SPEED POST
REGISTERED 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.195/146, 147, 148/WZ/2018 /19 Date of Issue: ~~.12.2023~~ 04.01.2024

ORDER NO. 402-404/2023-CX (WZ) /ASRA/Mumbai DATED 29.12.2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant	:	M/s L & T Hydrocarbon Engineering Limited, Survey No.148A, 230, 241 & 230/p, 231/p, 233/p, 234, 235, Hazira Manufacturing Complex, (MFF Block), Technology Block, Hazira Road, Mora, Surat - 394510.
Respondent	:	Commissioner of CGST & Central Excise, Surat, New Central Excise Building, Chowk Bazar, Surat - 391 001.
Subject	:	Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 57-58-59/AGU/ADT-VAD/2017-18 dated 08.06.2018 passed by the Commissioner (Appeals), GST & Central Excise, Vadodara.

ORDER

The subject Revision Application has been filed by M/s L & T Hydrocarbon Engineering Limited, Surat (here-in-after referred 'to as 'the applicant') against the Order-in-Appeal dated 08.06.2018 passed by the Commissioner (Appeals) GST & Central Excise, Vadodara which in turn decided three appeals, two of which were filed by the Department and one by the applicant, against three Orders-in-Original. Details of the Orders-in-Original are as under:-

Sl. No.	Order-in-Original No.	Date	Amount of Rebate claimed (Rs.)	Amount Sanctioned (Rs.)	Amount rejected (Rs.)
A	B	C	D	E	F
1	SRT-II/DIV-II/19/R/16-17	10.10.2016	4,31,66,053/-	4,30,75,886/-	90,187/-
2	SRT-II/DIV-II/26/R/16-17	22.11.2016	4,94,80,907/-	4,92,71,028/-	2,09,879/-
3	SRT-II/DIV-II/35/R/16-17	16.03.2017	3,93,76,214/-	0	3,93,76,214/-

2. Brief facts of the case are that the applicant held Central Excise registration and were engaged in the manufacture of 'Piping Spool' falling under Chapter 73 of the CETA, 1985. They also held license for Private Customs Bonded Warehouse under Section 58 of the Customs Act, 1962 for storage of various products imported without payment of duty subject to the conditions prescribed in the said license. The applicant filed three rebate claims in respect of Central Excise duty paid by them on the excisable goods manufactured and cleared for export under ARE-1 from the said Customs Bonded Warehouse. The original authority sanctioned the rebate claims vide Orders appearing at Serial Nos. 1 & 2 in the Table above, except for small amounts, as indicated at Column 'F' in the said Table, which were allowed to be re-credited to the Cenvat account of the applicant. However, the third claim for rebate made by the applicant was rejected by the original authority on the grounds that Rule 18 of the Central Excise Rules, 2002 which related to clearance of goods for export on payment of duty and Section 3 of the Central Excise Act, 1944 which provided for imposition of the Central Excise duty on excisable goods, were not applicable to the present case as the goods manufactured by the applicant in the Customs Bonded Warehouse from duty free imported goods could not be termed as excisable goods. The original authority found that the applicant was having

a private Bonded Warehouse and were operating/manufacturing under Section 58 and Section 65 of the Customs Act, 1962; that clearances for export was being done from such private Bonded Warehouse which was neither a factory nor a warehouse as defined under the Central Excise Rules, 2002. The original authority further held that as the goods in question had been manufactured in the Customs Bonded Warehouse under Section 65 of the Customs Act, 1962 they were liable to be assessed under Section 12 of the Customs Act, 1962 and not under Section 3 of the Central Excise Act, 1944 and hence could not be termed as excisable goods.

3. The Department, aggrieved by the said two Orders-in-Original dated 10.10.2016 and 22.11.2016 which sanctioned the rebate claims filed appeals before the Commissioner (Appeals). On the other hand, the applicant being aggrieved by the Order-in-Original dated 16.03.2017 which rejected their claim for rebate, filed appeal against the same before the Commissioner (Appeals). All these three appeals were disposed of by the Commissioner (Appeals) vide the impugned Order-in-Appeal dated 08.06.2018. The Commissioner (Appeals) upheld the view that Central Excise duty was not payable on the goods manufactured and cleared for export from a Customs Bonded Warehouse in terms of Section 65 and 69 read with Chapter IX of the Customs Act, 1962. Thus, the Commissioner (Appeals) vide the impugned Order-in-Appeal allowed the appeals filed by the Department and rejected the appeal filed by the applicant.

