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SPEED POST

F.No. 195/252-254/2013-RA-CX
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 24/02/16

ORDER NO. 36-38/2016-CX DATED 22.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed, under Section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No.182-184/RPR-I/2012 dated 19.10.2012 passed by Commissioner of Central Excise, (Appeals-I), Raipur.

Applicant : M/s Black Stone Overseas Pvt. Ltd, Kolkata.

Respondent : Commissioner of Central Excise, Raipur.

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ORDER

These revision application are filed by M/s Black Stone Overseas Pvt. Ltd, Kolkata (hereinafter referred to as applicant) against the Order-in-Appeal No. 182-184/RPR-I/2012 dated 19.10.2012 passed by Commissioner of Central Excise, (Appeals-I), Raipur with respect to Order-in-Original No.29/Rebate/AC/RD/2012 dated 18.05.2012,30/Rebate/AC/RD/2012 dated 18.05.2012 and 31/Rebate/AC/RD/2012 dated 18.05.2012 passed by the Assistant Commissioner of Central Excise Division, Raipur.

2. Brief facts of the case are that the applicant in the capacity of Merchant Exporter filed three rebate claim amounting to Rs. 4,27,702/-, Rs. 1,97,822/- and Rs. 4,36,844/- under Rule 18 of the Central Excise Rules, 2002 before the Assistant Commissioner, Central Excise Division, Raipur against export of excisable goods viz. Cast Iron Products which they procured from the manufacturer M/s Arpee Ispat Pvt. Ltd, Raipur, a manufacturer, for export to foreign countries on payment of duty and cleared under the cover of ARE-1s signed by both exporter and manufacturer. The claims were scrutinized in the light of the provisions contained in Section 11 B of the Central Excise Act, 1944. On scrutiny it was revealed that there was no acknowledgement with regard to "Let Export Order" by the Customs Authority except for an initial of Superintendent of Customs. Further it was also revealed that the ARE-1 did not bear any certificate regarding self sealing as provided under Clause 6 of Chapter 8 (Export under claim for Rebate) of Supplementary Instructions. It also did not contain the declaration to the effect as to who will claim the Duty Drawback i.e. whether by the manufacturer or by the Merchant Exporter. The scrutiny of the documents further revealed that the exports under the said ARE-1s were made under "Duty Drawback Scheme". The applicant availed the benefit of duty drawback scheme as well as Rebate under Rule 18 of the Central Excise Rules, 2002 which amounts to availing of double benefits for the one and the same thing. The Assistant Commissioner after processing/scrutinizing the applicant's rebate claims found some discrepancies in the supporting documents which were enclosed with the rebate claims and also following the instructions of the CBEC Circular No. 89/2003-Cus dated 06.10.2003 rejected all the rebate claims vide Order-in-Original No.29/Rebate/AC/RD/2012 dated 18.05.2012,30/Rebate/AC/RD/2012 dated 18.05.2012 and 31/Rebate/AC/RD/2012 dated 18.05.2012.

3. Aggrieved by the order of the adjudicating authority, the applicant filed appeal before the Commissioner (Appeals-I), Raipur who vide Order-in-Appeal No. 182-184/RPR-I/2012 dated 19.10.2012 rejected the same.

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

4.1. That the Commissioner (Appeals) has failed to appreciate that in the present case there is no dispute on the following facts:-

a) That the export product was duty paid;
b) That benefit of drawback @ 1% towards customs allocation was availed;
c) That Rule 18 of the Central Excise Rules, 2002 does not restrict for grant of rebate even if duty drawback is allowed;
d) That CBEC Circular clarifies that rebate will be admissible even if customs allocation of duty drawback allowed;
e) That other Maritime Commissionerates are allowing the rebate in identical cases.

4.2. That the Commissioner(Appeals) has failed to appreciate that as per AIR Drawback Table, for the goods exported by the applicant the rate of duty drawback is 1% for both the column "A" and "B" and that as per Customs Notification i.e. whereCenvat credit is availed or not availed. That the CBEC circular clarifies that in case of export of duty paid goods under claim of rebate, rebate will be admissible even if duty drawback of customs allocation benefit is given to the exporter under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995. That Rule 18 of the Central Excise Rules, 2002 do not stipulate any condition/restriction that if drawback is availed benefit of rebate shall not be allowed. That the CBEC Circular No.35/2010-Cus dated 17.09.2010 and Customs Notification No. 68/2011-Cus(NT) dated 22.09.2011 reveals that simultaneous availment of rebate and customs duty drawback shall be available if drawback rate is 1%. That in the present case, the applicant has availed customs allocation drawback rate @ 1% of FOB price.

