REGISTERED SPEED POST AD

सत्यमेव जयते

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. 195/439/2016-RA / 3148 Date of Issue: 26/08/2020

ORDER NO. 481/2019-CX (WZ) /ASRA/MUMBAI DATED 29.05.2019 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 Oil States Industries (India) Pvt. Ltd.
Gala No. 11/3B & 22/1,
Village Chaal,
MIDC, Taloja, District Raigad

Respondent : Commissioner of Central Excise, Raigad

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. CD/201/Bel/2016 dated 15.02.2016 passed by the Commissioner(Appeals-II), Central Excise, Mumbai.

ORDER

This revision application has been filed by M/s Oil States Industries (India) Pvt. Ltd., Gala No. 11/3B & 22/1, Village Chaal, MIDC, Taloja, District Raigad(hereinafter referred to as "the applicant") against OIA No. CD/201/Bel/2016 dated 15.02.2016 passed by the Commissioner(Appeals-II), Central Excise, Mumbai.

2.1 The applicant had filed two rebate claims for rebate of duty paid on finished excisable goods exported under Rule 18 of the CER, 2002. The goods in question; viz. Offshore Pedestal Deck Crane Model 1100L falling under chapter heading no. 8426 9990 had been cleared for export from the premises of the manufacturer on payment of central excise duty, education cess and secondary and higher education cess totally amounting to Rs. 1,85,28,052/- and the said duty amount had been debited in their CENVAT account/PLA account as per the dated entries shown. All the goods had been cleared for export directly from the factory premises of the manufacturer as stipulated in Notification No. 19/2004-CE(NT) dated 06.09.2004 and all the other conditions stipulated in the said notification had also been fulfilled by the claimant/exporter.

2.2 The manufacturer/exporter had given a certificate that the finished goods were neither subjected to NIL rate of duty nor were they fully exempted under any exemption notification. The manufacturer/exporter had also given a declaration that the unit would not claim drawback in respect of any input and that the unit is not operating under any Export Promotion Scheme which prohibits them the CENVAT credit in respect of inputs used in the manufacture of finished goods. This aspect was confirmed by the Superintendent of Central Excise, Range-V, Taloja.

2.3 It was observed from the submission made by the applicant that they had accepted that the goods imported against Advance Authorisation was imported duty free and thus no duty credit was available thereon. The applicant also submitted that they have imported goods on which customs duty was paid and also procured duty paid goods locally. However, they had not made any submission to elaborate, differentiate and identify the goods so procured and on which duty credit was availed. It was not proved or established by any evidence that goods imported against Advance Authorisations no. 0310774051 dated 11.03.2014 stated to be used for manufacture of

goods cleared against Shipping Bill No. 3148708 dated 08.06.2014 & 346875 dated 24.06.2014 were actually brought into the manufacturing premises.

2.4 In the absence of any evidence that duty free imported goods were used in the manufacturing activity and that they were used in manufacturing and utilized in the goods exported against Shipping Bill No. 3148708 dated 08.06.2014 & 346875 dated 24.06.2014, it appeared to the Assistant Commissioner, Central Excise, Taloja Division that the provisions of the Central Excise(Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 were applicable and that the exports could only be under the provisions of Rule 19 of the CER, 2002 subject to such conditions, safeguard and procedure as specified in Notification No. 43/2001-CE(NT) dated 26.06.2001 and 41/2001-CE(NT) dated 26.06.2001 as amended. It therefore appeared that the applicant had failed to follow the correct procedure in respect of the goods imported against Advance Authorisation and claimed to have been used in the goods exported. The Assistant Commissioner, Central Excise, Taloja Division therefore rejected two rebate claims amounting to Rs. 1,85,28,052/-.

3.1 Aggrieved, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that the applicant had admitted that the goods imported against Advance Authorisation were imported duty free and therefore no CENVAT credit was available thereon. They had also submitted that they had imported goods on which customs duty was paid and also procured duty paid goods from the local market. However, the applicant had not made any submission to elaborate, differentiate and identify the goods so procured and on which duty credit was availed, it is not proved or established by any evidence that goods imported against impugned advance authorisations dated 11.03.2014 stated to be used for manufacture of goods cleared against shipping bills dated 06.05.2014 and 24.06.2014 were actually brought into the manufacturing premises.

3.2 The Commissioner(Appeals) held that the applicant had not submitted any certified documents with the appeal memo to evidence the goods imported against the advance authorization had been used for the manufacture of goods which had been exported. They had also not submitted tangible documentary evidence to substantiate that the goods imported against the advance authorization had actually been brought into the manufacturing premises. The Commissioner(Appeals) reasoned that when the

applicant was seeking that the order of the adjudicating authority be set aside, they should have come forward with tangible documentary evidence to prove their say. The Commissioner(Appeals) therefore vide his Order-in-Appeal No. CD/201/Bel/2016 dated 15.02.2016 held that the adjudicating authority had rightly rejected the rebate claim filed by the applicant and upheld the order-in-original.

