F.No. 195/541/13/RA

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
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Mumbai- 400 005

F.No. 195/541/13 /RA /4012 Date of Issue: 26-08-2020

ORDER NO. 338 /2020-CX /ASRA/MUMBAI DATED 05.03.2020 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 Elec Steel Processing Industries, Vadodara, Gujarat.

Respondent : The Commissioner of Central Excise, Vadodara-II Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central Excise ACT, 1944 against the Order in Appeal No. PJ/518/VDR-II/2012-13 dated 27.02.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

ORDER

1. This Revision Application has been filed by Elec Steel Processing Industries, Vadodara, (hereinafter referred to as "the applicant") against Order-in-Appeal No. PJ/518/VDR- II/2012-13 dated 27.02.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara.

2. The brief facts of the case are that the applicant is engaged in the manufacture of CRGO Torodial Core falling under Chapter 85 of Central Excise Tariff Act, 1985. The applicant filed a refund claim of Rs.24,729/-(Rupees Twenty Four Thousand Seven Hundred Twenty Nine only).

3. The Original authority vide Order in Original No. Reb/Elect/1002/10-11 dated 25.03.2011 rejected the rebate claim of Rs.24,729/- under Section 11B of Central Excise Act, 1944 on the grounds of unjust enrichment.

4. Being aggrieved by the aforesaid Order in Original the applicant preferred an appeal before the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara who vide Order in Appeal No. PJ/518/VDR- II/2012-13 dated 27.02.2013 upheld the Order in Original and rejected appeal filed by the applicant.

5. Being aggrieved by impugned Order-in-Appeal the applicant has preferred the present Revision Application mainly on the following grounds:

5.1 It is not true that the rebate claim was filed on the strength of (i) credit note, (iii) certificate issued by the SEZ Unit and (iii) Chartered Accountant's certificate. These were the additional supporting documents which they had submitted along with the regular prescribed documents.

5.2 The Adjudicating Authority had rejected the rebate claim vide Order-in-Original No. Reb/ELEC/1002/10 dated 25.03.2011 on the grounds of "unjust enrichment" by stating that "such post clearance adjustment, cannot be recognized while deciding the unjust enrichment factory under Section-11B of Central Excise Act, 1944, therefore, refund of Rs.24,729/- is within the per-view of unjust enrichment to the assessee in pursuance of Section-11B of Central Excise Act, 1944.

5.3 Whereas the Commissioner (Appeals) has upheld the order-in-original and dismissed the appeals on the grounds of railed to follow the prescribed procedure" by recording his finding in Para-5.4 that "in the present case, since the appellant failed to follow the prescribed procedure

for claiming rebate of duty on export goods, the rebate claim is liable to be rejected. Thus, there are contradictions in the order-in-original and order-in-appeal.

5.4 In the identical and similar rebate claim, the Commissioner (Appeals) in his earlier Order-in- Appeal Commr. (A) /335/VDR-II/2011 dated 07.09.2011 has rejected the appeal filed by the Department against Original order No. Reb/Elec/594- 599/10-n dated 15.11.2010 of the Adjudicating Authority who had earlier sanctioned the identical refund.

5.5 The Commissioner (Appeals) has in fact wrongly came to the conclusion in Para 5.5 that the "earlier order-in-appeal was on the aspect of unjust enrichment, whereas the instant case is not maintainable for not following the prescribed procedure". In fact there is no change in the fact and circumstance of the present case and the case that was decided by the Commissioner (Appeals) earlier on 07.09.2011. Therefore, there are contradiction in findings of both original Adjudicating Authority and Appellate Authority.

5.6 They neither failed in submitting the rebate claims along with the prescribed documents nor failed in following the procedure. Even if assuming without admitted that there was some procedural deficiencies, still the rebate claim cannot be rejected if otherwise admissible.

