

REGISTERED SPEED POST



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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/1397-1398/12-RA /517A

Date of Issue: 02.09.2020

ORDER NO. 309-310 /2020-CX (WZ) /ASRA/MUMBAI DATED 04-03-2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Man Industries (India) Ltd.,
Survey No. 485/2, Anjar-Mundra Highway,
Village Khedoi, Tal : Anjar- Kutch, Gujarat.

Respondent : Commissioner of Central Excise & Service Tax, LTU, Mumbai.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BK /2&3/LTU / MUM/2012 dated 20.07.2012 passed by the Commissioner (Appeals) Central Excise & Service Tax, Large Tax Payer Unit, Mumbai.

ORDER

These revision applications have been filed by the applicant M/s Man Industries (India) Ltd., Kutch, Gujarat (hereinafter referred to as 'the applicant') against Order-in-Appeal No. BK/2&3/LTU / MUM/2012 dated 20.07.2012 passed by the Commissioner (Appeals) Central Excise & Service Tax, Large Tax Payer Unit (LTU), Mumbai.

2. Brief facts of the case are that the applicant had manufactured and exported submersible ARK Welded Pipes (SAW Pipes) and filed two separate rebate claims and the Deputy Commissioner, Central Excise and Service Tax, LTU, Mumbai disposed off the said rebate claims as under :

No. of Rebate claims & Date of filing these claims	Amount of Rebate Claimed	Order in Original No. and Date	Amount of Rebate Sanctioned	Amount of Rebate rejected
1	2	3	4	5
27 Rebate Claims filed on 27.05.2011	Rs. 10,62,20,259/-	LTU/MUM/CX/GLT-6/MAN/ANJ/REB/391/2011 dated 06.09.2011	Rs.10,58,43,519/-	Rs. 3,39,850/-
21 Rebate claims filed on 16.08.2011	Rs. 7,48,32,692/-	LTU/MUM/CX/GLT-6/MAN/ANJ/REB/406/2011 dated 03.10.2011	Rs. 7,46,37,922/-	Rs. 1,94,770/-

The Deputy Commissioner, Central Excise and Service Tax, LTU, Mumbai rejected the rebate claims pertaining to Education Cess & Secondary Higher Education (SHE) Cess to the extent of Rs. 3,39,850/- (Rupees Three Lakh Thirty Nine Thousand Eight Hundred Fifty only) (Education Cess Rs. 2,26,567/- + Secondary Higher Education Cess Rs.1,13,283/-) & Rs. 1,94,770/- (Rupees One Lakh Ninety Four Thousand Seven Hundred Seventy only) (Education Cess Rs. 1,29,691/- + Secondary Higher Education Cess Rs.65,079/-) vide respective Orders in Original (column 3 of Table above) as the same were paid by the applicant by utilizing cenvat credit availed under the Head of the Basic Central Excise duty (CENVAT) which was inadmissible.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeal before Commissioners of Central Excise (Appeals) LTU, Mumbai who vide Orders-in-Appeal No. BK / 2 & 3 / LTU/ MUM / 2012 dated 20.07.2012 upheld the Orders-in-Original and rejected the appeals filed by the applicant.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision applications on the grounds mentioned therein.

5. A personal hearing in this case was held on 09.10.2019 and was attended to by Shri B.B. Mohite, Advocate, on behalf of the applicant. He reiterated the grounds of revision Applications and written submissions filed on the date of hearing. Government observes that there was a delay of 4 days in filing the present revision applications by the applicant. The applicant has contended that the delay was due to the festival season in the month of October 2012, when the concerned person remained on leave. In view of this, the applicant prayed for condonation of delay of 4 days in filing these applications. Since, the applicant filed these revision applications 4 days after the initial 90 days period, which falls within condonable limit of 90 days, Government in the interest of justice condones the said delay and proceeds to examine the cases on merits.

6. In their written submissions filed on 09.10.2019, the applicant contended as under:

6.1 The Judgment in case of M/s Bharat Box Factory Ltd (unit-1)-2011(265)ELT 366 relied on by Commissioner (Appeals), is in context of Notification No 56/2002-CE dated 14.11.2002 (area based exemption) and refund of education cess which was paid utilizing cenvat credit. Tribunal held that Notifn. No. 56/2002 does not provide refund of education cess as the notification is only for refund of duties paid in cash. However, in the present case education cess is paid by debit in cenvat account.