4. Aggrieved, the applicant has filed the subject Revision Applications on the following grounds :-

(a) That the Commissioner (Appeals) had overlooked the submissions made by them and had not discussed the case laws cited by them;

(b) That they manufactured Oil Exploration & Exploitation Machinery and Piping Spool falling under Chapter 84/73 of the Central Excise Tariff Act, 1985 and held Central Excise Registration; that their unit was under physical control of customs/central excise officers and that each and every removal of goods was undertaken with the approval of excise/custom

officers; that the provisions of the provisions of Central Excise Act was applicable to the applicants:

(c) That a harmonious reading of Section 2(d), 2(e) and 2(f) of the Central Excise Act, 1944, indicated that -

- The Central Excise Act, 1944 was applicable to their registered premises as the same was in India;
- The activities undertaken by them were manufacturing activities as defined in the Central Excise Act;
- They were manufacturing excisable goods, since the goods manufactured by them were enlisted in the Schedules in Central Excise Tariff Act;
- The manufacturing activity was undertaken in the excise registered premises; and
- Excise duty was payable on such manufactured excisable goods, unless benefits laid out under various Schemes of the Government were claimed availed by them;

That in view of the above there could not any dispute that they were liable to pay excise duty on their final product that is exported viz., Piping Spool falling under Chapter 73 of Central Excise Tariff Act, 1985; and hence the allegation of the Department that excise duty was not applicable on the goods exported by them was baseless and hence impugned Order-in-Appeal was liable to be set aside;

(d) That manufacturing of goods in a warehouse was not expressly excluded under section 3 of the Central Excise Act, 1944; that they were holding Private Bonded Warehouse License under Section 58 of Customs Act, 1962, and also have In-bond Manufacturing Permission under Section 65 of Customs Act; that Section 3 of the Central Excise Act, 1944 prescribes the levy and manner of collection of excise duty; that it nowhere excludes the goods manufactured under section 65 of the Customs Act, 1962; that further section 58 and section 65 of the Customs Act also did not exclude applicability of provisions of Central Excise Act;

(e) That from a plain reading of Section 58 and Section 65 of the Customs Act, 1962, it is evident that dutiable imported goods could be deposited in

an approved Private Bonded Warehouse, and the Owner could carry out any manufacturing process in relation to such warehoused goods with necessary approvals of the prescribed authorities; that the said provisions do not preclude applicability of provisions of Central Excise Act on the bonded warehouse and that the Central excise provisions were applicable on the manufacturing activity in the bonded warehouse;

(f) That in their own case the Commissioner of Central Excise had held that they were liable to pay Excise duty on finished goods; that the Commissioner of Central Excise & Customs, Surat Commissionerate, though in a different context, had in their own case vide Order-in-original 24.09.2003 held that "But a 100% EOU is nothing but a customs bonded warehouse under Section 25 of the Customs Act, 1962 and for all practical purposes it is identical with any other customs bonded warehouse in which manufacture takes place. Therefore, these orders are squarely applicable to the customs bonded warehouse being operated by M/s L&T. No distinction can be made between a 100% EOU and any other customs bonded warehouse because in both cases the raw material are brought without payment of import duty under bond, manufactured in the unit and the manufactured goods cleared there from for the purposes of export"; that it was further held that "In the present case M/s L & T have correctly paid central excise duty on the Topside of HV Platform and Helideck, which has been manufactured by them in their customs bonded warehouse and cleared to M/s ONGC offshore installation."; that the Department had accepted the decision in the above said case, and thus it rests beyond doubt that the goods manufactured in the bonded warehouse were excisable goods;

(g) That it was further submitted that the Hon'ble Tribunal in the matter of Commissioner of Central Excise, Lucknow v. Jindal Saw Ltd., [2017 (6) TMI 42- CESTAT Allahabad] vide its order dated 05.05.2017 had held that the asssesse had rightly paid Excise duty on their finished product, that were manufactured under section 65 of Customs Act, in a customs bonded warehouse by relying on Board's clarification dated 09.05.2006 bearing F. No. 473/13/2004 LC regarding duty liability in respect of in-bond manufactured goods required for the purpose of offshore oil exploration/exploitation project of ONGC, that the clarification read as follows:- "The matter has been re-examined in the board. It is now clarified

that in the instant case, the end product that is pipes would be subject to the Central Excise duty leviable on the assessable value of the pipes under Section 3 of Central Excise Act, 1944. The proviso to Section 3 of Central Excise Act, 1944, regarding levy of Excise duty of an amount equal to Customs duties on goods manufactured by 100% EOU is not applicable to manufacturing in bond under Section 65(1) of the Customs Act, 1962";