4. Aggrieved by the order of the Commissioner(Appeals), the applicant has filed revision application against the Order-in-Appeal No. CD/201/Bel/2016 dated 15.02.2016 on the following grounds :

(i) The original authority as well as the Commissioner(Appeals) had completely ignored the reply filed by them on 21.05.2015 wherein they clarified all facts relating to the Advance Authorisation and fulfillment of its conditions, the fact about import of goods in CKD condition and classification of goods and the basis for claiming rebate.

(ii) They had also provided copy of Notification No. 96/2009-Cus dated 11.09.2009 and also the relevant provisions under para 4.2 of the FTP vide their letter dated 18.06.2015. They had explained that there is no specific requirement or embargo about claiming CENVAT credit on indigenous goods and claiming rebate thereon.

(iii) The applicant drew attention to the condition sheet enclosed to the advance authorization and pointed out that there is no condition prescribed for non-availment of rebate at the time of export of finished goods. They stated that the lower authorities had completely ignored the said condition sheet.

(iv) The lower authorities had not given any specific reason for rejecting the rebate. They had merely stated that the provisions of the Central Excise(Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 were applicable and that the export could only be under the provisions of Rule 19 of the Central Excise Rules, 2002 subject to the conditions, safeguard and procedures specified in Notification No. 43/2001-CE(NT) dated 26.06.2001 and Notification No. 44/2001-CE(NT) dated 26.06.2001 as amended.

(v) After taking through the text of Notification No. 43/2001-CE(NT) dated 26.06.2001 and Notification No. 44/2001-CE(NT) dated 26.06.2001, the

applicant averred that it was nowhere stated that they were required to follow any specific procedure if they were importing goods under the Advance Authorisation Scheme.

(vi) The applicant thereafter referred Notification No. 96/2009-Cus dated 11.09.2009 and stated that they had executed Bond and given Undertaking as per the condition in the notification. They pointed out that there was no condition therein that goods cannot be cleared under claim of rebate under Rule 18. They stated that the notification does not restrain the manufacturer from clearing goods under Rule 18 or that they are not eligible for CENVAT credit on locally procured goods. They further submitted that they had discharged their export obligations after export of goods. The applicant further noted that para 4.2.7 of the FTP states that CENVAT credit facility would be available for inputs either imported or procured indigenously.

(vii) The applicant further contended that the avowed policy of the Government was to promote export by relieving the burden of taxes on the products exported and also on the products consumed in the manufacture of goods exported. Therefore, the CENVAT Credit Rules and the Central Excise Rules have to be read harmoniously to give effect to this objective.

(viii) It was averred that even if the Department was of the opinion that rebate was rightly disallowed and if the rebate as denied in the OIO and the OIA was upheld then the amount of duty paid should not be retained by the Department and should be allowed to be re-credited as the goods in question have been duly exported and moreover they were eligible for exemption.

(ix) The applicant placed reliance upon the following case laws.

- Suksha International vs. UOI[1993(39)ELT 503(SC)]
- UOI vs. A. V. Narsimhalu[1983 ELT 1534(SC)]
- Formica India vs. Collector of Central Excise[1995(77)ELT 51(SC)]
- Bhai Jaspal Singh vs. Asstt. Commissioner of Commercial Taxes (2011) 1 SCC 39
- G. P. Ceramic (P) Ltd. vs. CTT (2009) 2 SCC 90
- A. P. Steel Re-Rolling Mills Ltd. vs. State of Kerala(2007) 2 SCC 725
- Govt. of India vs. Indian Tobacco Assn. (2005) 7 SCC 396 = 2005(187)ELT 162(SC)

- CCE vs. Parle Exports Pvt. Ltd. (1989) 1 SCC 345 = 1988(38)ELT 741(SC)
- CCE, New Delhi vs. Hari Chand Shri Gopal (2011) 1 SCC 236 = 2010(260)ELT 3(SC)
- Novopan India Ltd. vs. Commissioner of Customs & Excise 1994 Supp.(3)SCC 606 = 1994(73)ELT 769(SC)
- TISCO Ltd. vs. State of Jharkhand (2005) 4 SCC 272.

