SPEED POST
REGISTERED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 198/105/13-RA /3918 Date of Issue: 10.8.2020

ORDER NO. 529 /2020-CX(WZ)/ASRA/MUMBAI DATED 06/07/2020 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 : Commissioner of Central Excise, Pune-III

Respondent : M/s John Deere India Pvt Ltd.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-003-APP-206-13-14 dated 10.07.2013 passed by the Commissioner of Central Excise(Appeals), Pune-III.

ORDER

This Revision Application is filed by the Commissioner of Central Excise, Pune-III (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. PUN-EXCUS-003-APP-206-13-14 dated 10.07.2013 passed by the Commissioner of Central Excise(Appeals), Pune-III.

2. Briefly, M/s John Deere India Pvt Ltd., Pune (herein after as 'the Respondent') is engaged in manufacture of Tractors and parts thereof falling under Chapter 87019090, 87081010 respectively of the first schedule to the Central Excise Tariff Act, 1985 (herein after as 'CETA'). They had filed rebate claims for the amounts of Rs. 27,84,345/- (Rupees Twenty Seven Lakhs Eighty Four Thousand Three Hundred and Forty Five Only) in respect of the their finished goods (Tractors) exported under Rules 18 of Central Excise Rules, 2002 (herein after as 'CER') read with Notification No. 19/2004-CE(NT) dated 6.9.2004. The Deputy Commissioner, Central Excise, Pune-VIII Divn, Pune Commissionerate vide Refund Order-in-Original No. 651/Refund/P-VIII/CEX/12-13 dated 19.10.2012 rejected their rebate claim on the grounds that :

(i) The Respondent's unit had converted from EOU unit to DTA on 08.08.2011 after de-bonding;

(ii) The goods i.e. Agricultural Tractors falling under CSH 8701 in question were manufactured when the Respondent were operating as 100% EOU. Notification No. 24/2003-CE dated 31.03.2003 issued under Section 5A of the Central Excise Act, 1944, provides absolute exemption to goods manufactured by 100% EOU from payment of Central Excise duty. As per Section 5A(1A) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid.

(iii) In the instant case, Tractors were manufactured by 100% EOU and since they opted out of EOU scheme, they were required to pay back the benefits availed by them as EOU.

(iv) The Respondent paid duty i.e. aggregate of custom duties on said Tractors at the time of de-bonding, in terms of provisio to Section 3(1) viz, in respect of in stock of same held by them as on 08.08.2011, through debit in their Cenvat Account.

(v) At the time of export in respect of goods covered under the present rebate claim during the period 27.08.2011 to 05.03.2012 (subsequent to de-bonding of EOU), Agricultural Tractors were unconditionally exempt from payment of Central Excise duty in terms of Notification No. 06/2006-CE dated 01.03.2006.

(vi) Thus, though the duty in terms of provisio to Section 3(1) of the Central Excise Act, 1944 is rightly attracted in the case of all finished goods held in stock as on the cut-off date (on de-bonding), it appears that the same is not admissible as rebate.

. On being aggrieved, Respondent preferred appeals with the Commissioner of Central Excise (Appeals), Pune-III. The Commissioner(Appeals) vide Order-in-Appeal No. PUN-EXCUS-003-APP-206-13-14 dated 10.07.2013 set-aside the Order-in-Original dated 19.10.2012 and held that the Respondent had paid duty of excise on the finished goods (tractors) at the time of debonding and they had exported some of these goods and is eligible for the rebate of Rs. 27,84,345/- of duty paid on the exported goods with consequential relief.

3. Aggrieved, the Department then filed the current Revision Application on the following grounds :

(i) The Commissioner (Appeals) has erred in not considering the fact that the duty for which rebate is claimed by the Respondent are the duties paid on tractors in terms of proviso to Section 3(1) of Central Excise Act,

1944 at the time of debonding of their 100% EOU to a DTA unit. Accordingly, this duty *"shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India...."*

(ii) The goods viz. tractors in question have been cleared at the time when the Respondent had debonded and converted their 100% EOU unit to a DTA unit. The benefits availed prior to this date viz. 08.08.2011 when the unit was 100% EOU, have been in a way paid back when they opted for debonding. In that sense, the duty chargeable under Section 12 of the Customs Act 1962 are recovered or to be paid in terms of proviso to Section 3(1) of the Central Excise Act, 1944 is rightly attracted in the case of all finished goods held in stock as on the cut-off date. The goods at the point of clearances do not attract any Central Excise duty in as much as the same are unconditionally exempt in terms of Sr. No. 40 of Notification No. 6/2006-CE. It is emphasized herein that the provisions of Sub-section (1A) of Section 5A of the Central Excise Act, 1944 are rightly applicable as far as effective rate of duty on "tractors" falling under CETH No. 8701 is concerned. The text of the above provisions are as below:

> *"(1A) For the removal of doubts, it is hereby declared that where an exemption under subsection (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.*

Thus as far as clearances from the factory, subsequent to debonding is concerned, there is no duty payable and Section 3(1) is attracted for levy of Central Excise duty. The Respondent are required to avail to the Notification No. 6/2006-CE and no duty is payable on the 'Agricultural

Tractors' since the effective rate of futy is Nil and no option of paying duty is available to the manufacturer.

(iii) At the outset, a 100% EOU cannot file rebate of exports undertaken. The Notification No. 24/2003-CE dated 31.03.2003, which provides absolute exemption to goods manufactured by 100% EOU from payment of Central Excise duty. Therefore the fact that the duty paid during the course of debonding of 100% EOU is to be treated as an act of discharge of Customs duty liability on import of goods into India. It is an exit of 100% EOU Scheme. Whereas, subsequent to debonding and on exit of 100% EOU scheme, act of export of finished goods by the DTA unit is by itself independent and separate activity which has no relation whatsoever with the passed status of the EOU unit Hence, the Respondent's claim for rebate of such duty paid during the course of debonding on the goods subsequently exported is not maintainable.

(iv) During the course of debonding, the duties are paid on input finished goods, WIP, Capital goods available during the material time. Once the unit is debonded, it is brought on par with domestic unit. The unit had option to export before debonding. The Respondent as EOU could not claim rebate on export of such good. Therefore, after debonding, the said DTA unit can claim rebate on exported finished goods provided the said exported finished goods are cleared from the factory gate on payment of duty subsequent to debonding. Therefore, the payment of duty during the debonding by an EOU and payment of duty during the course of export by a domestic unit are two different independent functions perform during two different situation and as no nexus with each other. In the given situation, the finished goods i.e Tractors are exempted from payment of Central Excise duty and therefore there is liability cast on the domestic unit to pay duty on such goods at the time of clearance for export or domestic clearances.

(v) In the present case, the Respondent is correlating the exports subsequent to the debonding with the duty paid at the time of debonding is clearly an act to claim unlawful export benefits by putting for the misconceived and distorted facts with aim to hoodwink the department. Therefore, by no stretch of imagination it can be onstrued that the duty paid at the time of debonding is to be treated as duty paid at the time of export also. Hence, if rebate on export of such goods subsequent to debonding by treating them duty paid goods would make the whole process of debonding redundant.

(vi) Therefore, in view of above, the rebate claim is not admissible to the Respondent. Going by the facts of the case, even if it is held that the duty has been paid, though by the unit at the time when they were operating as 100% EOU, the amount of refund in the time when the were rebate is not covered in any of the clauses (a) to (f) to sub-section (2) of Section 11B of Central Excise Act 1944.

(vii) The Applicant prayed that the Order-in-Appeal dated 10.07.2013 may be set aside and the Order-in-Original, passed by Deputy Commissioner, Central Excise, Pune VIII Division, may be restored.

4. The Respondent have filed the following cross objections contending that:

(i) They had paid the Excise duty on all the Tractors which were in stock on the date of exit. Thereafter they had filed the rebate claim of duty paid only on those finished goods which were subsequently exported out of India. The duty paid is the Central Excise Duty paid on all tractors lying on the date of exit in terms of proviso to Section 3(1) of Central Excise Act, 1944. The department had also collected the same as "Excise Duty" and that the department is also confirming the same as rightly paid. But Department is perhaps not appreciating the same when same is claimed as export, and emphasizing that duty paid by them is equal to duty chargeable under Section 12 of Customs Act, 1962, whereas Excise Duty

is exempted on the said final product i.e. Tractors for a DTA Unit. Further, department has contended that payment of duty during the de-bonding by an EOU and payment of duty during the course of export by the DTA unit are two different independent functions performed during two different situations and has no nexus with each other. Such a contention is incorrect and is not legally sustainable at all. Once the duty paid character of goods is established, the actual export at a later dated of the same goods cannot be contended to be of exempted goods. Such an incorrect contention would directly mean " to export of duties and Taxes" which is against the Government of India Policy and grossly defying the Rebate Scheme and Rule 18 of Central Excise Rules, 2004.

(ii) The Order-in- Appeal passed by the Commiscioner (Appeals) is self-explanatory and very categorically dealt all aspects and contention of department. Moreover, there is Commissioner (Appeals) order for earlier claim in favour of the Respondent and the same is not challenged by the Department. But Department has still filed the current Revision Application without reference of any supporting provisions of law and judicial decisions, hence revision application filed by the Department is not sustainable and needs to be rejected.