(h) That only SEZ Units were clearly excluded from applicability of provision of Central Excise Act: that sub-Section 1 (a) of Section 3 of Central Excise Act, 1944, provides that the excise duty shall be levied on all excisable goods with the exception of goods manufactured in Special Economic Zone and the same clearly established that excisable goods manufactured in India, with the exception of goods manufactured in an SEZ, will attract levy of excise duty, unless otherwise exempted; that based on the explicit exclusion of SEZ, it could be construed that the goods manufactured in licensed warehouse situated in India, would attract the provisions of Central Excise Act, 1944 as they were not expressly excluded;

(i) That Central Excise Act was applicable even on EOUs which were bonded warehouse in terms of section 58 of Customs Act and undertaking manufacturing under section 65 of Customs Act; that on comparing with the EOU scheme – EOU was also customs bonded warehouse and undertook manufacturing under bond in terms section 65 of the Customs Act; that as per Clause 17 of the Chapter 9 of Customs Manual it was settled law that EOU are required to pay central excise duty;

(j) That as per Circular No 618/9/2002-CX dated 13.02.2002 it was clarified that provisions of Central Excise Act, 1944 would apply to goods manufactured by EOUs that are situated in India, as goods manufactured or produced in India are governed by Central Excise Act, 1944; that similarly, the goods produced by them were manufactured in licensed warehouse, which is situated in India and hence they were liable to pay excise duty for the goods manufactured by them in the warehouse that is situated in India";

(k) That they had rightfully claimed rebate under Rule 18 of the Central Excise Rules, 2002; that Rule 18 and 19 of the Central Excise Rules are applicable for export of excisable goods; that goods can either be exported without payment of duty, subject to compliance with certain conditions, or

can be exported on payment of duty with the option of claiming rebate; that Rule 18 of the Central Excise Rules, 2002 granted rebate of the excise duty paid on finished goods exported and Notification No. 19/2004-CE dated 06.09.2004 issued under Rule 18 granted rebate of the whole of the duty paid on all goods exported; that it was clear that the whole of the excise duty paid was available as rebate and that in the present case, it was not disputed that the rebate claims filed by them represented the whole of excise duty paid by them of the ARE-1 value; that from a combined reading of the Rule 18 of Central Excise Rules, 2002 and Notification No. 19/2004-Central Excise (N.T.), it was evident that there was no restraint on export of goods from India on payment of excise duty, and then in claiming rebate of such excise duty paid;

(l) That in any case having accepted the duty paid on exported goods, if the same is questioned at the time of claiming of rebate, it would amount to a failure of legislative intent behind provisions of Rule 18 of the Central Excise Rules, 2002; that it was the intention of the legislature in Rule 18 to incentivize exports by not subjecting goods meant for export to excise duty, and allowing rebate of such duty, if paid; that once it was not disputed that the goods had been exported and hence rejecting refund of such excise duty paid would be an erroneous interpretation of the Notification No.19/2004-CE dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002;

(m) That there was no denying the fact that –

- Goods manufactured have been exported out of India;
- Proceeds of such export have been realized;
- Excise duty as applicable had been paid by them;
- Such excise duty was not recovered from the Customer;
- All terms and conditions as applicable had been complied with; and hence they were rightly entitled to rebate of such duties paid;

(n) That the fact that the goods which have been exported have suffered excise duty was not in dispute: that Rule 18 as also Notification No. 19/2004-C.E. (N.T.) uses the terms duty paid for grant of rebate, however, the Notification goes one step ahead to say that the rebate shall be allowed to the extent of whole of duty paid and hence in the absence of any

restrictions in granting of rebate, the rebate shall be allowed to the extent of duty actually paid on the goods exported; they placed reliance on the following decisions: -

