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F.No. 195/500/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 5/6/13

Order No. 516 /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. SB/88/Th-I/11 dated 25.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai -I
Applicant	:	M/s Ganesh Tiles & Marble Industries, Mumbai
Respondent	:	The Commissioner of Central Excise, Thane-I

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ORDER

This revision application is filed by M/s Ganesh Tiles & Marble Industries, Mumbai against the Order-in-Appeal No. SB/88/Th-I/11 dated 25.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I, with respect to order-in-original passed by the jurisdictional Assistant Commissioner of Central Excise, Kalyan-IV Division.

2. Brief facts of the case are that the applicants files rebate claim under Rule 18 of the Central Excise Rules, 2002 in respect of the goods cleared by them to SEZ Unit. Original Authority rejected the rebate claim by holding that clearance of goods to SEZ cannot be considered as export for grant of rebate and also that applicant failed to fulfill the requirement of filing Bill of Export.

3 Aggrieved with their Order-in-Original applicant filed appeal before Commissioner (Appeals), who rejected the same

4 Being aggrieved with the impugned Orders-in-Appeal, the applicant has filed these Revision Applications under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The SEZs are physically segregated from the DTA and considered outside the country. The SEZ Units follow tailor made export and import procedures, which are simplified in some critical areas in comparison to the normal procedures that apply to domestic exporters and importers. The policy of treating SEZs as being outside India necessitated corresponding changes in various domestic legislation. Hence clearance to SEZ is treated as Physical Export. The clearance to the SEZ is treated as export out of India and duty paid on the goods cleared needs to be rebated to the sender/exporter. In this case Assistant Commissioner has rejected the genuine claim giving wrong findings.

4.2 The clearance to the SEZ is treated as export out of India that duty paid on the goods cleared needs to be rebated to the sender/exporter. In this case Assistant Commissioner has rejected the genuine claim giving wrong findings, all the findings has been answered by the CBEC in the CBEC No. 6/2010-Cus dated 19.03.2010.

4.3 As per Rule 30(1) of SEZ Rules, 2006 Rebate requires to be sanctioned s laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004. These Notifications are issued under Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2001 now Central Excise Rules, 2002. As per this Rebate Claim requires to be sanctioned and refunded to us.

5. Personal hearing scheduled in this case on 05.03.2013 was attended by Shri R.V. Shetty, Advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended the hearing on behalf of Respondent department.

6. Government has carefully gone through the relevant case records available and perused the impugned Orders.

7. Government observes that the applicant supplied the goods to units located in special Economic Zone and filed rebate claims under Rule 18 of Central Excise Rules, 2002. The rebate claims were rejected by the original authority on the ground that goods supplied to SEZ cannot be considered as export for grant of rebate and also on the ground that rebate being an export entitlement, the applicant was required to file Bill of export, which they have not filed. Commissioner (Appeals) decided the cases in the favour of department. Now the applicant has filed this revision application on grounds mentioned in para (4) above.

9. Government observers that in terms of para (5) of Board's Circular No. 29/2006-Cus dated 27.12.06, the supply from DTA to SEZ shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to fulfilment of conditions laid thereon. Government further observes that the Rule 30 of SEZ Rules, 2006 prescribes for the procedure for procurements from the Domestic Tariff Area. As per sub-Rule (1) of the said Rule (30) of SEZ Rules, 2006, DTA may supply the goods to SEZ, as in the case of exports, either under Bond or as duty paid goods under claim of rebate under the cover of ARE-1. The original authority has rejected rebate as they failed to produce bill of Export in term of sub-Rule (3) of Rule 30 of SEZ Rules, 2006 and Board's Circular No. 29/2006-Cus dated 27.12.06. Similar instructions are contained in CBEC Circular No. 6/10-Cus dated 19.3.2010. Since rebate claim is also export entitlement, the Bill of Export is required to be filed for clearances made to SEZ. Though Bill of Export is required to be filed for making clearances to SEZ, yet the substantial benefit of rebate claim cannot be denied only for this lapse. Government further observes that Custom Officer of SEZ Unit has endorsed on ARE-1 that the goods have been duly received by them. As the duty paid nature of goods and supply the same to SEZ is not under dispute, the rebate on export of duty paid goods under Rule 18 of Central Excise Rules, 2008 can not be denied. As such the rebate claim is admissible in the instant case under Rule 18 of Central Excise Rules, 2002. read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

10. In view of above discussion, Government sets aside impugned order in appeal and allow the revision application.

10. This revision application thus succeeds in above terms.

11. So, ordered.

(D.P. Singh)
(Joint Secretary to the Government of India)

M/s Ganesh Tiles & Marble Industries,
Plot No. A/14, MIDC, AMP Road,
Ambernath (W) – 421 501.

(Attested)

(भागवत शर्मा/Bhsgwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)

Order No. 516 /13-Cx dated 04- 06-2013

Copy to:-

1. The Commissioner of Central Excise, Thane-I, 4th Floor, Navprabhat Chambers, Ranade Road, Dadar (West), Mumbai – 400028.

2. The Commissioner of Central Excise (Appeals) Mumbai Zone-I, Meher Building, D.S. Lane, Chaowpathy, Mumbai – 400 007.

3. The Assistant Commissioner of Central Excise, Kalyan-IV Division, 2nd Floor, Bhagwandas Mension Shivaji Chowk, Kalyan (West).

4. Shri R.V. Shetty, Advocate, Flat No. 101, 1st Floor, E-Wing, Sterling Court, Marol, MIDC Orkay Mill Lane, Next to Maheshwari Nagar, Andheri (E), Mumbai 400093.

4. PS to JS(Revision Application)

5. Guard File

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(Bhagwat P. Sharma)
OSD (Revision Application)