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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/1653/2012-RA/23/2

Date of Issue: 06/12/2018

ORDER NO. 399/2018-CX (WZ)/ASRA/MUMBAI DATED 30.11.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Technocraft Industries (I) Ltd.

Respondent : Commissioner, Central Excise, Thane-I Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR/149/Th-I/2012 dated 14.09.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by the M/s Technocraft Industries (I) Ltd (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/149/Th-I/2012 dated 14.09.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

2. The issue in brief is that the Applicant, is a company registered under Companies Act, 1956. They are engaged on the manufacture of cotton and other yarns. They have two Units i.e. Unit No.1 & 2, Village Dhanivali, Taulha Murbad, Dist. Thane

M/s Technocraft Industries (I) Ltd	100 % EOU upto	De-bonding date amt lying unutilized	DTA unit from	rebate claim (Rs.)	SCN
(1)	(2)	(3)	(4)	(5)	(6)
Unit No. 1	29.9.2008	Rs. 62,66,940/- dt 29.9.08	30.9.08	15,64,934 dt 26.3.09	2.6.09
Unit No. 2	29.1.2009	Rs. 29,09,133/- dt 29.1.09	30.1.09	3,04,402 dt 26.3.09	2.6.09

O-in-O No. & date	O-in-A No. & Date	RA filed	RA Order	H.C.	
(7)	(8)	(9)	(10)	(11)	
R-256/09/10 dated 23.6.009 Reject the refund claim	No. SB/116 & 117/T-I/2010 dated 17.08.2010	Appeal allowed and eligible for rebate claim 15,64,934	Filed by Deptt on 13.11.2010 and Deptt also issued 04 protective demand i.e. SCNs dated 21.12.11	Restored the OIO No. R-256/09/10 dated 23.6.009	The Applicant filed appeal in Bombay High Court W.P. No. 2511/2013. Last date of hearing 13.11.2017.
R-257/09/10 dated 23.6.009 Reject the refund claim		Appeal rejected and not eligible for rebate claim of Rs. 3,04,402/-	Filed by Applicant 18.1.2011	Upheld the OIO No. R-257/09/10 dated 23.6.009	

Meanwhile

M/s Technocraft Industries (I) Ltd	Based on Col.(8) Rebate was claimed sanctioned vide OIO No. & Date	Amount (Rs.)		OIA No. & date		Current Status
(1)	(12)	(13)	(14)	(15)	(14)	
Unit No. 1	No. R-1145/2010-11 dt 22.11.10	4,64,780	And Deptt filed appeal with Comm(A)	OIA No. BR/149/Th-1/2012 dated 14.9.12 Allowed the Deptt appeal and set-aside the 04 OIO dated 22.11.10	Applicant has filed the current RA	On the same issue against the RA Order No. 866-869/12-CX dated 24.7.2012 (Col. 10) the Applicant filed appeal in Bombay High Court W.P. No. 2511/2013.
	No. R-1146/2010-11 dt 22.11.10	1,89,574				
	No. R-1147/2010-11 dt 22.11.10	4,17,934				
	No. R-1148/2010-11 dt 22.11.10	4,92,646				
	Total	15,64,934				
Unit No. 2	-	-	-	-	-	Last date of hearing 13.11.2017

- 2.1 The Applicant's Unit No. 1 & 2 was an 100% EOU. W.e.f. 29.9.2008 their Unit No.1 was converted into DTA unit and w.e.f 29.1.2009 their Unit No. 2 was converted into DTA unit.
- 2.2 On the day of de-bonding i.e. 29.9.2008, their Unit No. 1 had unutilized balance of Rs. 62,66,940/- and on the day of de-bonding i.e. 29.1.2009, their Unit No. 2 had unutilized balance of Rs. 29,09,133/-.
- 2.3 The Applicant, during the period 2008-09 exported their goods and filed rebate claims i.e. Unit No. 1 - Rs. 15,64,934/- dated 26.3.2009 and Unit No. 2 - Rs. 3,04,402 dated 26.3.2009.
- 2.4 They were issued SCNs dated 2.6.2009 separately for Unit No.1 & 2 and the same were adjudicated vide Orders-in-Original No.

R-256/2009-10 dated 23.6.2009 (Unit No. 1) and No. R-257/2009-10 dated 23.6.2009 (Unit No. 2) wherein their refund claims were rejected.