4.3. That the Commissioner (Appeals) has gravely erred while giving his finding on simultaneous availment of rebate along with customs allocation of duty drawback. That the Central Government has determined the All Industry Rate of Drawback for every year. That the two Notification No. 103/2008-Cus(NT) dated 29.08.2008 and 68/2011-Cus (NT) dated 22.09.2011 prescribes All Industry Rate of Drawback for the period from 1st September, 2008and 1st October, 2011 respectively. That the aforesaid notifications read with CBEC Circular No. 35/2010-Cus dated 17.09.2010 permits that rebate along with custom allocation of duty drawback are simultaneously available to the exporter. That the applicant is legally entitled to rebate of duty paid on export goods and hence the order of the appellate authority and adjudicating authority that simultaneous claim of rebate and duty drawback of customs allocation will amounts to double benefit to the applicant is liable to be set aside being devoid of merit.

4.4. That the Commissioner (Appeals) has gravely erred by not considering the order of Maritime Commissioner, Kolkata-I merely stating that the said order is not

applicable in the present case without giving any specific reason. That the said export goods have been made by the applicant themselves under claim of custom allocation of duty drawback and rebate as is evident from the ARE-1 and shipping bill.

4.5. That the Commissioner (Appeals) did not agree with finding contained in Para 9(Xiii) of the Order-in-Original dated 18.05.2012 of the original adjudicating authority that on the ARE1 No. AIPL/EXP/37/11-12 dated 03.10.2011 was improper document for sanction of rebate claim, therefore needs no submission.

4.6. That the Commissioner (Appeals) has gravely erred while giving his finding that the ARE-1 did not bear any certificate regarding self sealing and also that who will claim the duty drawback. That the said export goods have been made by the applicant themselves under the examination and sealing of Range Superintendent and Inspector as is evident from the ARE-1. That with regard to duty drawback claim, the said export goods have been made by the applicant themselves in it's own name as evident from the shipping bills and hence the applicant is entitled to claim the drawback.

4.7. That it is well settled principle that Section 11 BB of the Central Excise Act, 1944 provides provision for payments of interest on delayed refunds, in case the duty ordered to be refunded to any applicant is not refunded within 03 months from the date of receipt of application. That the applicant for refund has been submitted with the department on 08.12.2011 along with all requisite papers/documents, which is beyond three months, therefore interest will be admissible to the applicant by applying provisions of Section 11 BB of the Central Excise Act, 1944.

4.8. The applicant placed reliance on following case laws:-

- Mars International 2012(286) ELT 146 (GOI)
- Benny Impex Pvt. Ltd 2003 (154) ELT 300 (GOI)
- Birla Corporation Ltd Vs CCE 2005 (186) ELT 266 (SC)

5. A show cause notice was also issued to the Respondent Commissionerate on 03.05.2013, in response to which the following submissions have been made:

5.1. That the findings and observations given in the impugned order are in consonance with the Central Excise Rules, 2002, instructions issued by the CBEC from time to time and pronouncement made by different legal fora in the subject.

5.2. That the applicant's contention that the appellate authority has failed to appreciate the facts and points of the dispute in the case is not correct as the appellate authority has considered and discussed all the facts of the case reasonably and legally in the impugned order passed by him.

5.3. That the case laws cited by the applicant do not appear to be applicable in the present case.

5.4. That the applicant's contention that the Commissioner (Appeals) has not considered the order passed by the Maritime Commissioner, Kolkata-I is not correct as the appellate authority has categorically mentioned in the impugned order that he has gone through the said order of Maritime Commissioner, Kolkata-1 but he did not find the same to be applicable due to non similarity in the nature of the claims involved in the cases.

5.5. That the appellate authority's contention regarding denial of double benefit is correct in view of the Notification No. 103/2008-Cus(NT) dated 29.08.2008 and 68/2011-Cus(NT) dated 22.09.2011 and also duly supported by the legal pronouncement by the Hon'ble High Court of Gujarat in the case of M/s Texcellent Worldwide Vs UOI-2008(225) ELT 173 (Guj).