6.3 There is no bar in cenvat credit rules that the credit of basic excise duty can not be utilized for payment of education cess. Rule 3(4) of CCR, 2004 provides that cenvat credit can be utilized for payment of any duty of excise. In case of CCE, Vapi V/s Donear Ind. Ltd reported in 2009(233)ELT.221(Tri-Ahd) Tribunal held that Education cess can be paid by utilizing the cenvat credit of Basic Excise duty- Rule 3(4) of CCR,2004.

6.4 As per Rule 3(4)(a) of CCR, 2004, cenvat credit may be utilized for payment of any duty of excise on any final product. This has been confirmed in case of TTK, LIG Ltd. V/s CCE, Chennai/New Delhi reported in 2006(193)ELT.169(Tri-LB.).

6.5 As per Section 91 & 93 of FA, 2004, and Section 136 & 138 of FA, 2007, education cess is duty of excise. The Hon'ble Tribunal in case of Mahindra and Mahindra Ltd V/s CCE, Mumbai-2007(211) ELT.481(Tri-Mum) held that education cess is in the nature of excise duty. The Hon'ble Tribunal in case of Sun Pharmaceutical Industries V/s CCE, Jammu reported in 2007(207)ELT.673(Tri-Del.) held that education cess is duty of excise. Payment of education cess from BED credit permissible.

6.6 Rule 3(7)(b) of CCR,2004 restrict the credit of duties of Addl.Duties (textile & textile) , education cess and can only be utilized for payment of said duties

only. Rule 3(7)(b) of CCR,2004 does not restrict payment of education cess by utilizing credit of basic excise duty as held in the case of Sun Pharma mentioned above. Therefore, credit of basic duty can be utilized for payment of any duty of excise including education cess.

- 6.7 In present case rebate is claimed under Notification No. 19/2004-CE(NT) dated 06.09.2004. Accordingly, whatever duties has been paid has to be refunded. The Hon'ble High Court of Gujarat in case of M/s Vipor Chemicals Pvt. Ltd V/s. UOI [2009(233)ELT.44(Guj.)] held that education cess paid out of cenvat credit account should also be refunded. The above findings are not deferred in case of Metal Box Factory Ltd'. relied upon by the department. Therefore education cess is duty of excise and can be paid by utilizing cenvat credit of basic duty in terms of Rule 3(4)(a) of CCR,2004.
- 6.8 The Hon'ble High Court of Rajasthan in case of Banaswara Syntex Ltd Vs UOI reported in 2007(216) ELT.16(Raj.) held that education cess levied as excise duty from date of introduction of said levy and rebate is available under basic-Notification. Rebate of education cess is available. Hon'ble Supreme Court in case of SRD Nutrients Pvt. Ltd. V/s.CCE - 2017(355)ELT.481(SC) held that when excise duty is exempted there would be no education cess. From the judgments referred above, refund / rebate of education cess paid from cenvat credit is admissible.

7. Government has carefully gone through the relevant case records and perused the Orders-in-Original and the impugned Orders-in-Appeal and written submissions. Government in this regard relies on and refers to GOI Order Nos. 1515-1516/2012-CX. dated 5-11-2012 In Re : Welspun Corporation Ltd.[2014 (314) E.L.T. 968 (G.O.I)] wherein while deciding an identical issue, GOI in its aforementioned Order observed as under :-

8.1 Government proceeds to first peruse the relevant provisions of law which are as under :-

(i) Rule 3(4) of Cenvat Credit Rules, 2004 :-

.....
3(4) the cenvat credit may be utilized for payment of -
(a) any duty of excise on any final product, or

(ii) Rule 3(7)(b) of Cenvat Credit Rules, 2004 :-

"provided that the credit of the education cess on excisable goods and education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services."

(iii) Para 2.4.2 of Chapter 5 of C.B.E. & C. Excise Manual on Supplementary Instructions dealing with the restrictions on utilization of credit reads as under :-

"There are certain restrictions on utilization of Cenvat Credit of different duties..... It has however been provided that the credit of Education Cess on excisable goods and the Education Cess on taxable services can be

utilized either for payment of Education Cess on excisable goods or for payment of the Education Cess on taxable services.

.....
There is no restriction on utilization of credit of duties other than mentioned above."