- 2.5 Aggrieved, the Applicant then filed 02 separate appeals with Commissioner(Appeals), who vide a common Order-in-Appeal No. SB/116 & 117/Th-I/2010 dated 17.08.2010 allowed the appeal against the Order-in-Original No. R-257/2009-10 dated 23.6.2009 in respect of Unit No.1 and rejected the appeal against Order-in-Original No. R-257/2009-10 dated 23.6.2009 in respect of Unit No.2.
- 2.6 In respect of Unit No. 2, aggrieved, the Applicant then filed a Revision Applicant and in respect of Unit No. 1 the Deptt also filed a Revision Applicant.
- 2.7 Based on that portion of Order-in Appeal No. SB/116 & 117/Th-I/2010 dated 17.08.2010 allowing the rebate claims of Rs. 15,64,934 in r/o Unit No.1, the Asstt. Commr of Central Excise sanctioned the rebate as detailed below:

Sl.No.	O-in-O No. date	Period	Amount of Rebate Sanctioned Rs.
1	R-1145/2010-11 dt 22.11.2010	Oct & Nov. 2008	4,64,780
2	R-1146/2010-11 dt 22.11.2010	Oct. 2008	1,89,574
3	R-1147/2010-11 dt 22.11.2010	Dec. 2008	4,17,934
4	R-1148/2010-11 dt 22.11.2010	Nov. 2008	4,92,646
		Total	15,64,934

- 2.8 Aggrieved, the Deptt then filed appeal with the Commissioner(Appeal), who vide Order-in-Appeal No. BR/149/Th-1/2012 dated 14.9.12 allowed the Deptt appeal and set-aside the 04 Orders-in-Original dated 22.11.2010 (Para 2.7 above).

2.9 Aggrieved, the Applicant then filed the current Revision Application.

Meanwhile,

2.10 As Deptt had filed Revision Application (Para 2.6 above), in order to safe guard government revenue, the Deptt issued 04 SCNs all dated 21.22.2011 for protective demand

2.11 The Joint Secretary(Revision Application), vide Order No. 866-869/12-CX dated 24.7.2012, restored the Order-in-Original No. R-256/09/10 dated 23.6.009 and upheld the Order-in-Original No. R-257/09/10 dated 23.6.009.

2.12 Aggrieved, the Applicant (in r/o Unit No. 1 & 2) the filed W.P. No. 2511/2013 in Hon'ble Bombay High Court and as per the high court listing, the last date of hearing is shown as 13.11.2017.

3. The Applicant, then filed the Revision Application to the Central Government on the following grounds :

3.1 The Commissioner(Appeals) had erred in allowing the Department's Appeal and setting aside Order-in-Original No. R-1146/2010-11 dated 22.22.2010 without considering and appreciating the submissions made, provisions of law, judgments etc. on the issue.

3.2 Only the status of theirs had changed from EOU to DTA, factory premises remaining the same, manufacturing activity remaining the same. Under the said circumstances, when the factory neither has shifted nor the manufacturing activity has been suspended, hence the credit of Cenvat balance which was there on the day of de-bonding continues to remain and available for utilization even after de-bonding. The Commissioner(Appeals)'s contention that transfer of credit was in contravention of Cenvat Credit Rules/ Central Excise Rules and that the credit lying on

date of de-bonding is not available and has lapsed was incorrect.

- 3.3 The lapsing provision under Rule 10, 11 of the Cenvat Credit Rules, are not applicable to their case, as there is no bar for utilization of credit by a DTA on conversion from 100% EOU. Lapsing provisions under Rule 11 of Cenvat Credit Rules would apply in a case where the manufacturer has opted for absolute exemption under the Notification issued Section 5A of the Central Excise Act or has opted for value based exemption Notification (SSI Exemption).
- 3.4 Circular No. 77/99-Cus dated 18.11.1999, stipulating that unutilized credit lying on the day of converting from DTA to EOU is not available to EOU, would not apply to their case, as it was prevalent during the period prior to 06.09.2004 when modvat/ cenvat credit facility was not extended to EOU and EOUs were barred from utilizing credit for payment of duty and the provisions for such utilization was first time brought into statute book only with effect from 6.9.2004. Their case relates to the period 29.09.2008 and with effect from 06.09.2004 by issue of Notification No. 18/2004-CE(NT), EOUs were allowed to utilize Cenvat credit for payment of duty. Hence the Circular No. 77/99-Cus dated 18.11.1999 would not be applicable for their case. In this they relied on few case judgments.
- 3.5 The rebate amounts were sanctioned by four different Order-in-Originals, but the Department had filed only one appeal challenging all of them. Under the said circumstance, the Department's appeal was not sustainable on this ground only.
- 3.6 Credit was taken of duty paid on inputs used in manufacture of final products exported under Bond in terms of LOP, hence was validly taken within the peripheries of law and the said valid credit was utilized for payment of duties on clearances of goods, which again is within the provision of Rules 3 & 4 of the Cenvat

Credit Rules. Further, it is not the Department 's case that the credit taken by their Unit as EOU, before de-bonding was not valid or that, duty on clearances from DTA Unit after de-bonding, cannot be paid from Cenvat account, hence, demanding duty on subsequent clearances on the ground that it has been debited from Cenvat account, is incorrect.

