of notification 19/2004-CE (NT) have been contravened to disallow rebate to M/s. Induja.

5.6 The Applicant Commissioner without application of mind had simply stated that Commissioner Goa reported that M/s. Induja can only claim rebate to the extent of duty paid on DCU & Wall Panel manufactured by M/s. Saison. In spite of the above statement the Applicant Commissioner had prayed for denial of the total rebate. The rebate always relates to the duty paid on the goods exported, whether manufactured by the assessee or sourced by the assessee. As such, by no stretch of imagination the rebate can be limited to the goods manufactured.

5.7 The Applicant Commissioner without application of mind anchored on the premise that transaction between M/s. Induja & M/s. Gulf Pearl, Dubai was not on commercial basis as profit on sale of M/s. Induja is Rs. 1426/- on purchase price of Rs. 4,10,0001-. He had erroneously concluded that the above facts proved that the whole modus operandi has been adopted for claiming the irregular rebate. It has been conveniently ignored by the Applicant Commissioner that the rebate equals to the amount of duty paid & does not depend on the profits of the exporter or the manufacturer. An exporter who may be donating the goods to a foreign entity would still be clearly eligible for the rebate of the duty paid on such goods even when he had not made any profit on such transaction.

6. Personal hearing was scheduled in the case on 20.12.2012, 11.10.2012, 20.12.2012 & 05.03.2013. Personal hearing held on 20.12.2012 was attended by Shri Dharam Singh Meena, Deputy Commissioner, on behalf of applicant department who reiterated the grounds of revision application. Shri O.P. Khanduja, consultant appeared for hearing on 21.12.2012 on behalf of respondent and reiterated their submissions made vide written reply dated 29.08.2011.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the respondent, who was a merchant exporter, exported the goods cleared by M/s Saisons Communication on payment of duty. The respondent's rebate claims were initially sanctioned by the original authority. The department filed appeal before Commissioner (Appeals) mainly on the ground that activity undertaken by manufacturer M/s Saisons Communication, Goa doesnot amount to manufacture under section 2(f) of the Central Excise Act, 1944 and Cenvat Credit was not admissible to M/s Saisons Communication on the inputs received by them and as such, the Cenvat Credit availed by the manufacture was irregular. Under such circumstances, rebate of duty paid through such irregular Cenvat Credit is not admissible Commissioner (Appeals) decided the case in favour of respondent. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above. The department vide their letter dated 09.01.2013 has informed that Assistant Commissioner Division-I, Panaji-Goa has issued Show Cause Notice No. V/30/5/17/2007-Tech.(Div.I) dated 05.03.2008 involving one of the ground that activity undertaken by the manufacture M/s Saison Communication Pvt. Ltd., Goa doesnot amount to manufacture. The same Show Cause Notice is still pending for adjudication.

9. Government observes that the rebate was contested to be inadmissible by the department on the ground that the activity undertaken by manufacture of final export product does not amount to manufacture and hence, Cenvat Credit availed on the inputs received was not regular. Government observes that the issue is yet to be decided in the adjudication proceedings initiated vide said show cause notice dated 05.03.2008 and outcome of said adjudication proceedings will have a direct bearing on alter mining admissibility of this rebate claim.

10. The governing statutory provisions of grant of rebate are contained Rule 18 of Central Excise Rules, 2002 which reads as under :

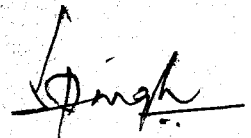
*"Rule 18 : Rebate of Duty : Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if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

The provision of said rule stipulate that rebate of duty paid an excisable goods exported goods is admissible. The fundamental requirement for claiming rebate is that the duty paid good are exported out India. In this case, payment of duty on exported goods is in dispute as the matter of reassessment of ARE-1 No. 1/07-08 dated 03.08.2007 and reclassification of goods is yet to be decided. In view of above, the admissibility of rebate claim can be finalized after conclusion of on going adjudication proceedings. It is pertinent to mention here that the sanction of rebate claim depends of decision on the issues raised in Show Cause Notice dated 05.03.2008.

11. In view of above discussion, , Government is of opinion the principles equality of justice demands that the case has to be re-considered in the light of fresh facts of the case. Accordingly, Government sets aside the impugned orders and remands the case back to the original adjudicating authority for fresh consideration of said claim in the light of out come in the ongoing adjudication proceeding in relation to Show Cause Notice dated 05.03.2008 before Department of Central Excise Goa. A reasonable opportunity of hearing will be afforded to both the parties before deciding the case.

12. Revision Application is disposed off in above term.

13. So, ordered.




(D.P. Singh)

(Joint Secretary to the Government of India)

The Commissioner of Central Excise,  
Mumbai-I, 115 Kendriya Utpad Shulk Bhavan,  
Maharishi Karve Road, Mumbai – 400020.

(Attested)



(भगवती शर्मा/Bhagwati Sharma)  
सहायक आसुकर/Assistant Commissioner  
C.B.E.C.-O.S.D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Reven)  
एन.ए.ए.ए./Govt of India  
नं. 198/182/11-RA

G.O.I. Order No.290/13-Cx dated 25-03-2013

Copy to:-

1. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Dadi Seth Lane, Chowpatty, Mumbai- 400 007.
2. The Assistant Commissioner of Central Excise, Division K-II, Mumbai-1, 2<sup>nd</sup> Floor, M.S.E.B. Building, Estarella Battery Compound, Dharavi, Mumbai - 400019.
3. M/s Induja Traders P. Ltd., A-104, Raj Umang-2, Shiv Vallabh Cross Road, Ashok Van, Dahisar (East), Mumbai 400 068.
- ✓ 4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.



(Bhagwat P. Sharma)  
OSD (Revision Application)