8.2 Government notes that as per Rule 3(4) of Cenvat Credit Rules, 2004, Cenvat credit may be utilized for payment of any duty of excise on any final product. As such Cenvat credit of BED paid on inputs can be utilized for payment of any duty of excise on any final product. Section 93(1) of Finance Act, 2004 and Section 138(1) of Finance Act, 2007 under which Education Cess and SHE Cess are leviable specifically refer to these cesses as duty of excise. The Rule 3(7)(b) of Cenvat Credit Rules, 2004 put restriction in regard to utilization of Cenvat credit availed in respect of Education Cess and SHE Cess paid on inputs. The provisions relating to utilization of basic excise duty credit contained in Rule 3(4) of said rules does not put any restriction on utilization of said credit for payment of Education Cess/SHE Cess leviable as per provisions of relevant Finance Acts. This point is further clarified in ~~para 2.4.2 of Chapter 5 of C.B.E. & C. Excise Manual on Supplementary Instructions~~ which clearly stipulate that there is no restriction on utilization of credit of duties other than the restriction as envisaged in Rule 3(7)(b) of Cenvat Credit Rules, 2004.


8.3 Hon'ble High Court of Guwahati vide order dated 1-7-2011 in the case of CCE, Dibrugarh v. M/s. Prag Bosimi Synthetics Ltd., Assam [2013 (295) E.L.T. 682 (Gau.)] has held that BED credit could be utilized for payment of NCCD which is a similar levy to Education Cess/SHE Cess. The operative portion of above order is reproduced below :-

"Rule 3(7) limits the utilization of Cenvat credit in respect of NCC duty as also other duties mentioned in Rule 3(7)(b). It provides that Cenvat credit in respect of NCC duty and other duties shall be utilized towards payment of duty of excise leviable under various statutes respectively. The use of word "respectively" in this regard is important inasmuch as it confined to the utilization for payment of duty under that statute only. The converse, however, does not follow. That is to say that merely because Cenvat credit in respect of NCC duty can be utilized only for payment of NCC duty, it does not follow that any other credit of duty cannot be utilized for payment of NCC duty. Under the circumstances, the second part of the substantial question of law must be answered in the affirmative and it must be held that while Cenvat credit of NCC duty can be utilized under the Cenvat Credit Rules only towards payment of such NCC duty, Cenvat credit obtained from other sources can be utilized for payment of NCC duty on the final product."

8.4 Government further notes that Hon'ble Supreme Court in M/s. Paper Products Ltd. v. CC - 1999 (112) E.L.T. 765 (S.C.) and Collector of Central Excise, Vadodara v. Dhiren Chemicals Industries Ltd. - 2002 (143) E.L.T. 19 (S.C.) has held that the plain reading of statute as clarified and elaborated vide the C.B.E. & C. Manual and circulars are mandatorily binding on the departmental authorities. Thus in the event of there being no specific bar anywhere to the utilization of accumulated Cenvat

credit of BED towards payment of Education Cess and SHE Cess, the objection and ground of revision application of the department are not legally sustainable. As such Commissioner (Appeals) has rightly hold that there is no restriction on utilization of Cenvat credit of BED for payment of Education Cess & SHE Cess.

8. Applying the ratio of aforementioned GOI order, Government holds that rebate claims of Rs. 3,39,850/- and Rs. Rs. 1,94,770/- in r/o Education Cess and SHE Cess paid by the applicant from the Cenvat Credit of Basic Central Excise duty in impugned cases cannot be held inadmissible.
9. In view of above circumstances, Government sets aside the Order-in-Appeal No. BK / 2 & 3/LTU/ MUM/2012 dated 20.07.2012 passed by the Commissioner (Appeals) Central Excise & Service Tax, Large Tax Payer Unit, Mumbai.
10. Revision Applications thus succeed in the above terms.
11. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ³⁰⁹⁻³¹⁰ /2020-CX (WZ) /ASRA/Mumbai Dated 04.03.2020

To,
M/s Man Industries (India) Ltd.,
Survey No. 485/2, Anjar-Mundra Highway,
Village Khedoi, Tal : Anjar- Kutch, Gujarat.

Copy to:

1. The Commissioner of CGST, Kutch (Gandhidham), GST Bhavan, Plot No. 82, Sector -8, Opp. Ramleela Maidan, Gandhidham - 370 201
2. The Commissioner of CGST, (Appeals) Central GST Bhavan, Race Course Ring Road, Rajkot-360001
3. Assistant Commissioner, Anjar-Bachau Division, GST Bhavan, Plot No. 82, Sector-8 , Opp. Ramleela Maidan, Gandhidham - 370 201
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.