- Vera Laboratories v. CCE- [2004 (173) E.LT. 43 (Tri-Bang)]
- CCE v. M.F. Rings & Bearings Races Ltd. [2000 (119) ELT. 239 (Tri-Delhi)]
- Bharat Chemicals v. CCE [2004 (170) E.L.T. 568 (Tri-Bom)]
- Siddhartha Tubes Ltd. v. CCE [1999 (114) EL.T. 1000 (Tri-Delhi)]
- Serene Labs v. CCE-2005 (188) ELT. 290 (Tri-Bom)
- CCE v. Sterlite Industries India Ltd. - 2004 (173) E.LT. 28 (Tri-Bom)
- Ajanta Chemical Indiastries v. CCE- 1984 (18) EL.T. 367 (Tri-Bom)
- Gayatri Laboratories Pvt. Ltd. v. CCE, Mumbai, 2006 (194) ELT 73 (Tri-Bom);

(o) That their rebate claim could not be rejected on the ground that they have claimed rebate to encash Cenvat credit as they had availed credit of duty paid on inputs and input services used in the manufacture of their finished goods in terms of Rule 3(1) of Cenvat Credit Rules, 2004; that they had utilized such credit for payment of excise duty on clearance of the said exported goods in terms of Rule 3(4) of the Cenvat Credit Rules, 2004; they placed reliance on the CBEC Circular No. 21/89-CX.6 dated 04.04.1989 to submit that the rebate should be paid to them in cash;

(p) That having collected excise duty on the goods, Revenue could not reject their rebate claim even if the duty was wrongly paid as principle of unjust enrichment was equally applicable to Revenue; that it was a well settled law that the Government can't retain taxes that are not due, or erroneously collected; that emphasis was placed upon the decision of Hon'ble High Court of Rajasthan in the case of CCE v. Suncity Alloys Pvt. Ltd. [2007 (218) E.L.T. 174 (Raj.) -2009 (13) S.T.R. 86 (Raj.)]. In the said case Hon'ble High Court has held that if no duty is leviable and still assessee paid duty, the Department cannot retain it on any ground and must refund it; that the court observed that the duty paid without the authority of law, cannot be treated as duty paid under the provision of Central Excise Act, and the said amount has to be treated as a voluntary deposit made by the Applicant with the Government. Government cannot retain any amount without the authority of law; reliance was also placed

upon decision in case of BNM Organics vs UOI [2015 (326) ELT 486] wherein Calcutta High Court has held that "If no customs duty was in fact payable by the petitioners, but duty realized on the premises that the petitioners had claimed rebate, the respondent customs authorities would be obliged to refund the amount realized through mistake on being satisfied that no rebate of Central Excise duty had actually been allowed."

(q) That they had paid excise duty on goods exported and if that be so, the duty paid was required to be neutralized; that the portion of the rebate claim which was now disputed by the Commissioner (Appeals) may be treated/ traced as refund claim under Section 11B; that such refund claim would not be hit by unjust enrichment in view of clause (a) of proviso of Section 11B (2) which states that refund pertaining to rebate of duty of excise on excisable goods exported out of India is not hit by unjust enrichment; that they were eligible for refund under Section 11B of the portion of rebate claim which was being disputed by the Commissioner (Appeals);

(r) That they could not be denied refund on the ground that no excise duty was payable in the first place; that CBEC vide Circular No. 510 06/2000-CX dated 03.02.2000 had clarified that rebate could not be reduced; they also placed reliance on the judgement in the case of Sterlite Industries Ltd. vs CCE [2009 (236) ELT 143] in support of their argument; and hence they submitted that the Department could not retain it on any ground and must refund it;

(s) That rejecting rebate claim will be against the policy of the government, which intends to promote export by relieving the burden of taxes on the products exported; that if the rebate claim was rejected, it would amount to payment of excise duty on goods exported;

(t) That the whole exercise was revenue neutral inasmuch as they were entitled for refund in cash under Section 142(3) of CGST Act, 2017 even if the rebate was rejected and the amount allowed as re-credit; and they placed reliance on the decision of the High Court in the case of Hindalco Industries v. UOI [2018-TIOL-18-HC-MUM GST], wherein the Court had disposed the petition on the ground that whole exercise was merely academic.

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside with consequential relief.

