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F.NO. 195/423/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.. 5/6/13

Order No. 515 /13-Cx dated 04.06.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act., 1944 against the Order-in-Appeal No. 630/2010 dated 06.12.2010 passed by the Commissioner of Central Excise (Appeals-II), Banglore

Applicant : M/s Olaer Fawcett Christie Hydraulics India Pvt. Ltd., Banglore

Respondent : Commissioner of Central Excise , Banglore-III.

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ORDER

This revision application has been filed by the applicant M/s Olaer Fawcett Christie Hydraulics India Pvt. Ltd., Bangalore against the order-in-appeal No. 630/2010 dated 06.12.2010 passed by the Commissioner of Central Excise (Appeals-II), Bangalore with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Kanakapura Division, Bangalore-III Commissionerate.

2. Brief facts of the case are that the applicants have filed two applications claiming rebate of Rs. 5,58,623/- and Rs. 3,66,362/- for certain goods exported under ARE-1. The applicants claim is that they have cleared inputs as such for export and reversed the Cenvat Credit availed of the CVD paid Cesses and SAD, on the inputs in terms of Rule 3(5) of Cenvat Credit Rules, 2004 (in short CCR 2004), the said inputs were claimed to have been imported under Bills of Entry dated 19.04.2008. No documentary evidence was furnished to establish that the goods so imported were in fact exported under the ARE-1s supra. Accordingly two Show Cause Notices were issued proposing to reject the claims. The original adjudicating authority rejected the Rebate claims, by holding that the onus is on the exporter to prove that the goods imported are the ones claimed to be exported, that the sanction of rebate claim is governed by the provisions of Section 11B of the Act, that Rule 3(5) of the CCR, 2004 provides for paying the equivalent amount of the credit availed on removal of the input and same should be under the cover of invoice issued under rule 9 of the CCR 2004, that exporting the goods imported as such is not covered under section 11B of the Act.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

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

4.1 The applicant had imported inputs which were meant for manufacture of excisable products and availed Cenvat Credit on the same. The inputs were cleared for exports as such under Rule 3(5) of Cenvat Credit Rules, 2004 by debiting in the Cenvat Credit account.

4.2 Rule 18 of the Central Excise Rules, 2004 read – “where any goods are exported, the Central Government may by notification grant rebate on duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification etc.” The goods cleared ‘as such’ the Radiator Cooler (Matrix) and Air Cooler spares which are excisable goods falling under Chapter heading CETH 84799090 and 84159000. “Excisable goods” under Section 2(d) of Central Excise Act, 1944 is defined as “Excisable” goods means goods specified in the first schedule and the second schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt.

4.3 The definition of ‘Excisable goods’ does not restrict itself to manufactured goods alone. From a reading of the above, it is clear that any excisable goods that suffers duty while exporting becomes eligible for sanction of rebate. The rebate is not confined a only to manufactured final products or inputs used in the manufacture of final products as contented by the respondent. As such, the conclusion of the respondent that, only inputs used in the manufacture of final products are eligible for rebate and not inputs cleared ‘as such’ is not based on provisions of Central Excise Rules 18 of Central Excise Rules 2002.

5. Personal hearing scheduled in this case on 13.12.2012 and 07.03.2013. Hearing held on 13.12.2012 was attended by Shri R. Rangaswamy, consultant on behalf of the applicant and reiterated the grounds of revision application. The applicant also relied upon Hon'ble Bombay High Courts judgement in the case of CCE, Raigarh Vs. Micro-ink Ltd. reported in 2011 (270) ELT 360 (Bom). Shri Y.C.S. Swamy, Deputy Commissioner attended hearing on behalf of department and stated that Order-in-Appeal being legal and proper may be uphold. .
6. Government has considered the relevant case records and perused the orders passed by the lower authorities.
7. Government has considered the relevant case records and perused the impugned order-in-original and order-in-appeal.
8. The original authority rejected the rebate claim on the ground that inputs are cleared for export as such on reversal of Cenvat Credit under rule 3(5) of Cenvat Credit Rules 2004 and such reversal of Cenvat Credit can not be treated as payment of duty. Further imported goods have been exported 'as such' without undertaking any manufacturing activity and such exported goods cannot be treated as export of 'excisable goods'. Commissioner (Appeals) also rejected the appeal. Now the applicant has filed this revision application on the grounds stated in para (4) above.
9. Government observes that the one of the issues involved in all the cases was decided by this authority in the following orders holding that rebate of an amount equal to Cenvat Credit reversed under rule 3(5) of Central Excise Rule 2004 on export of inputs/capital goods as such, will be admissible under Rule 18 of Central Excise Rules, 2002.
  - 9.1 Government of India Revision order No. 873/10-CX dated 04.06.2010 in the case of Micro Inks—Department filed W.P. No. 2195/10 against this order

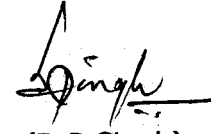
before Hon'ble Bombay High Court who vide order dated 23.3.2011 reported as 2011 (270) ELT 360 (Bom) has upheld the said GOI Revision order.

9.2 Government of India Order No. 18/09 dated 20.1.2009 in the case of M/s Sterlite Industries (I) LTD. Department filed W.P. No. 2094/2010 against said order before Hon'ble Bombay High Court who vide order dated 24.3.2011 upheld the said GOI Revision order. The SLP No. 6120/12 filed in Supreme Court by Department against Hon'ble Bombay High Court order was dismissed vide order dated 14.09.2012.

10. The issue of this case is squarely covered by above said orders of Hon'ble Bombay High Court. As such the instant case is to be decided taking into account said High Court orders. Therefore, Government sets aside the impugned orders and remands the case back to original authority to decide the case afresh after taking into account the above mentioned orders of Hon'ble High Court of Bombay. A reasonable opportunity of hearing will be afforded to the party.

11. Revision application is disposed off in terms of above.

12. So ordered.

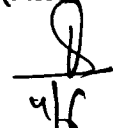


(D P Singh)

Joint Secretary(Revision Application)

M/s Olaer Fawcett Christie Hydraulics India Pvt. Ltd.,  
No.1/22, Balaji Nilaya, Bugle Rock Road,  
Off. Puttanna Road, Basvanagudi,  
Bangalore – 560 004.

(Attested)

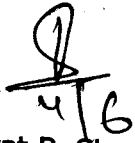


(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

G.O.I.Order No.515/2013-CX dated 04.06.2013

Copy to:

1. Commissioner Central Excise, Bangalore-III, CR Building, Queen's Road, P B No. 5400, bangalore-560 001.
2. Asstt. Commissioner of Central Excise, Kanakapura Division, No. 110/10, 2<sup>nd</sup> Floor, Lalbagh Road, Bangalore-560 027.
3. Commissioner of Central Excise (Appeals-II), 16/1, 5<sup>th</sup> Floor, SP Complex, Lalbagh Road, Bangalore-560 027.
4. Shri R. Rangaswamy, Consultant, C/o M/s Olaer Fawcett Christie Hydraulics India Pvt. Ltd., No.1/22, Balaji Nilaya, Bugle Rock Road, Off. Puttanna Road, Basvanagudi, Bangalore - 560 004.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

  
(Bhagwat P. Sharma)  
OSD (RA)