- 3.7 Credit of duty paid on indigenously procured capital goods, at the time of de-bonding by EOU is admissible to DTA Unit after de-bonding from EOU status to DTA based on the tribunal judgment in Rajdhani Fab. Pvt. Ltd [2008 (221) ELT 435 (T)] which has been upheld by the Hon'ble Bombay High court [2009 (237) ELT A47 (Bom)]. Based on the said judgment, their DTA unit after de-bonding from EOU status is entitled to credit lying unutilized on the date of conversion. Besides, it being just a change in the status from EOU to DTA, it is just a bring forward the balance of credit in their own books of accounts like Cenvat register.
- 3.8 As there is no provision barring DTA Unit to carrying of Cenvat credit balance in accounts, on its conversion to 100% EOU, demanding credit, on date of conversion is incorrect. In this they relied on the case of Sun Pharmaceuticals Indus Ltd [2010 (251) ELT 312 (Tri-Chennai)]. Hence denying the rebate on the ground that, there is no provision for transfer of credit from EOU to DTA, on de-bonding is incorrect.
- 3.9 In cases where ownership is change, or sale/ shifting to a new manufacturer, transfer of credit is permissible, hence in the present case, where Applicant remain the same entity, before and after de-bonding, a carry forward of credit in the same set of books belong to the same entity, only with change in status is not correct. The Applicant also take persuasive support of the Tribunal judgment in the case of ECIE Impact Pvt Ltd. [2006 (198) ELT 390 (T)], to say that, credit unutilized at their Unit 1

is available to another receipt Unit on shifting of factory, where both the Units are under common management.

4. A personal hearing in the case was held on 06.02.2018 and Ms Manasi Patil, Advocate appeared on behalf of the Applicant. The advocate reiterated the submission filed through Revision Application along with written brief and case laws and order of the Bombay High Court. It was pleaded that the instant Revision Application be allowed and Order-in-Appeal be set aside.

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. Before going into detail Government consider it necessary to write chronology of events based on the copy of various evidences submitted in the case records. The Applicant have two Units i.e. Unit No.1 & 2, Village Dhanivali, Taulha Murbad, Dist. Thane and the chronology is as under :

Sr.No.	Date	Event	Remarks
1	29.09.2008	Unit No.1 was a 100% EOU and date of de-bonding, unutilized balance of Rs. 62,66,940/- was lying	
2	30.09.2008	Unit No. 1 got converted into DTA Unit with the permission of the Development Commissioner.	
3	29.01.2009	Unit No.2 was a 100% EOU and date of de-bonding, unutilized balance of Rs. 29,09,133/- was lying	
4	30.01.2009	Unit No. 2 got converted into DTA Unit with the permission of the Development Commissioner.	
5	2008-09	Unit No. 1 & 2 exported	

		their goods on payment of duty, by debiting their Cenvat credit lying unutilized on the day of de-bonding into DTA	
6	26.03.2009	Unit No. 1 filed 04 rebate claims for Rs. 15,64,934/-	
7		Unit No. 2 file 01 rebate claim for Rs. 3,04,402/-	
8	02.06.2009	Separate Show Cause Notice issued to Unit No. 1 & 2	
9	23.06.2009	The Dy. Commr. Vide OIO No. R-256/09-10 (Unit No.1)	Rebate Rejected
10		The Dy. Commr. Vide OIO No. R-257/09-10 (Unit No.2)	Rebate Rejected
11		Unit No. 1 filed appeal with Commissioner(Appeals)	
12		Unit No. 2 filed appeal with Commissioner(Appeals)	
13	17.08.2010	Commissioner(Appeals) OIA No. SB/116 & 117/Th-I/2010	Unit No. 1- Appeal Allowed
14			Unit No. 2 - Appeal Rejected
15	23.08.2010	Unit No. 1 requested for sanctioning of rebate claim in view of the Commr(A) OIA dated 17.08.2010 (Sr.No. 13 above)	
16	08.11.2010	Aggrieved by OIA dated 17.08.2010 (Sr. No. 14 above), Unit No. 2 filed a Revision Application No. 195/885-886/10-RA	RA filed by Applicant
17		Aggrieved by OIA dated 17.08.2010 (Sr. No. 13 above), Deptt filed a Revision Application No. 198/498-499/10-RA	RA filed by Deptt
18	22.11.2010	Rebate claims totaling to Rs. 15,64,934/- was sanctioned vide 04 OIAs by the Asstt. Commr, in lieu of the favourable OIA dated 17.08.2010 (Sr. No. 13 & 15 above)	Unit No. 1
19	21.12.2010	As Deptt had filed RA (Sr. No. 17 above), 04 protective	Unit No.1