5. Personal hearing in the matter was held on 15.02.2023 and Shri Vishwanathan, Advocate and Shri Chandrasekhar, Head of Indirect Taxation of the applicant firm appeared on behalf of the applicant. They submitted a synopsis of the issue. They further submitted that Central Excise Act nowhere prevents them from paying excise duty on goods manufactured in Customs Bonded Warehouse and exported. On being pointed out that Customs Bonded warehouse is a Customs area and is governed by Section 65 of the Customs Act, they submitted that EOUs are also allowed to pay excise duty. The requested to allow their applications.

6. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Appeal.

7. Government notes that the short issue involved here is whether the applicant will be eligible to the rebate of Central Excise Duty paid by them on the goods manufactured and exported from a Private Customs Bonded Warehouse. Government notes that the applicant had been granted a license for such Private Customs Bonded Warehouse under Section 58 of the Customs Act, 1962 for storage of various products imported without payment of duty. The applicant manufactured 'Piping Spools' within the said Customs Bonded Warehouse and exported the same on payment of Central Excise Duty, the rebate of which has been denied by the lower authorities on the grounds that the Central Excise Act, 1944 is not applicable to a Customs Bonded Warehouse and hence the applicant cannot claim rebate under Rule 18 of the Central Excise Rules, 2002.

8. Government finds that it is not in dispute that the applicant imported inputs without payment of Customs duty for being stored in the Customs Bonded Warehouse and that the manufacturing activity was carried out in the said Customs Bonded Warehouse from where such manufactured goods were then exported. Government finds that, at this juncture, it becomes pertinent to examine the relevant provisions of the Customs Act, 1962 which deal with a 'Custom Bonded Warehouse'. Sections 65, 68, 69 and 71 which

deal with the manufacture and removal of goods from a Customs Bonded Warehouse are reproduced below:-

- ***Section 65***

Manufacture and other operations in relation to goods in a warehouse.

65. *(1) With the permission of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.*

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provision shall apply :

(a) *if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:*

Provided *that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;*

(b) *if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.*

- ***Section 68***

Clearance of warehoused goods for home consumption.

68. *The importer of any ware-housed goods may clear them for home consumption, if -*

(a) *a bill of entry for home consumption in respect of such goods has been presented in the prescribed form:*

[(b) *the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and*

(c) *an order for clearance of such goods for home consumption has been made by the proper officer. :*

Provided further *that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.*

Provided further *that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.*

➢ ***Section 69***

Clearance of warehoused goods for exportation.

69. *(1) Any warehoused goods may be exported to a place outside India without payment of import duty if—*

(a) *a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;*

(b) *the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and*

(c) *an order for clearance of such goods for exportation has been made by the proper officer .*

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

➢ ***Section 71***

Goods not to be taken out of warehouse except as provided by this Act.

71. *No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.*

On examining the above Sections which deal with the manufacture and clearance from a 'Custom Bonded Warehouse', Government finds that a 'Customs Bonded Warehouse' is a Customs area governed by the provisions of Section 65 of the Customs Act, 1962 and that none of the said Sections require payment of Central Excise duty on clearances, whether for export or home consumption from the Customs Bonded Warehouse. Government finds that Section 65 lays down that waste and scrap arising during the course of manufacture in the Warehouse and which do not form part of the exported goods would be subject to import duty. Similarly, Section 68 provides that when goods from the Warehouse have to be cleared for home consumption a Bill of Entry requires to be presented and the import duty on such goods required to be paid. As regards the goods from the warehouse being cleared for export, Section 69 provides that a Shipping Bill or Bill of export needs to be presented before the proper officer; there is no requirement of payment of Central Excise duty on such clearance. Given the above, Government finds that the provisions in the Customs Act, 1962, which lays down the conditions and procedures to be followed for import, manufacture and clearance from a 'Customs Bonded Warehouse', do not indicate that that the goods in such warehouse would attract any provision of the Central Excise Act, 1944 at any stage. Further, Government finds that Section 71, in no uncertain terms lays down that the warehoused goods can be taken out of the warehouse, for any purpose, only in the manner provided for by the Customs Act, 1962. Given the above, Government finds that the applicant in this case having paid Central Excise duty which was not required by the Customs Act, 1962 are actually in breach of Section 71 of the Customs Act, 1962. Thus, Government finds that the Central Excise Act, 1944 will have no applicability within a 'Customs Bonded Warehouse'. As stated above, it is not in doubt that the applicant manufactured and exported goods from a 'Customs Bonded Warehouse' and hence such exported goods will not attract any provision of the Central Excise Act, 1944 or the rules made thereunder, including Rule 18 of the Central Excise Rules, which provides for rebate of Central Excise duty paid on the goods exported. Thus, Government does not find any flaw in the order of the lower authorities who have expressed similar views to reject the rebate claims of the applicant.