5.6. That the ratio of judgement of Hon'ble High Court of Gujarat in the case of M/s Texcellent Worldwide Vs UOI-2008(225) ELT 173 (Guj) is squarely applicable in the instant case.

5.7. That the rebate claim itself is not allowable and liable to be rejected, therefore the question of payment of interest does not arise.

6 Personal hearing scheduled in this case on 30.03.2015 and 16.11.2015 was attended by Shri A.K. Mishra, Consultant of the company who reiterated the grounds of revision application. He also referred to orders No. 551-569/2012 dated 11.05.2012 of the Central Government in the case of Aarti Industries Ltd, wherein rebate of Central Excise Duty paid has been allowed even if customs component of drawback taken. None from the Department attended the personal hearing.

7. 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.

8. On perusal of records, the Government observes that the applicant in the capacity of Merchant Exporter filed three rebate claim amounting to Rs. 4,27,702/-, Rs. 1,97,822/- and Rs. 4,36,844/- before the Assistant Commissioner, Central Excise Division, Raipur against export of excisable goods viz Cast Iron Products which they procured from the manufacturer M/s Arpee Ispat Pvt. Ltd, Raipur, a manufacturer, for export to foreign countries on payment of duty and cleared under the cover of ARE-1s. The Assistant Commissioner vide impugned Orders-in-Original rejected the claims of the applicant. Aggrieved by the orders of the adjudicating authority, the applicant filed appeal before the Commissioner (Appeals-I), Raipur who vide impugned Order-in-Appeal rejected the same. Now the applicant has filed this Revision Application under Section 35 EE of Central

Excise Act, 1944 before Central Government on the grounds mentioned at para 4 above.

9. Government observes that the instant rebate claims for refund of duty paid at time of clearance of goods for export are governed by Notification No. 19/2004-CE(NT) dated 06.09.2004, wherein conditions and procedures have been prescribed for claiming rebate of duty in terms of Rule 18 ibid. The said Notification nowhere puts any restriction to the effect that rebate of duty paid on exported goods will not be admissible if exporter avails of drawback of customs portion on the said exported goods. The relevant Customs Notification No. 84/2010-Cus(NT) dated 17.09.2010 condition 8(e) states that rates of drawback specified in drawback schedule shall not be applicable to the export of a commodity or product if such commodity or product is manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of Rule 18 of Central Excise Rules, 2002. Similarly Para 1.5 of Part V of Chapter 8 of C.B.E. & C. Manual of Supplementary Instructions debars the benefit of input stage rebate of duty paid on materials used in the manufacture of exported goods where finished goods are exported under duty drawback. In these cases, applicants have claimed rebate of duty paid on finished exported goods and therefore the above mentioned restrictions are not applicable here.

10. Government also observes that CBEC vide Circular No.83/2000-Cus., dated 16th October, 2000 has clarified that "where only Customs portion of duties is claimed as per the All Industry Rate of Drawback (erstwhile) Rule 57F(14), does not come in the way of admitting refund of unutilized credit of Central Excise/Countervailing duty paid on inputs used in the products exported." This clarification also indicates that there is no restriction on granting rebate of duty paid on exported goods when the drawback of Customs portion is availed by exporter. This view is already taken by Government in Government of India Order cited in the impugned Order-in-Appeal i.e. in the case of *M/s. Benny Impex Pvt. Ltd.* - 2003 (154) E.L.T. 300. This position was thereafter taken in GOI order No. 551-569/2012-CX dated 11.05.2012 wherein it was held that allowing rebate when drawback of customs portion is availed will not amount to double benefit.

11. Government notes that the composite rates of drawback have been bifurcated into Central Excise portion & Customs portion and that too in two types of different situations i.e when Cenvat Credit facility has been availed and when no Cenvat credit facility is availed. Notification No. 103/2008-Cus(NT) dated 29.08.2008 condition no. 6 envisages as under:-

" The figures shown under drawback rate and drawback cap appearing below the columns "Drawback when Cenvat facility has not been availed "refer to the total drawback

(Customs, Central Excise, & Service Tax component put together) allowable & those appearing under the Colum " Drawback when cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two column refers to the Central Excise & Service Tax components & drawback. If the rate indicated is the same in both the column, it shall mean that the same pertains to only customs component & is available respective of whether exporter has availed Cenvat or not."

12. It may be noted that CBE&C vide circular No. 35/2010 dated 17.09.2010 has further clarified the position as under :-

"vi(d) The earlier Notification No. 103/2008-Cus. (NT), dated 29-8-2008 as amended provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present Notification No. 84/2010-Cus. (NT), dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."