		demand SCNs were issued totally to Rs. 15,64,934/-	
20	02.02.2011	Deptt. filed an appeal with Commr(Appeals) in view of Sr.No. 18 above	Current RA
21	14.09.2012	Commr(A) vide OIA No. BR/149/Th-1/2012 dated 14.9.12 Allowed the Deptt appeal and set-aside the 04 OIOs dated 22.11.10 (Sr.No. 18 above)	Applicant then filed the current RA
21	23.07.2012	Govt. vide Order No. 866-69/12-CX rejected the both the rebate claims filed by Unit 1 & 2.	Restored the OIO No. R-256/09/10 dated 23.6.009 (Sr.No. 9 above)
22			Upheld the OIO No. R-257/09/10 dated 23.6.009 (Sr.No. 10 above)
23	29.07.2013	The Applicant (Unit No. 1 & 2) filed a Writ Petition No. 2511/2013 with the Hon'ble Bombay High Court	The case is still pending in high court. Last hearing held 13.11.2017

7. Government observes that based on the Order-in Appeal No. SB/116 & 117/Th-I/2010 dated 17.08.2010 allowing the rebate claims of Rs. 15,64,934 in r/o Unit No.1, the Asstt. Commr of Central Excise sanctioned the rebate totaling to Rs. 15,64,934 vide 04 Orders-in-Original dated 22.11.2010 (details in Para 2.7 above). Aggrieved, the Deptt then filed appeal with the Commissioner(Appeal), who vide Order-in-Appeal No. BR/149/Th-1/2012 dated 14.9.2012 allowed the Departmental appeal and set-aside the above 04 Orders-in-Original dated 22.11.2010.

8. Government notes that the basic dispute herein is that as to whether the rebate of "duties" actually paid out of the unutilized Cenvat credit lying in balance with 100% EOU at the time of conversion to DTA Unit, on the goods exported by the Applicants, can be granted under Rule 18 of Central

Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 6.09.2004.

9. Government notes that that the same issue involved in the current Revision Application has already been dealt by the Joint Secretary (Revision Application), vide Order No. 866-869/12-CX dated 24.7.2012 -

"11. Government, therefore keeping in view the observations of Hon'ble Supreme Court in M/s ITC Ltd Vs CCE [2004 (171) ELT 433 (SC)] along with M/s Paper Products Ltd. Vs CC {1999(112) ELT - 765 (SC)} that in fiscal statutes, the ordinary and natural maning of words has to be given effect and words would beconstrued as they stand, finds that as per provisions of CBEC Circular dated 18.11.99 and Rule 10 of Cenvat Credit Rules, 2004, the said unutilized cenvat credit was rightly held as lapsed by the original authority. Government is therefore in agreement with the findings of impugned orders-in-original.

12. Comissioner (Appeals) has already upheld the order-in-original No. 257/09-10 dated 23.06.09. Government upholds the impugned order-in-Appeal to this extent. Further, Government set aside the portion of said order-in-appeal pertaining to order-in-original No. R-256/09/10 dated 23.6.09 and restores the order-in-original No. 256/09/10 dated 23.6.09.

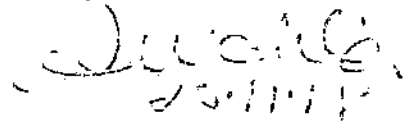
13. Therefore, the revision applications filed by the department succeed in terms of above but the revision applications of the applicant exporter herein stand rejected for being devoid of merits."

Hence the issue had attained finality and thus the case/ issue is Res-Judicata.

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10. In view of above, Government upholds the impugned Order-in-Appeal No. BR/149/Th-1/2012 dated 14.09.2012 passed and dismisses the instant Revision Application as being devoid of merit.

11. So, ordered.



(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 399 /2018-CX (WZ)/ASRA/MUMBAI DATED 30-11-2018

To,
M/s Technocraft Industries (India) Ltd.,
Yarn Division (Unit-I), Village Dhanivali,
Taluka Murbad
Thane - 421 401.

Copy to:

1. The Commissioner of Central Excise, Thane-I Commissionerate, 4th floor, Navprabhat Chambers, Ranade Road, Dadar(West), Mumbai 400 028.
2. The Commissioner(Appeals), Central Excise. Mumbai Zone-I.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.