(iii) In the present case, following are the undisputed facts :

(a) The Tractors which were exported having identification mark i.e. Tractor Serial No., Engine Sr.No. and the same are reflected on the stock statement on 08.08.2011 and on which duty has been paid and collected in accordance with law in terms of judicial ratio and duty was calculated in accordance with provisio to Section 3(1) of the Central Excise Act, 1944 (i.e. aggregate of customs duties), held in opening stock as finished goods as on 08.08.2011 (EOU Exit day) through debit in their Cenvat Account.

(b) Export documents i.e. ARE-1, Invoice, Packing list reflects the same serial numbers therefore it is undisputed facts that tractors which were exported have suffered the duty on exit from EOU scheme.

(iv) In view of the above undisputed facts, the contention of the Department that EOU do not have option to pay duty under Notification No. 24/2003-CE dated 31.03.2003 and thereafter to claim rebate of duty paid amount is not sustainable. This Notification in fact does not say that no duty is payable if the goods are lying in EOU on the date of exit. The department has accepted the payment of duty on all Tractors including those which have been subsequently cleared from the same premises for Domestic Market. In other words the harmonious way of interpreting the above Notification relating to export is in respect of a continuing EOU and not in the case of EOU which debonds. At the time of debonding, all goods in the bonded premises are deemed to be cleared, even though there is no physical movement. Only after such duty payment which is deemed clearances to DTA , a unit can exit as EOU.

(v) Department failed to appreciate the fact that Respondent had claimed the rebate of duty paid on the opening stock of finished goods on 08.08.2011 for the purpose of de-bonding and thereafter said duty paid finished goods were exported by them. There is no dispute on the fact that they had paid the duty on the finished goods for which rebate is claimed and Department has also agreed on the correctness with the fact of payment of duty made by them and there is no second opinion that duty was not required to be paid at the time of de-bonding. The fact of payment of duty has been accepted by the Department in Para 5 of the show cause notice dated 20.09.2013. Therefore, once the duty paid goods are exported then no rebate claim can be denied Therefore, it is crystal clear that Department has filed Revision Application which is not sustainable in law as well as against the policy of the Government.

(vi) In the Revision Application, Department has contended that finished goods exported by the Respondent i.e. Tractors are unconditionally exempted by Notification No. 6/2006-CE and also admitted that duty paid in terms of proviso to the Section 3(1) of Central Excise Act, 1944, is rightly attracted on the stock of finished goods on cut off date but same is not admissible as rebate. Further, it was also erroneously contended that the duty paid during the course of de-bonding of 100% EOU is to be treated an act of discharge of Customs duty liability on import of goods into India. The Respondent submitted that this contention is totally wrong as EOU pay duty in terms of proviso to Section 3 of the Central Excise Act, though the measure of duty is with reference to the Customs Tariff Act. It has been held that nature of duty cannot be altered due to measuring mechanism prescribed under law. On the other hand Department has not referred any legal provisions which disallow the rebate claim of Central Excise duty paid on goods exported. In view of the legal provision of Section 3(1) of the Central Excise Act, 1944 the duty which is levied on the goods manufactured and cleared by 100% EOU at the time of debonding is a duty of Excise and not a duty of Customs on account of a measure being the Customs duty provided in provisio to Section 3(1) and the Respondent had made payment of duty as required under law. In this they relied on the case law of Vikram Ispat Vs Commr. of C.Ex. M-III [2000(120) ELT 800 (Tri.LB)]. In view of the above, it is clear that the duty paid at the time of debonding of the unit is Excise duty and not Custom duty.

(vii) Department failed to appreciate the fact that since duty is paid on the tractors is accepted by the Department in the Show Cause Notice dated 20.09.2012 and in Order-in-Original, therefore Respondent is entitled for rebate under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Hence Order-in-Original rejecting rebate claim has been correctly set-aside by the Commissioner(Appeals).

(viii) Respondent prayed that the Revision Application be dis-missed and the Order-in-Appeal be upheld.

5. A Personal hearing in this case was held 10.12.2019 and Shri Ashok .B. Nawal, Cost Accountant appeared on behalf of the Respondent and none appeared on behalf of the Applicant. The Respondent reiterated the synopsis and cross objections filed by them and relied upon the case laws cited. They had paid duty on finished goods i.e. tractors 'as on date stocks'.They have further informed that their 3 earlier appeals were upheld by the Commissioner(Appeals).

