REGISTERED SPEED POST AD

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. 195/1641/12-RA/8390 Date of Issue: 31.08.2020

ORDER NO. 462/2020-CX (WZ) /ASRA/MUMBAI DATED 20.04.2020 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. MSN Technology Private Ltd.
AU-105, Rajlaxmi Commercial Complex,
Kalher – 421 302,
Bhiwandi, District Thane

Respondent : Commissioner, Central Excise, Thane-I

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the OIA No. BR/120/Th-I/2012 dated 22.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

ORDER

The revision application has been filed by M/s. MSN Technology Private Ltd., AU-105, Rajlaxmi Commercial Complex, Kalher – 421 302, Bhiwandi, District Thane (hereinafter referred to as "the applicant") against OIA No. BR/120/Th-I/2012 dated 22.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

2.1 The applicant had cleared "Bimetal Bond Saw Blades" falling under chapter sub-heading no. 8202.20 of the CETA, 1985 to units falling under SEZ and 100% EOU. The applicant had cleared the said goods to SEZ units under Bond No. U/T No. 03/2008-09. The claimant vide their letter dated 25.07.2011 submitted that due to lack of knowledge they had not debited the amount of central excise duty payable on some invoices under which the goods were cleared. After it being pointed out, they have debited the whole amount in September 2010 alongwith interest for the delayed amounts. The applicant had filed 8 rebate claims.

2.2 During the scrutiny of the rebate claims, it was observed that there were several deficiencies in the rebate claims; viz. the applicant had not followed proper procedure for clearance of goods to SEZ unit and 100% EOU, the goods had been cleared without payment of duty/under valid letter of undertaking or bond as applicable to such removal, the claimant had not intimated the Department regarding clearances of excisable goods to SEZ or 100% EOU, the applicant had failed to submit the triplicate copy of ARE-1's within 24 hours from the time of clearance from the factory, the claimant was required to follow the procedure under ARE-3 for clearances to 100% EOU whereas they had followed the procedure under ARE-1, they had filed rebate claim in respect of one ARE-1 after a period of one year from the date of shipment, the clearances to a unit in SEZ cannot be considered as export for grant of rebate under Rule 18 of the CER, 2002 as the units in SEZ do not qualify to be a country other than Nepal and Bhutan and also because the applicant could not clear the bar of unjust enrichment. The applicant was therefore issued an SCN dated 08.09.2011 calling upon them to show cause why their rebate claims should not be rejected on these grounds. The rebate claims filed by the applicant were rejected by the Deputy Commissioner, Central Excise, Thane City Division vide his OIO No. SC/R-186/11-12 dated 03.10.2011 on these grounds.

3. Aggrieved, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that the applicant had filed rebate claims in respect of ARE-1 No. 1 to 6 on 07.07.2011 for goods cleared between 07.04.2010 to 29.06.2010 after a period of one year from the date of clearance and were therefore hit by time bar. He further observed that the clearances to a unit in SEZ cannot be treated as export for grant of rebate under Rule 18 in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 as the units in SEZ do not qualify as countries other than Nepal and Bhutan. Reliance was placed upon the decision in the case of CCE, Thane-I vs. Tiger Steel Engineering (I) Pvt. Ltd.[2010(259)ELT 0375(Tri-Mum)] and the judgment of the Hon'ble High Court of Gujarat in the case of Essar Steel Ltd. vs. UOI[2010(249)ELT 0003(Guj)] which was thereafter maintained by the Hon'ble Supreme Court[2010(255)ELT A115(SC)]. The Commissioner(Appeals) vide his OIA No. BR/120/Th-I/2012 dated 22.08.2012 held that the appeal filed by the applicant was devoid of merits and rejected their appeal.

4. Being aggrieved by the OIA No. BR/120/Th-I/2012 dated 22.08.2012, the applicant has filed revision application on the following grounds.

(a) They had supplied these goods between May 2010 to September 2010 without executing LUT-1 and without charging/collecting excise duty on the goods supplied to the SEZ units as these supplies are considered to be deemed exports. They contended that goods can be supplied without prepaying excise duty.

(b) They submitted that when the error of not carrying out proper documentation by submitting LUT-1 undertaking was brought to their notice in September 2010, they immediately debited the duty amount alongwith interest. Hence, there was no malafide intention on their part.

(c) They stated that they had debited the excise duty amount in the month of September 2010 and have submitted refund claim only on 14.12.2010. They stated that their claim has been recorded at the concerned Range entry Sr. No. 1941 to 1948 on 15.12.2010. They further stated that their office copies have the due acknowledgment of the Range Office.

