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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/360/2015-RA/5939 Date of Issue: 12/12/19

ORDER NO.346/2019-CX (WZ)/ASRA/MUMBAI DATED 11.12.2019 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 VSL Wires Ltd.

Respondent : Commissioner of Central Excise, Thane-II.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/84/Th-II/2005 dated 31.03.2005 passed by the Commissioner of Central Excise (Appeals), Mumbai-IV.

ORDER

This Revision Application is filed by M/s VSL Wires Ltd. Plot No. G-1/3, MIDC, Tarapur, Boisar, Dist. Palghar, Maharashtra 501506 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BR/84/Th-II/2005 dated 31.03.2005 passed by the Commissioner of Central Excise (Appeals), Mumbai-IV.

2. Briefly, the Applicant had filed rebate claims amounting to Rs. 27,52,660/- (Rupees Twenty Seven Lakhs Fifty Two Thousand Six Hundred and Sixty Only) in respect of Stainless Steel Wires (herein after as 'SS Wires') falling under CH 7223 of the Central Excise Tariff Act, 1985 under Notification No. 40/2001 dated 26.06.2001 issued under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER'). On scrutiny of the rebate claims, it was observed that the SS Wires were drawn from SS Wire rods. Based on the decision of Hon'ble Supreme Court in the case of Department's Civil Appeal No. 74/2001 in the case of CCE Vs Tecnoweld Industries [2003(155) ELT 209 (SC)], the CBEC vide Circular No. 720/36/2003-CX dated 29.05.2003 had clarified that wire drawn out of wire rods would not amount to manufacture, withdrawing its earlier Circular No. 570/7/2001 CX dated 16.02.2001. Therefore it appeared that the SS Wires drawn from the SS Wire Rods are not excisable and not chargeable to Central Excise duty. The Applicant, however, paid Central Excise duty @ 16% adv on the clearances of SS Wires for export. When there was no duty chargeable on clearance of the said goods, the amount paid against such clearances was treated as deposits to Government account. Therefore, the claims for rebate of duty in respect of Stainless Steel Wires so produced and exported were not admissible to the Applicant. Hence they were issued 10 Show Cause Notices and the adjudicating authority, Assistant Commissioner of Central Excise, Boisar-I Division, Thane-II Commissionerate vide Order-in-Original No. 1979 to 1988 [F.No. V(Ch-72)18-1032/BSR-I/2003] dated 21.06.2004 rejected their rebate claims. Aggrieved, the Applicant then filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-IV who vide

Order-in-Appeal No. BR/84/Th-II/2005 dated 31.03.2005 rejected the appeal and upheld the Order-in-Original dated 21.06.2004. The Applicant on 31.05.2005 then filed Appeal No. E/1768/05 with the Hon'ble Tribunal, Mumbai who vide Order No. A/2523/15/EB dated 27.07.2015 directed the Registry to transfer the appeal records to the Revisionary Authority since the appeal related to rejection of rebate claim and is not maintainable before the Tribunal. The Assistant Registrar, CESTAT, Mumbai vide letter F.No. CESTAT/MUM/CR/TFR dated 22.09.2015 transferred the appeal the Revisionary Authority.

3. On transfer of the records, the Applicant then filed the current Revision Application on the following grounds :

3.1 That CBEC Circular No. 129/40/95 CX dated 29.5.95 Para 2.2 had clarified that the benefit of input stage rebate under Rule 12 (1)(b) of the erstwhile CER could be claimed on export of all finished goods whether excisable or not.

3.2 That the Applicant was availing the benefit of Cenvat credit and had taken Cenvat credit on the SS wire rods and this Cenvat credit which was used towards payment of duty on their final product i.e. SS wire. If no Central Excise duty was payable on the clearance of the exported SS wire, then the credit utilized will automatically revert back to their Cenvat account. Such reverted credit could then be utilized towards payment of duty on any dutiable final products. Thus the whole exercise leading to the present proceedings is revenue neutral.

3.3 That the Finance Act, 2004 amended the First Schedule to the Central Excise Tariff Act, 1985 by inserting Note 10 in Section XV effective from 09.07.2004 and the process of drawing or redrawing of rod, wire or any other similar article, into wire was specified as amounting to "manufacture". Thus when the Commissioner of Central Excise (Appeals) Order-in-Appeal

dated 31.3.2005 was passed, the effect of the Supreme Court decision in the case of Technoweld Industries [2003 (155) ELT 209 (SC)] had already been nullified.

3.4 That both the Assistant Commissioner and the Commissioner (Appeals) have taken an erroneous view that the duty paid on the exported SS wire be treated as deposit to government account. It is the settled position that when no Central Excise duty was leviable on SS wire on the ground that no process of manufacture was involved in drawing of wire from wire rods, the provisions of section 11D of the Central Excise Act, 1944 could not be applied to such a manufacturer.

3.5 That Board issued a Circular No 831/8/2006 – CX dated 26.07.2006 stating that "assessee" shall include wire drawing unit which has cleared the goods on payment of an amount equal to the duty at the rate applicable to drawn wire on the date of removal and that the amount so paid shall be allowed as Cenvat credit to the buyer of the wire as if it was duty paid by the assessee who removed the goods.

3.6 That the Central Government then issued Notification No 28/2010 – CX (NT) dated 01.09.2010, as under:

> *"In exercise of the powers conferred by section 5B of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby orders that where an assessee has paid duty of excise on wires drawn from wire rods (hereinafter referred to as final product), falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the CENVAT credit taken or utilized, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product, shall not be required to reversed, notwithstanding that the process of drawing of wires from wire rods was held as not amounting to manufacture by the Supreme Court in Civil Appeal No. 74 of 2001 with C.A. Nos. 96, 1701, 4206 of 2002 and 1988 of 2003, decided on the 27th March, 2003 in the case of Collector of Central Excise Vs. Technoweld*

Industries, reported in 2003 (155) ELT 209 (SC) = 2003-TIOL-37-SC-CX .."

3.7 They prayed that Order-in-Appeal be set aside and their rebate claims of Rs 27,52,660/- for the period from 27.06.2003 to 17.07.2003, may be allowed with appropriate interest.

4. A personal hearing in the case was held on 04.09.2019 and on behalf of the Applicant, Shri H.R. Garg, Consultant attended the hearing. The Applicant submitted that the claim period was from 27.06.2003 to 17.07.2003 and the OIO dated 21.06.2004 and OIA dated 24.04.2005 were prior to retrospective amendment to Circular No. 831/08/2006-CX dated 26.07.2006. They relied upon the Orders of RA in RE: Raajratna Metal Industries Ltd [2013 (288) ELT 152 (GOI)] and KEI Industries Ltd 2012 (282) ELT 156 (G.O.I.)

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the Applicant manufacturer of SS Wires had filed 11 rebate claims total amounting to Rs. 27,52,660/- for the period 27.06.2003 to 17.7.2003. They were issued 10 SCNs and these rebate claims were rejected by the adjudicating authority vide Order-in-Original No. 1979 to 1988 [F.No. V(Ch-72)18-1032/BSR-I/2003] dated 21.06.2004 on the ground that the Hon'ble Supreme Court in the case of Department's Civil Appeal No. 74/2001 in the case of CCE Vs Tecnoweld Industries [2003(155) ELT 209 (SC)] and the CBEC vide Circular No. 720/36/2003-CX dated 29.05.2003 had clarified that wire drawn out of wire rods would not amount to manufacture and had withdrawn its earlier Circular No. 570/7/2001 CX dated 16.02.2001.

7. Government further notes that the Finance Act, 2004 amended the First Schedule to the Central Excise Tariff Act, 1985 by inserting Note 10 in Section XV effective from 09.07.2004 and the process of drawing or redrawing of rod, wire or any other similar article, into wire was specified as

amounting to "manufacture". But it did not resolve the problem of the earlier period. However, in order to solve problem of intervening period from 29.05.2003 to 08.07.2004, vide Section 39 of the Taxation Laws (Amendment) Act, 2006, Rule 16 of the CER was amended retrospectively to provide that "assessee" shall include wire drawing unit which has cleared the goods on payment of an amount equal to the duty at the rate applicable to drawn wire on the date of removal and that the amount so paid shall be allowed as Cenvat credit to the buyer of the wire as if it was duty paid by the assessee who removed the goods. The relevant portion of the Board Circular No 831/8/2006-CX dated 26.07.2006 is reproduced-

> *"4.4 The retrospective amendment in Rule 16 is aimed at facilitating "wire drawing units", which had paid a sum equal to the duty leviable on "drawn wire" after availing the credit of duty paid on inputs for the said period. It is aimed at regularizing availment of credit at two stages and payment of an amount representing duty at one stage. The purpose of the amendment is to regularize credit taken at the input stage (on wire rod), credit taken by the downstream user of "drawn wire" and the amount paid as central excise duty on clearance of drawn wire. In other words, wire drawing units, which had paid a sum equal to duty leviable on drawn wire, would be eligible to avail the credit of duty paid on inputs and utilize the same for payment of duty on drawn wire for the period of amendment. The sum paid by the wire drawing unit in such cases will be treated as duty and shall be allowed as credit to the buyer of drawn wire, in terms of the amendment. The amendment would not create any additional liability on any wire drawing unit which did not pay duty on drawn wire during the period of amendment."*

8. Government notes that on the specific matter, Central Excise Notification No 28/2010 – CX (NT) dated 01.09.2010 had been issued clarifying that any duty of excise paid on wire drawn from wire rods, the CENVAT credit taken need not be reversed. The relevant portion of the notification is reproduced below:

> *"In exercise of the powers conferred by section 5B of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby orders that where an assessee has paid duty of excise on wires drawn from wire rods (hereinafter referred to as final product), falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the CENVAT credit taken or utilized, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product, shall not be required to*

reversed, notwithstanding that the process of drawing of wires from wire rods was held as not amounting to manufacture by the Supreme Court in Civil Appeal No. 74 of 2001 with C.A. Nos. 96, 1701, 4206 of 2002 and 1988 of 2003, decided on the 27th March, 2003 in the case of Collector of Central Excise Vs. Technoweld Industries, reported in 2003 (155) ELT 209 (SC) = 2003-TIOL-37-SC-CX, subject to following conditions, namely:....

.....

Provided that the CENVAT credit, if any, taken by the buyer of the said final product, of the excise duty paid by the said assessee on the said final product made and cleared upto the 8th of July, 2004 shall not be required to be reversed."

9. In view of the above, Government notes that drawing Unit which had cleared the goods during the period from *29.05.2003 to 08.07.2004* on payment of an amount equal to the duty at the rate applicable to drawn wire on the date of removal were treated as 'assessee' and the Board's Circular dated 26.07.2006 (supra) has clarified that the sum paid by the units during intervening period *29.05.2003 to 08.07.2004* shall be treated as duty. Government finds that in the current case the rebate claims on duty paid on final product during the period from 27.06.2003 to 17.7.2003 cannot be denied in terms of Rule 18 of the CER. Once such payment is treated as duty and availment of Cenvat credit has been allowed against payment of such duty, payment of duty against Cenvat credit is entitled for rebate claim.

10. In view of the above, verification of the 11 rebate claims total amounting to Rs. 27,52,660/- (Rupees Twenty Seven Lakhs Fifty Two Thousand Six Hundred and Sixty Only) by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE-1 as produced by the Applicant in their rebate claims has to be taken into consideration.

11. In view of the above, Government sets aside the impugned Order-in-Appeal No. BR/84/Th-II/2005 dated 31.03.2005 and remands back the instance case to the original authority who shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within eight weeks from receipt of this order. The

Applicant is also directed to submit their relevant records/documents to the original authority in this regard for verification.

12. The Revision Application is disposed off in terms of above.

13. So ordered.

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

ORDER No. 346/2019-CX (WZ)/ASRA/Mumbai DATED 11.12.2019.

To,
M/s VSL Wires Ltd.,
Plot No. G-1/3, MIDC,
Tarapur, Boisar,
Dist. Palghar
Maharashtra 401 506.

Copy to:

1. The Commissioner of Goods & Service Tax , Palghar Commissionerte, 5th floor, Kendriya GST Bhavan, BKC Bandra(E), Mumbai 400 0051.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.