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

7. The main issue to be determined is whether duty paid under provisio to Section 3(1) of the Central Excise Act, 1944 on the goods (Tractor) at the time of debonding of 100% EOU is eligible for rebate when those goods are subsequently exported or otherwise.

8. It is observed that the Respondent is a manufacturer of Agricultural Tractors, Aggregates and Components & Parts thereof and was operating under EOU since 12.03.2007. Later they decided to exit from EOU and obtained NOC and intimated the cut-off date as 09.06.2011 i.e. the date on which day stock will be considered for the purpose of payment of duty for obtaining NO Dues Certificate and from same day no duty benefits will be availed. The Department granted them No Due Certificate dated 01.07.2011 and the Development Commissioner granted Final De-bonding Order dated 03.08.2011 and informed the final date of debonding as 08.08.2011. During the transition phase i.e. from 09.06.2011 to 07.08.2011, being still EOU, the Respondent were required to pay Central Excise duty on Tractors cleared in DTA in accordance with provisio to Section 3(1) of the Central Excise Act, 1944. Subsequently, after 08.08.2011, the Tractors on which Central Excise duty was paid were exported

from time to time and the export were made under claim for rebate. Government finds that even though Tractors were unconditionally exempted from payment of Excise duty under Notification No. 06/2006-CE, in the current case during the transition phase i.e. from 09.06.2011 to 07.08.2011, the Respondent paid the Central Excise duty on Tractors and other goods then was granted 'No Due Certificate' dated 01.07.2011.

9. Government places reliance on the case of Vikram Ispat Vs Commr. of C.Ex. M-III [2000(120) ELT 800 (Tri.LB)] in an identical issue. Relevant paras of the said case are reproduced for case of reference-

> *"12. We have considered the submissions of all the sides. The concept of 100% E.O.U. was brought with an idea to increase the export from the country. These units were provided facilities, among other things, of importing capital goods raw materials, components, etc. without payment of customs duty and also to obtain similar goods from domestic market without payment of central excise duty. These units have also been provided a facility to sell a specified quantity of their product in Domestic Tariff Area in India. In respect of excisable goods manufactured by them, Section 3(1) of the Central Excise Act provides that the duty of excise shall be an amount equal to the aggregate of the duties of customs on like goods produced or manufactured outside India, if imported into India. There is substance in the submissions of the learned Advocates for the appellants that the nature of the duty levied on the goods manufactured by 100% E.O.Us, is central excise duty whereas the measure of collection of duty is customs. The measure of collection of duty does not change the nature of duty. In support of their contention the learned Advocate has relied upon the decision in the case of D.G. Cause & Co. Pvt. Ltd. v. State of Kerala supra, wherein it was held that a tax has two elements: subject of a tax and the measure of a tax and decided cases establish a clear distinction between the subject matter of a tax and the standard by which the tax is measured. In this case a tax imposed by State Government on buildings on the basis of capital value of the Assets was held to be valid by the Supreme Court holding that for the purpose of levying tax under Entry No. 49, List II of the Seventh Schedule to the Constitution, the State Legislature may adopt annual or capital value of the building and this will not make it a tax falling within the scope of Entry 86 of List I of the Seventh Schedule. Similar views were held by the Supreme Court in the case of Himgir - Rampur Coal Co. Ltd. v. State of Orissa, AIR 1961 SC 459 wherein it was held that the method in which the fee is recovered is a matter of convenience and by itself it cannot fix upon the levy the character of the duty of excise. In this case a fee was levied by the State of Orissa on the basis of 5% of the value of the minerals at the pits mouth.-It was challenged that the CESS was in the nature of duty of excise.*

The Supreme Court did not agree with this contention holding that "it is difficult to appreciate how the method adopted by the Legislature in recovering the impost can alter its character.... In our opinion, the mere fact that the levy imposed by the impugned Act had adopted the method of determining the rate of levy by reference to the minerals produced by the mines would not by itself make the levy a duty of excise. Again the Supreme Court in the case of U.O.I. v. Bombay Tyre International, supra, held that Section 3 of the Central Excise Act creates the charge and defines the nature of the charge that it is a levy on excisable goods, produced or manufactured in India. "The levy of tax is defined by its nature, while the measure of the tax may be assessed by its own standard". The Supreme Court held that "When enacting a measure to serve as standard assessing the levy the Legislature need not contour it along lines which spell out the character of the levy itself." In this case the Supreme Court did not accept the contention that because levy of excise is a levy on goods manufactured, the value of excisable goods must be limited to the manufacturing cost plus the manufacturing profit. We are, thus, in agreement with the learned Advocates that the duty which is levied on the goods manufactured and cleared by 100% E.O.Us to the Domestic Tariff Area is a duty of Excise and not a duty of Customs on account of a measure being the Customs duty provided in proviso to Section 3(1) of the Central Excise Act.....