5.7 Kind attention to Hon'ble Bombay High Court's decision dated 10.08.2010 in case of M/s Madhav Steel Vs. Union of India, wherein while relying upon the judgements of Hon'ble Supreme Court in the case of Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner, reported in 1991 (55) ELT 437, wherein it has been held "that technicalities attendant upon a statutory procedure should be cut down where these are not necessary for the fulfillment of legislative purpose". In other case of Formika India Vs. Collector of Central Excise, reported in 1995(77) ELT 511, the Hon'ble Supreme Court held that "benefit should not be denied on technical grounds".

6. A personal hearing in this case was held on 05.11.2019 and was attended by Mr. Prakash Mirchandani, Consultant, on behalf of the applicant. He reiterated the grounds of Revision Application and submitted that unjust enrichment does not apply to exports.

7. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original and Order-in-Appeal and considered oral & written submissions made by the applicant in their Revision Application.

8. Government observes that Original authority vide Order in Original No. Reb/Elect/1002/10-11 dated 25.03.2011 while rejecting the rebate claim of Rs.24,729/- of the applicant under Section 11B of Central Excise Act, 1944 observed that the applicant had issued credit note no.13 dated 12.11.2010 amounting to Rs. Rs.24,729/- i.e. the duty involved on ARE-1 No.08/2010-11 to its customer M/s MDL Technologies India Pvt. Ltd., VSEZ, Duvvada, Vizag, Vishakhapattanum against Invoice No. 614 dated 11.11.2010 which indicated that the full amount as per their ledger had been realized from the buyer; that M/s MDL Technologies India Pvt. Ltd., VSEZ, Duvvada, Vizag, Vishakhapattanum informed that (i) they had not claimed Cenvat Credit and (ii) they paid the invoice amount after deducting Central Excise duty amount as per supplier's credit note amount; that relying on case laws of Sangam Processors (Bhilwara) Ltd. Vs CCE, Jaipur [1994(71) E.L.T.-989 (T), Ballarpur Industries Ltd. Vs CCE [2005(184) E.L.T. 67 (Tri-Del) and Sundaram fasteners Ltd. Vs CCE Chennai [2008-TIOL-1646-CESTAT. MAD], post clearance adjustment, cannot be recognized while deciding the unjust enrichment factor under Section 11B of Central Excise Act,1944 and the refund of Rs.24,729/- is within the preview of unjust enrichment to the assessee in pursuance of Section 11B of Central Excise Act 1944.

9. While rejecting the appeal filed by the applicant, Commissioner (Appeals) vide impugned Order observed that the applicant had filed the rebate claim on the strength of (i) credit note issued by them (ii) certificate issued by SEZ unit and (iii) Chartered Accountant's Certificate, which are not at all prescribed for claiming rebate of duty paid on export goods; that the applicant had paid duty of excise and on his own volition issued credit note to their buyer and claimed the same as rebate; that the credit note and CA Certificate are not valid and prescribed documents for claiming rebate of duty; that for claiming rebate of duty paid on exports goods, the applicant has to follow the prescribed procedure which he failed to do; that it is a settled law that the person claiming benefit of an exemption notification shall have to fulfill all the relevant conditions prescribed in the said notification and in the present case the applicant failed to follow the prescribed procedure for claiming rebate of duty on export goods.

10. Perusal of Order in original reveals that the applicant in the instant case had produced all the documents required for filing rebate claims except original copy of ARE-1 No. 08/20-11 dated 11.11.2010, however the same was also submitted by the

applicant along with the additional documents vide his letter dated 18.03.2011. The original authority while deciding the subject rebate claim, nowhere in his order observed that the applicant had not furnished the requisite documents and held the rebate claim inadmissible only on the grounds of unjust enrichment. Hence the conclusion arrived at by the Commissioner (Appeals) in impugned order that the applicant had failed to submit prescribed documents is not consistent with the findings of the original authority.