The content of the above said circular envisage that the Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002. This position is made amply clear in the Notification No. 84/2010-Cus. (NT) dated 17.09.2010.

13. Government notes that it has from time to time in a catena of its decisions decided the issue of admissibility of rebate on finished goods exported under Rule 18 and simultaneous availment of drawback of customs duty component on inputs in a number of Revision orders as in the case of namely, M/s. Four Star Industries, Government of India Order No. 11/2014-Cx dated 03.01.2014, M/s. Aarti Industries Ltd, Government of India Orders No. 551-569/2012-Cx dated 11.05.2012, M/s. Mars International, Government of India Orders No. 540-542/2012-Cx dated 07.05.2012 and held such rebate to be admissible.

14. Further, Government notes that the Commissioner (Appeals) in his order has relied upon the decision of the Hon'ble High Court of Gujrat in the case of M/s Texcellent World Wide vs UOI reported in 2008 (225) ELT 173 (Guj) in which the Hon'ble Court has held that *"From the above, it is clear that DEPB benefit and Rule 12(1) (b) rebate cannot be allowed simultaneously. This restriction is kept because reimbursement of duty incidence cannot be allowed twice, first time on deemed basis (DEPB) and second time on actual basis (Rule 12 (1) (b) rebate). Benefit can be given only once in one of the methods available".*

From the above, Government notes that the Commissioner (Appeals) has not taken into consideration the full facts of the case in as much as that whether the applicant has claimed drawback on customs portion and rebate on finished goods. Also there is no bar on availment of rebate on duty paid on exported finished goods w.r.t export made under DEPB Scheme. As such, reliance of the Commissioner (Appeals) on above said High Court is not applicable to the present case as the applicant has claimed to avail benefit of Drawback of Customs portion and rebate on finished goods.

15. Government notes that Commissioner (Appeals) has only relied on note and condition (8) ofNotifications103/2008-Cus (NT) dated 29.08.2008 and 68/2011-Cus(NT) dated 22.09.2011 and the decision in case of Texcellent Worldwide vs UOI 2008 (225)ELT 173 (Guj) and held that benefit of DEPB and Rule 12 (1) (b) rebate is not admissible, and as Cenvat Credit has been availed and utilized in terms of the said condition of Notification No. 103/2008-Cus(NT)dated 29.08.2008 and 68/2011-Cus(NT) dated 22.09.2011, the applicant is not entitled for the double benefit. However, Government further notes that the appellate order has failed to take into consideration CBEC's Circulars 83/2000-Cus. dated 16.10.2000 and 35/2010-Cus dated 17.09.2010 and Notification No. 103/2008-Cus (NT) dated 29.08.2008 (condition 6). In this regard, Government finds that under such circumstances, it needs to be re-examined whether these circulars and condition of the said notification would be applicable to the facts of the present case.

16. Government further observes that another contention of the applicant is that original authority as well as appellate authority have erred while giving their findings that the ARE-1 did not bear any certificate regarding self sealing. They have claimed that the said export goods have been made by the applicant themselves under the examination and sealing of Range Superintendent and Inspector while referring to the ARE-1. In this regard, Government observes that under such circumstances, being a matter of fact, the claim of the applicant for the purpose of correlation of duty paid goods with the goods exported needs to be verified on the basis of original documents.

17. In view of above, Government sets aside the impugned Order-in-Appeal and remands back the case to Commissioner (Appeals) for fresh consideration after

taking into account the observations as above and the facts of the case along with the original documentary evidence presented by the applicant. A reasonable opportunity of hearing will be afforded to the concerned parties.

18. The Revision Applications are disposed off in above terms.

19. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Blackstone Overseas Pvt. Ltd,
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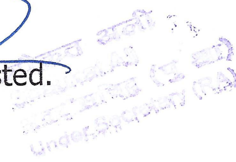

Attested.

Order No. 36-38/2016-CX dated 22.02.2016

Copy to:-

1. The Commissioner of Central Excise & Customs, Raipur.

2. The Commissioner of Customs &Central Excise (Appeals-I), C.R. Building, Tikarapara, Raipur, Chattisgarh.

3. The Assistant Commissioner of Central Excise, Raipur.

4. PA to JS (RA).

5. Guard File.

6. Spare Copy.

(Attested)

Under Secretary (RA)