(d) The applicant submitted that they do not understand why the OIO records that they have filed their claims on 07.07.2011. However, even assuming that the said date was correct, they claimed to have completed all their documentation for request to

grant refund within 12 months of debiting the duty and hence their claim was made within stipulated time limits.

(e) They drew attention to para 3(a) and para 5 of Circular No. 29/2006-Cus dated 27.12.2006 and para no. 4 of Circular No. 06/2010-Cus dated 19.03.2010 in support of their contentions.

(f) They submitted that the lapses on their part were due to lack of knowledge and ignorance about documentation and procedures. It was due to this reason that they had not obtained LUT to clear the goods from time to time for clearances to units in SEZ.

(g) They requested that their sincerity and commitment must be appreciated in view of the fact that as soon as they were informed by their Range Office about their mistake, they immediately reversed the credit amount of the respective supplies and also paid interest on the same. They also stated that they had given a separate undertaking on bond paper for the lost/not received triplicate copies of ARE-1 and that they would not file any further claims in these cases.

5. The applicant was granted personal hearing on 20.11.2017, 09.10.2019 & 21.11.2019. However, none appeared on their behalf. The Department also failed to avail of the opportunity of being heard.

6. Government has carefully gone through the relevant case records available in case files, the revision application, perused the impugned Order-in-Original and Order-in-Appeal. The Commissioner(Appeals) has rejected the rebate claims filed by the applicant on three primary grounds; viz. the claims filed by the applicant for the clearances(ARE-1 No. 1to 6) effected during the period between 07.04.2010 to 29.06.2010 were time barred as the rebate claims had been filed beyond one year on 07.07.2011, clearances to SEZ cannot be treated as export for grant of rebate under Rule 18 and that the legal fiction of treating clearances from DTA to SEZ as export would be confined to the statute(SEZ Act, 2005) which creates it.

7. Government observes that the contention of the Department that the clearances from DTA to SEZ would not amount to export is not tenable. In this regard, the CBEC has issued three different circulars; viz. Circular No. 29/2006-Cus dated 27.12.2006, Circular No. 6/2010-Cus dated 19.03.2010 and Circular No. 1001/8/2015-CX.8 dated 28.04.2015 which very explicitly state that clearances of goods to an SEZ from the DTA

would be export and entitled to the benefit of rebate under Rule 18 of the CER, 2002. Needless to say, Board Circulars are binding upon the executive and therefore the field formations cannot take a divergent view. Government now takes up the first ground for rejection of the rebate claims; i.e. the contention that six rebate claims filed by the applicant on 07.07.2011 were time barred as the exports had been effected during the period between 07.04.2010 to 29.06.2010. In this regard, the applicant has made submissions in the revision application stating that they had made payment of duty in September 2010 and filed refund claim on 14.12.2010 and therefore the refund claims were not time barred. The inconsistency in the date of filing refund claim as per the Department and the applicant notwithstanding, it would be pertinent to note that the relevant date in terms of Section 11B would be the date on which the goods have left the customs frontier and the refund claim should have been filed within one year of such date. However, the applicant has also made submission stating that they have carried out the documentation for grant of refund within 12 months of debiting the duty and averred that hence their claims should be treated as made within the stipulated time limit. Be that as it may, these submissions would have to be considered in the light of their admission that they had not obtained LUT to clear the goods to SEZ units. The applicant has admitted in very plain words that at the time of clearance, the goods were not duty paid.

8.1 Government observes that irrespective of whether the goods are cleared domestically or for export, the duty liability remains attached to the manufactured goods. Even for exports, two options are available to the exporter; viz. the exporter of goods has the option to clear goods under an LUT or a bond which covers the duty liability or to pay the duty on the export goods and claim rebate thereof. The decision In Re : Marim International[2012(281) ELT 747(GOI)] has delved into this issue in detail. The relevant text is reproduced below.