11. As regards rejection of rebate claim on account of unjust enrichment Government relies on GOI order No. 875-876/2012-CX dated 30.07.2012 in RE: Tulsyan Nec Ltd. [2014(313) ELT.977 (GOI) which also involved an identical issue. In this case, the applicant M/s Tulsyan Nec Ltd. whose rebate claims were also rejected on the grounds of unjust enrichment had contended before the Government as under:

> *4.1 That the first proviso to sub-section (2) of Section 11B of the Central Excise Act clearly states that the concept of unjust enrichment would not attract in the case of goods exported. The Commissioner (Appeals) states that export to the SEZ was not an export out of India and accordingly the concept of unjust enrichment shall be attracted. It is submitted that export to SEZ is in fact an export out of India in terms of Section 2(i) of the SEZ Act, 2005. As per this sub-section domestic tariff area means the whole of India including the territorial waters and continental shelf but not include areas of SEZ. It is crystal clear from this section that SEZ is not a domestic tariff area which means that any supply of goods to the SEZ is an 'export'. In terms of Section 2(m) of the SEZ Act, 2005 supplying goods to a unit or developer from domestic tariff area is 'export'. The procedure to be followed is the same as for import from abroad and export out of the country. The Commissioner has therefore erred in holding that principles of unjust enrichment will apply to goods exported from domestic tariff area to SEZ. Further, Rule 18 of the Central Excise Rules, 2002 relating to export of goods permits payment of excise duty and claiming the same as rebate after the export was completed. The applicants followed the procedure as laid down in Rule 18. It is however to be noted that the unit which imported the goods from the applicants have issued the purchase order wherein it was clearly stated that the SEZ Unit ordering for the goods would not be liable to pay excise duty. Accordingly, the SEZ Unit paid only the value of the goods excluding the excise duty - vide ledger account. In order to make book adjustments, the applicants also issued a credit note. Further, no objection certificate from the buyers stating that they had no objection to refund the excise duty to the applicants was also produced.*

Government in its Order No. 875-876/2012-CX dated 30.07.2012 in this case, while deciding the issue of unjust enrichement observed that

> ***8.3*** *It is an established fact that the concept of unjust enrichment is not applicable in the matters of exports, as stands specified in the first proviso to sub-section (2) of Section 11(b) of Central Excise Act, 1944. Government therefore finds that the said ground as stated in para 4.1 above is legal and proper and same is acceptable.*

12. Government finds that in the present case also the applicant had issued credit note no.13 dated 12.11.2010 amounting to Rs. Rs.24,729/- i.e. the duty involved on ARE-1 No.08/2010-11 to its customer M/s MDL Technologies India Pvt. Ltd., VSEZ, Duvvada, Vizag, Vishakhapattanum against Invoice No. 614 dated 11.11.2010 which indicated that the full amount as per their ledger had been realized from the buyer and M/s MDL Technologies India Pvt. Ltd., VSEZ, Duvvada, Vizag, Vishakhapattanum also informed that (i) they had not claimed Cenvat Credit and (ii) they paid the invoice amount after deducting Central Excise duty amount as per supplier's credit note amount. The fact that the applicant had received payment from its supplier M/s MDL Technologies India Pvt. Ltd., without Central Excise duty has also been confirmed by the Certificate dated 11.02.2011 issued by the Chartered Accountant.

13. In view of the forgoing discussion and also relying on GOI Order 875-876/2012-CX dated 30.07.2012 discussed supra, Government holds that the rebate claim of Rs.24,729/-is admissible to the applicant.

14. Therefore, Government sets aside Order-in-Appeal No.PJ/518/VDR-II/2012-13 dated 27.02.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vadodara

15. The revision application succeeds in the above terms.

16. So, ordered.

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

ORDER No.338/2020-CX (WZ) /ASRA/Mumbai Dated 05.03.2020

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

To,

M/s Elec Steel Processing Indistries,
96, G.I.D.C. Industrial Estate,
POR- Ramangamdi,
Dist. Vadodara -391243

Copy to :

1. Commissioner of Goods & Service Tax, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
2. The Commissioner of Central Tax (Appeals), Central Excise Building , 1st Floor Annexe, Race Cource Circle, Vadodara 390 007.
3. The Deputy / Assistant Commissioner, of Goods & Service Tax, Division-VI, Vadodara-I Commissionerate, GST Bhavan, Race Course Circle, Vadodara, 390007.
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.