9. Government notes that the applicant has sought to draw parallels between a 'Customs Bonded Warehouse' and a 100% EOU in terms of the

applicability of the Central Excise Act, 1944. Government finds these submissions to be incorrect and the inferences drawn to be misplaced as Section 3 of the Central Excise Act, 1944 has specific provisions for levy of Central Excise duty on goods when cleared from a 100% EOU. The Central Excise Act, 1944 does not provide for such payment of duty in the case of clearances from a 'Customs Bonded Warehouse.' Thus, the submissions by the applicant on this count will not hold good.

10. Government finds that the applicant has relied upon the decision of the Hon'ble Tribunal in the case of Jindal Saw Limited vs CCE, Lucknow [2017 (357) ELT 1243 (Tri.-All)] in support of their submission that they could have paid Central Excise duty on the goods exported by them. On examining the said decision Government finds that the dispute therein related to the quantum of Customs duty paid on the waste and scrap that arose during the course of manufacture in the 'Customs Bonded Warehouse' which were cleared for home consumption. The Central Excise duty paid by the manufacturer was not disputed by Revenue and was not the subject for decision and hence it cannot be presumed that such payment has found the approval of the Hon'ble Tribunal. Having found so, Government notes that even in this case it was 'Customs duty' that was paid on the waste and scrap cleared for home consumption and not 'Central Excise duty'. Thus, Government finds that even this case goes to prove that clearances from a 'Custom Bonded Warehouse' will attract Customs Duty and not Central Excise duty. Government finds that the Hon'ble Tribunal in the case of Dempo Engineering Works Limited vs CCE & Cus, Goa [2002 (139) ELT 316 (Tri-Mumbai)] in a case involving clearances from a Customs Bonded Warehouse had held as under: -

> *"There is no dispute that the goods were manufactured in Customs Bonded warehouse therefore the decision of the Tribunal cited by the ld. Counsel is squarely applicable in the present case. In other words the barge manufactured under Customs warehousing bond is to be treated as having been manufactured in a foreign country, and therefore duty of Customs and not duty of Central Excise will be leviable thereon."*

Government finds that the Hon'ble Tribunal in the above decision has clearly stated that goods manufactured in a Customs Warehouse will not attract Central Excise duty. In view of the above, Government finds that a Customs Bonded Warehouse licensed under Section 58 of the Customs Act,

1962 will not attract the provisions of the Central Excise Act, 1944 and hence holds that the applicant in this case, having manufactured and exported goods from a Customs Bonded Warehouse, will not be eligible to claim rebate under Rule 18 of the Central Excise Rules, 1944.

11. Government finds that the applicant has submitted that in the event they are found to be ineligible for the rebate claimed, the amount paid by them in the instant case as Central Excise duty, needs to be returned back to them in the manner paid, as the goods in question were exported. Government finds that neither of the lower authorities have examined this submission of the applicant and hence remands the case back to the original authority for the limited purpose of examining this claim of the applicant in accordance with the law.

12. The subject Revision Application is disposed of in the above terms.

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 402-404/2023-CX (WZ) /ASRA/Mumbai dated 29.12.2023

To,

M/s L & T Hydrocarbon Engineering Limited,
Survey No.148A, 230, 241 & 230/p, 231/p, 233/p, 234, 235,
Hazira Manufacturing Complex, (MFF Block), Technology Block,
Hazira Road, Mora, Surat – 394510.

Copy to:

1. Commissioner of CGST & Central Excise, Surat, New Central Excise Building, Chowk Bazar, Surat – 391 001.
2. Commissioner of GST & Central Excise (Appeals), Vadodara, GST Bhavan, 2nd floor, Subhanpura, Vadodara – 390 023.
3. Shri V. Laxmi Kumaran, Advocate, B-334, Sakar – VII, Nehru Bridge Corner, Ashram Road, Ahmedabad – 380 009.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.