> ***"8.*** *As per provisions of Rule 18 of Central Excise Rules, 2002 r/w Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, the rebate of duty paid on excisable exported is granted subject to compliance of conditions and procedure prescribed in the Notification No. 19/2004-C.E. (N.T.). Condition 2(a) of said Notification stipulates that goods shall be exported of the payment of duty directly from factory or warehouse. Government further notes that as per provisions contained in para 1.1(1) of Part-I, Chapter 8 of C.B.E.C.'s Excise Manual of Supplementary Instructions the excisable goods shall be exported after payment of duty. The conditions of "payment of duty"*

is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under Rule 10 of Central Excise Rules, 2002 whereas the duty may be discharged in the manner specified under Rule 8 of the said Rules, i.e. monthly basis. Further, the Rule 8 of the said Rules requires that duty payment for the goods removed during the month of March should be done by the 31st of March. Rule 10 requires maintenance of Daily Stock Account, by giving complete details of goods produced and manufactured including amount of duty actually paid.

9. *From the harmonious reading of all the provisions mentioned above, it can be concluded that for the goods cleared in month of March, the duty was to be paid by 31st of March and such actual payment of duty should be entered in daily stock register. Government notes that applicant did not pay duty at the time of export of goods and as such failed to fulfil the abovesaid conditions stipulated under supplementary instruction/Rules.*

10. *Government further observes that sub-rules (3) and (3A) of Rule 8 provides for payment of duty along with applicable interest if the assessee failed to pay the amount of duty by due date. Government notes that provision for claim of rebate is governed by Rule 18, which requires payment of duty at the time of export. The provisions contained in Rule 8 does not absolve the assessee from substantial conditions of payment of duty of claim of rebate of duty under Rule 18 of Central Excise Rules, 2002. The decision of Tribunal relied upon by the applicant deals with export of goods under Bond, which is governed by different provision. As such the ratio of Tribunal's judgment is not applicable in this case."*

8.2 Government observes that the GOI has taken a similar view in its Order No. 501-503/13-CX dated 31-5-2013 in the case of M/s Sandhar Automotives. Government therefore holds that duty payment on the export goods by the due dates is mandatory. It is observed from the annexure detailing the payments made by the applicant at the behest of the Department that interest payment has been calculated till 30.09.2010. In the circumstances, the Government notes that by virtue of the fact that the applicant had failed to pay duty by the due dates for the relevant months, the clearances effected under ARE-1 No. 1, 2, 3, 4, 5, & 7 would not be rebatable. Government notes that besides the assertion of the Department that the rebate claims are barred by limitation as they had been filed after one year of the date of export, the rebate claims in respect of these ARE-1's is not admissible even on this ground. The rejection of the rebate claims in respect of the clearances for export under these ARE-1's is upheld.

8.3 However, the Government observes that the rebate claim in respect of the clearance under ARE-1 No. 6, the Central Excise Officer in charge of the 100% EOU had issued a Certificate in Form CT-3 for removal of excisable goods under Bond in terms of

Notification No. 22/2003-CE dated 31.03.2003 as amended. The contention of the Department while rejecting the rebate claim was that the applicant had made the clearance under ARE-1 format. Government observes that the applicant appears to be ignorant about the proper procedures and does not have knowledge of the law. It was at the insistence of the Department, based on the observation of the Department that the applicant had followed procedure under ARE-1 instead of ARE-3 procedure, that the applicant paid the duty on this clearance. The lapse of the applicant in this case is purely procedural/technical in nature and has occurred due to their ignorance. As such, the applicant was not required to pay duty on this clearance. Government therefore holds that the central excise duty amounting to Rs. 1,929/77 in respect of clearance effected under ARE-1 No. MTPL/06/10 dated 29.06.2010 paid at the behest of the Department is refundable to the applicant.

8.4 In so far as the ARE-1 No. MTPL/08/10 dated 08.09.2010 for rebate of an amount of Rs. 8626/25 is concerned, Government observes that the applicant has paid the central excise duty in respect of this clearance by the stipulated due date and also filed the rebate claim within the stipulated time limit. In the circumstances, the rebate claim in respect of the ARE-1 No. MTPL/08/10 dated 08.09.2010 is held to be admissible.

9. In view of the foregoing discussions, impugned OIA is modified by allowing the refund claims filed in respect of ARE-1 No. MTPL/06/10 dated 29.06.2010 & ARE-1 No. MTPL/08/10 dated 08.09.2010. The revision application filed by the applicant is disposed off in the above manner.

10. So ordered.

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

ORDER No. 462/2020-CX (WZ) /ASRA/Mumbai DATED 20.04.2020

ATTESTED

To,
M/s. MSN Technology Private Ltd.
AU-105, Rajlaxmi Commercial Complex,
Kalher – 421 302,
Bhiwandi, District Thane

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

Copy to:

1. The Commissioner of CGST & CX, Bhiwandi Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Thane
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy