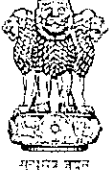


F.No. 372/35-36/DBK/2018-RA
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F.No. 372/35-36/DBK/2018-RA
F.NO. 372/37/DBK/2018-RA
F.NO. 372/62/DBK/2018-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 05/02/21

Order No. 32-35/2021-Cus dated 04-02-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal Nos. 06-07/CE/RKL-GST/2018, 18/CE/RKL-GST/2018 and 8/CE/RKL-GST/2018 dated 25.01.2018, 14.02.2018 and 30.07.2018 respectively, passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Bhubneshwar.

Applicant : M/s Vedanta Limited

Respondent : Commissioner of Central Excise, Rourkela

ORDER

Revision Application Nos. 372/35-36/DBK/2018-RA, 372/37/DBK/2018-RA and 372/62/DBK/2018-RA dated 17.05.2018, 17.05.2018 and 25.10.2018, respectively have been filed by M/s Vedanta Limited, SEZ unit, (hereinafter referred to as the applicant) against the Order-in-Appeals No. 06-07/CE/RKL- GST/2018, 18/CE/RKL-GST/2018 and 78/CE/RKL-GST/2018 dated 25.01.2018, 14.02.2018 and 30.07.2018, respectively, issued by the Commissioner of CGST, Central Excise & Customs (Appeals), Bhubaneshwar. Commissioner (Appeals), vide the above mentioned Orders-in-Appeal, has allowed the appeal of Assistant Commissioner, Central Excise, Customs and Service Tax, Sambalpur-I Division, Sambalpur, (hereinafter referred to as the respondent) on the ground that the assessment is still provisional with regard to the value of the goods and drawback can not be granted unless the assessment is finalized.

2. Brief facts of the case are that the applicant filed drawback claims, in respect of Calcined Alumina imported by them from the DTA Units, with the jurisdictional SEZ authorities, in terms of Rule 30(8) of SEZ Rules, 2006 read with the Circular No. 43/2007-Cus dated 05.12.2007 issued by the Board. The said claims were sanctioned by the jurisdictional specified officer, Vedanta Limited-SEZ, Jharsuguda, Odisha. Aggrieved, the respondents filed appeals before the Commissioner (Appeals) on the ground that the value of the impugned goods i.e. Calcined Alumina

Calcined Alumina cleared by the DTA supplier is not final and drawback can be allowed only after finalization of the price of the goods supplied to the applicant by the excise authorities and, therefore, the drawback claims filed by the applicant were premature. Commissioner (Appeals), vide the above mentioned Orders-in-Appeal, allowed the appeals on the ground that the jurisdictional authority has granted the drawback erroneously as the assessment in question is not final and unless assessment is finalized the drawback cannot be sanctioned.

3. The instant revision applications have been filed mainly on the ground that the amount of drawback is calculated on the FOB price, which is the price contracted in the purchase order. Thus, the amount of drawback will not change even after final assessment of the value for the excise purposes; that final assessment of the said provisional value has been completed; that drawback is being claimed by them at All Industry Rate of Drawback specified in the Drawback Schedule which is calculated at a percentage of FOB value whereas the provisional assessment is with respect to the value of the goods cleared by the supplier to the applicant. Since the FOB value of the goods does not change, finalisation of assessment on excise side will have no impact on the amount of drawback claimed.

3. Personal hearing, in virtual mode, was held on 02.02.2021, which was attended by Sh. Rahul Tangri, Advocate, and Sh. Dipankar Majumdar, Advocate, on behalf of the applicant. Written synopsis filed by the applicant, on 02.02.2021, has been

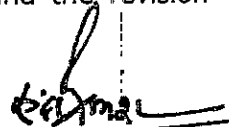
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taken on record. Sh. Tangri stated that the department has challenged the order of the original authority on the grounds that assessment in respect of export goods was provisional. However, the assessment for customs purposes was final as evident from relevant Bills of Export. It was the Central Excise Assessment which was provisional; that assessment for Central Excise purposes was finalized vide order dated 12.01.2018 for Financial year 2015-16; that the FOB value is less than the finally assessed value for excise purposes. Therefore, the drawback has been claimed on a value lower than the finally assessed value by the Central Excise authorities; that Commissioner (Appeals) has erred in facts and law by taking the provisional assessment for Central Excise purposes as that for customs purposes even though Bills of Export are finally assessed. His finding that the drawback was claimed at the provisionally assessed Central Excise value is also factually incorrect. None appeared for the department nor any request for adjournment has been received. Therefore, the matter is being taken up for disposal on the basis of records.

4. Government has examined the matter. It is observed that the drawback has been claimed by the applicant herein on the basis of exports made to them by the DTA units. The Commissioner (Appeals) has allowed the appeals of the respondent on the ground that the value (of goods exported to the applicant by the DTA units) assessed by the Central Excise authority was provisional and not final. Government has observed that the Bills of Export filed by the DTA Units were assessed finally by

the customs authorities at the first stage itself. The Central Excise authorities have finalized the provisional assessments vide orders dated 12.01.2018 and 02.08.2018 (in respect of DTA Unit) for the periods 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017, i.e., the period during which the exports were made to the applicant herein. The values finally assessed by the Central Excise Authorities are Rs. 23,071.00 per MT for FY 2015-16 and Rs. 24,750.00 per MT for FY 2016-17. The drawback claimed by the applicant is on FOB value basis i.e., Rs. 22,682/- per MT, Rs. 20,770/- per MT, Rs. 21,845 per MT, Rs. 20,030 per MT, Rs. 19,251/- per MT, Rs. 17,508/- per MT and Rs. 19,243/- per MT. The FOB value is, thus, less than the finally assessed value by the Central Excise authorities. In the conspectus of these facts, the only point of grievance of the department that drawback was sanctioned when the value of supplies was provisional has also got extinguished. As such, the Government finds that, even without traversing the issues involved on merits, the impugned Orders-in-Appeal cannot be sustained and the orders of the original authority have to be restored.

5. Accordingly, the impugned Orders-in-Appeal are set aside and the revision applications are allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Vedanta Limited, SEZ Unit,
Bhurkhamunda,
Jharsuguda (Odisha) – 768202

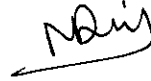
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F.NO. 372/62/DBK/2018-RA

Order No. _____ /21-Cus dated _____ 2021

Copy to:

1. The Commissioner of CGST & Central Excise, Rourkela, KK 42, Civil Township, Rourkela - 769102.
2. Commissioner of CGST, Central Excise & Customs (Appeals), Central Revenue Building, Rajaswa Vihar, Bhubaneswar - 7, Odisha
3. Specified Officer, Vedanta Limited-SEZ, Jharsuguda, Odisha
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested



(Nirmla Devi)

Section Officer (REVISION APPLICATION)