13.....

14.....

15.....

16. Notification No. 2/95-C.E., dated 4.1.95 provides that the goods manufactured and cleared by a 100% E.O.U. to DTA will be exempted from so much of duty of excise as is in excess of the amount calculated at the rate of 50% of each of duty of customs leviable read with any other notification for the time being in force on the like goods produced or manufactured outside India, if imported into India provided that the amount of duty payable shall not be less than the duty of excise leviable on like goods produced or manufactured by the units in Domestic Tariff Area read with any relevant notification. It is, thus apparant that notification No. 2/95 provides a minimum limit of the rate of duty which has to be paid by the 100% E.O.U. while clearing the goods to DTA and this limit is provided by the duty of excise leviable on like good manufactured outside 100% E.O.U. However, if the aggregate of duty customs leviable on goods cleared by 100% E.O.U. is more than the duty of excise leviable on like goods, a 100% E.O.U. has to pay more duty. The Revenue wants to restrict the availment of Modvat credit to the components of additional duty of customs paid under Section 3 of the Customs Tariff Act by bringing the fiction that 100% E.O.U. is a place which is not in India and the sale therefrom within India is akin to import into India. We do not find any substance in this view of the Revenue. The clearance of the goods by 100% E.O.U. are not import in the terms in which it has

been defined under Section 2 (23) of the Customs Act, according to which import, with its gramatical and cognet expression means bringing into India from a place outside India. This is also apparant from the fact that when the goods are cleared from 100% E.O.U. to any place in India, central excise duty under Section 3(1) of the Central Excise Act is levied and not the customs duty under the Customs Act. If it is to be regarded as import, then the duty has to be charged under Section 12 of the Customs Act, read with Section 3 of the Customs Tariff Act. The Revenue, it seems is confusing the measure of the tax with the nature of the tax. The nature of the duty levied on the goods from 100% E.O.U. is excise duty and nothing else, whereas for determining the quantum of duty the measure adopted is duty leviable under Customs Act as held by the Supreme Court in many cases referred to above. The method adopted by the law makers in recovering the tax cannot alter its character. Once it is held that the duty paid by the 100% E.O.U. in respect of goods cleared to any place in India is excise duty, the question of dissecting the said duty into different components of basic customs duty, auxilliary duty, additional duty of Customs or any other customs duty does not arise. The proforma of AR-1A on which the reliance was placed by the learned D.R., cannot change the legal position that the duty levied on 100% E.O.U. is a duty of excise and not customs duty."

10. Government finds that when duty was paid on the finished goods i.e. Tractors at the time of de-bonding, in accordance with proviso to Notification No. 24 /2003-CE dated 31.02.2003 these goods were not exempted. The Respondent had paid Central Excise duty in accordance with the proviso to Notification No. 24/2003-CE dated 31.03.2003 and in terms of provisio to Section 3(1) of the Central Excise Act, 1944 on all tractors which were in stock on the date of exit(debonding). Then after exit i.e. debonding, the Respondent exported the duty paid Tractors and filed rebate claims. Further, Government is in agreement with the findings of the Commissioner(Appeals) that tractors were unconditionally exempted from payment of duty of export from the DTA unit under Notification No. 06/2006-CE is not at all relevant in the current case as duty was paid by the Respondent as a 100% EOU and at the time of exit/debonding.

12. Further, Government is in the agreement with the findings of the Commissioner(Appeals) that the Respondent had paid Central Excise duty on the finished goods i.e. Tractors at the time of debonding and the duty paid

Tractors were then exported hence Respondent are entitled for rebate of duty paid on the exported goods (Tractors).

13. In view of above discussions and findings and also applying the ratio of afore stated case law, Government holds that the impugned Order-in-Appeal of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned Order-in-Appeal No. PUN-EXCUS-003-APP-206-13-14 dated 10.07.2013 passed by the Commissioner of Central Excise(Appeals), Pune-III and upholds the same.

14. The Revision Application is disposed off in terms of above.

15. So, ordered.

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

ORDER No. 529/2020-CX (WZ) /ASRA/Mumbai Dated 06/07/2020.

To,
The Commissioner of GST & CX,
Pune-I, GST Bhavan,
ICE House, Opp Wadia College,
Pune 411 001.

Copy to:

1. M/s John Deere India Pvt Ltd, Gat No. 166/167 & 271 to 291,Off Nagar Road, Sanaswadi, Pune 412 208.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.

ATTESTED

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