5. The applicant filed additional submissions on 25.04.2018 reiterating the grounds for revision in the revision application filed by them. The applicant was granted a personal hearing on 17.09.2019. Shri Vijay Kumar Joshi, Consultant(Indirect Tax) appeared on behalf of the applicant. He reiterated the submissions made on 25.04.2018. Written submissions were also filed on 17.09.2019. He submitted copy of the Redemption Letter in respect of Advance Authorisation No. 0310774051 dated 11.03.2014 issued by DGFT confirming fulfillment of export obligation, certificates for export proceeds realized, Chartered Engineers Certificate stating that the imported materials have been used for manufacture of goods covered under Advance Authorisation No. 0310774051 dated 11.03.2014 & Invoice No. OSI/EXP/14-15/INV001 dated 03.06.2014.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. The facts of the case are that the applicant had filed two rebate claims for rebate of duty paid on finished goods exported under Rule 18 of the CER, 2002. The lower authorities have rejected the rebate claim on the ground that the applicant has not been able to elaborate, differentiate and identify the goods on which CENVAT credit has been availed. It was also averred that they could not prove with evidence that the goods imported against advance authorization had been used for manufacture of goods cleared against Shipping Bill No. 3148708 dated 06.06.2014 & 3465875 dated 24.06.2014 and that they were actually used in the manufacturing premises. It was therefore contended that the provisions of Central Excise(Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001 were applicable and export could be only under the provisions of Rule

19 of the CER, 2002 subject to the conditions in Notification No. 43/2001-CE(NT) and Notification No. 44/2001-CE(NT).

7. Government observes that the order-in-original records the fact that the applicant had given a certificate that the finished goods are neither Nil tariff rated nor are they fully exempt under any notification. Therefore, the dutiability of the finished products is indisputable. The applicant has also given a declaration stating that they will not claim drawback in respect of any input and are not operating under any Export Promotion Scheme which prohibits them from availing CENVAT credit in respect of inputs used in the manufacture of finished goods. The order-in-original also records that this aspect has been verified and confirmed by the Superintendent of Central Excise, Range-V, Taloja Division and found correct.

8. The scheme of rebate requires that the duty paid character of the export goods is established. In the present case, it is observed that the Assistant Commissioner has noted that the applicant has paid duty totally amounting to Rs. 1,85,28,052/- through CENVAT/PLA account. The order also records that the applicant has used both imported duty paid goods as well as duty paid goods procured locally for the manufacture of the export goods. Therefore, the fact that the applicant was eligible for CENVAT credit is also clear. The correctness of the duty payment on the export goods is also not in doubt. One of the grounds on which the lower authorities have sought to reject the rebate claim is that the applicant had not specifically identified the goods on which CENVAT credit has been availed. Government observes that there was no such stipulation in Notification No. 19/2004-CE(NT) dated 06.09.2004. There is no requirement of one to one co-relation of materials used with the finished product. The other ground set out by the Department is that the applicant has not been able to substantiate that the goods imported against Advance Authorisation had been used for manufacture of the export goods. In this regard, it is observed that the applicant has submitted Chartered Engineers Certificate dated 06.06.2014 and dated 24.06.2014 stating that the materials imported under Advance

Authorisation No. 0310774051 dated 11.03.2014 have been exported under Invoice No. OSI/EXP/14-15/INV001 dated 03.06.2014 and Invoice No. OSI/EXP/14-15/INV002 dated 23.06.2014. It is further observed that the applicant has also been issued Redemption Letter dated 09.03.2018 by the DGFT stating that the export obligation has been met in full value as well as in quantity terms. Therefore, the factum of the use of the materials imported against the Advance Authorisation and the fulfillment of the export obligation have both been confirmed.

9. In so far as the Notification No. 96/2009-Cus dated 11.09.2009 governing the imports under Advance Authorisation Scheme is concerned, it is observed that there is no bar on availing CENVAT credit. There is nothing in the said notification which makes it mandatory for the authorization holder to follow the procedure under the Central Excise(Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001. The condition (viii) of the said notification bars the authorization holder from availing the benefit of facility under rule 18(rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the CER, 2002. Therefore, the restriction applies only to rebate of duty paid on materials used in the export goods and not rebate of duty paid on export goods. The said notification does not bar the authorization holder from availing rebate of duty paid on the finished goods exported.

10. Government therefore concludes that the rebate claims filed by the applicant of rebate of duty paid on the finished excisable goods exported under Rule 18 of the CER, 2002 is admissible. In the result, the revision application filed by the applicant is allowed.

11. So ordered.

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

ATTESTED

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

ORDER No. 481/2019-CX (WZ) /ASRA/Mumbai DATED 29.05.2020.

To,
M/s Oil States Industries (India) Pvt. Ltd.
Gala No. 11/3B & 22/1,
Village Chaal,
MIDC, Taloja, District Raigad

Copy to:

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

Pr. Commnr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai