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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.195/47/2015-RA /3003

Date of Issue: 10.8.2020

ORDER NO. 531/2020-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 : M/s Reil Electricals Ltd., Puducherry.

Respondent : Commissioner of Central Excise, Puducherry.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 27/2014(I)
dated 05.11.2014 passed by the Commissioner of Central
Excise (Appeals-II), Chennai



ORDER

This Revision Applications is filed by M/s M/s Keil Electricals Ltd., Thondamanatham Village, Villianur Commune, Puducherry-605 502 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. 27/2014(P) dated 05.11.2014 passed by the Commissioner of Central Excise (Appeals-II), Chennai.

2. The issue in brief is the Applicant is a manufacturer of automobile electrical parts like Starter Motor, Alternator, Armature Assembly, Field Coil Assembly, etc. They cleared their final products for domestic consumption and also exports under Rule 18 of the Central Excise Rules by debiting the Cenvat Credit account under claim for rebate of duty paid on final products.

- During the period from July 2008 to January 2009, Shri B Ganasekaran, Senior Manager(Finance) of the Applicant, deliberately took ineligible Cenvat credit by inflating the Cenvat Credit accounts of the Applicant. The deliberately availed ineligible Cenvat credit was taken on 17 input invoices amounted to Rs. 86,74,236/- (Rupees Eighty Six Lakhs Seventy Four Thousand Two Hundred and Thirty Six Only).
- Upon detection of the ineligible credit that had been availed, the Applicant voluntarily paid the entire amount of Rs. 86,74,640/- (Rupees Eighty Six Lakhs Seventy Four Thousand Six Hundred and Forty Only) along with interest of Rs. 3,18,191/-. A Show Cause Notice dated 03.08.2009 was issued by the jurisdictional Commissioner proposing demand of Rs. 86,74,640/- towards the excess credit taken.
- During the impugned period, the Applicant had cleared exports by following procedure of self sealing and on payment of Central Excise duty by debiting in their Cenvat Credit account. After the detection and voluntary payment of the amount with interest towards incorrect



Cenvat Credit taken, the Applicant on 13.04.2009 filed 07 rebate claims totaling to Rs. 1,23,86,277/-.

- On verification of the rebate claims, the Range Officer had reported that the Applicant did not have sufficient balance either in their Cenvat Credit account or in Personal Ledger Account to make payment of duty for the goods cleared for export. The Applicant had also accepted this fact, however they had paid the duty involved 04.02.2009 along with appropriate interest on the goods exported.

Month	No. of credit entries	Total credit taken (Rs)	No. of incorrect Cenvat credit entries	Amount of incorrect Cenvat credit taken (Rs)	Amount of correct Cenvat credit taken (Rs.)
Jul. 2008	138	50,66,404	5	25,25,984	25,40,420
Aug. 2008	166	34,88,305	0	0	34,88,305
Sept. 2008	146	43,00,637	2	9,90,008	33,10,629
Oct. 2008	136	34,81,823	1	13,45,495	21,36,328
Nov. 2008	111	52,07,887	5	27,18,622	34,89,265
Dec. 2008	128	31,68,982	3	11,88,268	19,80,714
Jan. 2009	94	10,03,337	0	0	10,03,337
Total	919	2,57,17,375	16	87,68,377	1,69,48,998

- The Applicant was issued Show Cause Notice dated 17.07.2009. The Assistant Commissioner of Central Excise, Puducherry-II Division vide 07 Orders-in-Original Nos 42 to 48/2009 all dated 31.08.2009 rejected their 07 claims on the grounds that the Applicant had not discharged duty at the time of export or in the manner specified under Rule 8 of the Central Excise Rules on monthly basis and that the Applicant however paid the duty at a later date on 04.02.2009. Hence the payment cannot be construed as payments for goods exported during July 2008 to September 2008 and further the Show Cause



Notice dated 03.08.2009 issued by the jurisdictional Commissioner proposing demand of Rs. 86,74,640/- towards the excess credit taken was pending adjudicating.

- The Applicant approached the Settlement Commission on 12.11.2009. The Settlement Commission, Chennai vide Order No. 09/2010-C.Ex. dated 27.09.2010 settled the issue by accepting the payment of Rs. 86,74,640/- towards irregular Cenvat Credit taken with interest of Rs. 3,18,191/- and imposed penalty of Rs. 10,000/- on the Applicant. Further the Commission also accepted payment of Rs. 94,239/- with interest of Rs. 33,899/- towards another demand of irregular credit (against the demand of Rs. 12,07,057/-).
- Being aggrieved with the 07 Orders-in-Original all dated 31.08.2009 rejecting their rebate claims, the Applicant then filed appeals with the Commissioner of Central Excise(Appeals), Chennai who vide Orders-in-Appeal No. 108 to 114/2011(P) dated 28.03.2011 upheld the rejection of rebate claims on the grounds that duty has been debited and hence granting rebate would lead to condoning the non-payment of duty and would annul the exercise of settlement.
- Being aggrieved, the Applicant then filed Revision Applications before the Central Government. The Revisionary Authority vide GOI Order No. 83-89/2013-CX dated 29.01.2012
 - (i) upheld the impugned Orders-in-Appeal dated 28.03.2011 to the extent that the order for rejection of rebate amounting to Rs. 87,69,879 out of total claim of Rs. 1,23,86,277/- cannot be faulted with.
 - (ii) held that the lower authorities have not considered the pleas of the Applicant to at least granting remaining rebate claim of Rs. 36,16,398/- since duty on exports relating to said claims were paid from undisputed Cenvat Credit. The remaining rebate claims are admissible to the



Applicant subject to verification that duty involved was paid from undisputed Cenvat credit and claim was otherwise in order. And directed the original authority to sanction the balance rebate claim of Rs. 36,16,398/- , if the duty was found to be paid from undisputed Cenvat Credit. The impugned Orders-in-Appeal was modified to this extent.

- In the light of direction of the Revisionary Authority, the Assistant Commissioner of Central Excise, Puducherry II Division vide Refund Sanction Order C.No. V/Ch.85/18/25/2013-RF dated 10.05.2013
 - (i) Sanctioned an amount of Rs. 16,07,774/- as refund as the same has been paid from undisputed Cenvt Credit for the exports made in July 2008 and ;
 - (ii) Rejected the balance amount of Rs. 20,08,624/- as the Applicant had no valid undisputed credit for the exports made during the period from Jul 2008 (in respect of ARE-1 Nos. 100, 101, 116, 123 to 128) to Jan 2009.
 - Being aggrieved with that portion of the Refund Sanction Order dated 10.05.2013 rejecting the amount of Ra. 20,08,624/-, the Applicant then filed appeals with the Commissioner of Central Excise(Appeals-II), Chennai who vide Order-in-Appeal No. 27/2014(1st) dated 05.12.2014 upheld the Refund Sanction Order dated 10.05.2013 and rejected their appeal as devoid of merits.
3. Being aggrieved, the Applicant filed the current Revision Application on the following grounds:
- (i) While calculating the availability of undisputed Cenvat Credit for exports clearances, the Department incorrectly had taken into account home clearances also and thus reduces the availability of



undisputed Cenvat Credits. If the home clearance are not taken into account, the Applicant is eligible for the rebate of Rs. 36,16,398/-.

- (ii) During the impugned period i.e. July 2008 to January 2009, they had total Credit of Rs. 2,57,17,473/- in their Cenvat Credit Account out of which Rs. 86,74,236/- were not valid credits. They paid this amount of Rs. 86,74,236/- and Rs. 94,239/- in cash on its own and settled the matter. Thus, the Appellant had genuine credit of Rs. 1,69,80,347/- (Rs. 2,57,17,473 - Rs. 86,74,236 - Rs 94,239 = Rs. 1,69,80,347/-) apart from the credit settled.
- (iii) If the home consumption clearance are also taken into account, then the 'Credit settled' should also be taken into account. If all the debits including debits for home consumption were to be taken into consideration for the purpose of arriving at the Cenvat balance available, then it is logically and legally imperative on part of the Department to include all the credits including the credits involved in the Settlement Commission Order. So, it is incorrect to say that all the debits are to be taken into account to arrive at the undisputed Cenvat Credit balance. Therefore, the Order of the Assistant commissioner taking into account the Domestic clearances/home consumption towards Cenvat debits is incorrect and detrimental to the interests of the Applicant..
- (iv) The impugned Order is incorrect in relying upon the Range Officer's Report which says that the exports pertaining to ARE-1s 100, 101, 116, 123 to 128 were made without sufficient balance in the Cenvat Account. The Range Officer's Reports dated 28.12.2012 and 25.02.2013 have attributed the undisputed Cenvat credit to both Home Consumption and Exports.
- (v) Pursuant to the specific question of the Id. Revisionary Authority mentioned above, the Applicant had prepared the Annexure-A to prove that 141 exports were made with duty involvement of



Rs.1,16,13,341/- with undisputed Cenvat Credits. This Annexure-A show the valid Cenvat Credits taken and not involved in the Settlement Commission Order. The Annexure "C" was the Cenvat Credit Account for the entire impugned period. Therefore, the annexures submitted to meet the specific query of the Revisionary Authority asking for credits not involved in the Settlement Commission cannot be called to say '*totally incorrect*' and '*misleading*'. This averment in the letter dated 28.12.2012 has been made without understanding the context in which the Annexure-A was furnished as an answer to the specific query of the Revisionary Authority. Therefore, this grounds of the impugned order passed on the erroneous understanding and misplaced reliance on the internal report dated 28.12.2012 is incorrect.

- (vi) The method of calculation of undisputed of Cenvat credit was explained in the impugned order by taking the example of July 2008 exports. In July, 2008, the impugned order estimated the undisputed Cenvat Credit on the date of clearance for exports, and sanctioned Rs. 16,07,774/- and rejected Rs. 7,76,590/- . As regards other months, according to the department, there was no undisputed Cenvat Credit on the dates of export. Whereas in terms of Rule 8, only at the end of the month the availability of credit should be seen. If so seen, the total undisputed Cenvat credit available in July 2008 was Rs. 25,40,424/- and the total duty debit for export in that month was Rs. 23,84,364/-. Thereby the entire duty paid on export was available as rebate in that month.
- (vii) The calculation of rebate payable has been made by the department by debiting duty payable against genuine undisputed Cenvat Credit on day to day basis whereas the duty is payable only by the 5th of the succeeding month. Thus the method adopted was against monthly adjustment provided under as per Rule 8 of the Central Excise Rules, 2002.



- (viii) As per the Rule 8 of the Central Excise Rules, 2002, the duty on goods removed from the factory during the month is required to be paid by 5th of the following month. The sub-rule (2) provides the Excise Duty is deemed to have been paid when the duty is paid in the manner provided under sub-rule (1). Therefore, the calculation for the purpose of rebate by the department was not in consonance with the provisions of Rule 8.
- (ix) Even the Assistant Commissioner of Central Excise, in the First Round Orders-in-Original all dated 31.08.2008 denied rebate on the ground that Applicant had not discharged duty at the time of exports in the manner specified in Rule 8 of the Central Excise Rules (that is by 5th of subsequent month to the month in which export was made).
- (x) The Applicant submitted that there was adequate undisputed Cenvat Credit to meet the exports made within the month. Instead of making the calculation on monthly basis, the impugned order incorrectly looks for the credit on day-to-day basis and allowed some and rejected other. The details of undisputed Cenvat credit and exports are as under:

Month	Genuine Opening Balance	Genuine Credit	Debit for Export	Closing Balance
Jul. 2008	131892	2540420	2384364	287948
Aug. 2008	287948	3488305	1557063	2219190
Sept. 2008	2219190	3341978	2139820	3421348
Oct. 2008	3421348	2136328	997077	4560599
Nov. 2008	4560599	2489265	2819012	4230852
Dec. 2008	4230852	1980714	1507478	4704088
Jan. 2009	4704088	1003337	985117	4722308
Total		1,69,80,347	1,23,89,931	

- (xi) Thus, the Appellant submits that omitting the credits involved in the settlement commission's order from the total Cenvat credit availed by the Appellant during the impugned period, there was always genuine



undisputed Cenvat credit available vis-à-vis the exports made. This position of availability of genuine credits is applicable for all exports involved in total debit of Rs. 1,23,89,931/-.

(xii) Therefore the Applicant prayed that the rebate of Rs. 20,08,624/- be sanctioned and paid as rebate.

(xiii) Internal Report dated 25.02.2013 of the Range Officer which was relied upon in the impugned Order was not provided to the Applicant before passing the Refund Sanction Order. The Applicant came to know about the existence of such a Report only on receipt of the impugned Order. The Applicant after making written requests to the Assistant Commissioner of Central Excise vide letter dated 20.05.2013, the copy of the internal verification report was given to the them only on 30.05.2013. Thus, the impugned Order has been passed without providing the relied upon documents and also any opportunity of being heard to the Applicant and so it is in violation of the principles of natural justice. The Order merits to be set aside on this ground alone. The Commissioner (Appeals) had rejected this plea of the Applicant on the ground that there was no necessity for the Assistant Commissioner to provide the details of such Verifications conducted by him or his subordinates to the Applicant. Such reasoning is incorrect and the impugned Order merits to be set aside on this ground alone.

4. A personal hearing in the case was held on 03.07.2018. Shri R. Sai Prashanth, Advocate appeared on behalf of the Applicant. The Applicant reiterated the contents of the revision application, written submission and case laws and pleaded that the Order-in-Appeal be set aside and revision application be allowed. However, there was a change in the Revisionary Authority, hence a final hearing was granted on 10.12.2019. Shri R. Sai Prashanth, Advocate appeared on behalf of the Applicant and reiterated the submissions made in the earlier personal hearing and grounds of revision application.



5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. On perusal of the records, it is found that vide GOI Order No. 83-89/2013-CX dated 29.01.2012 observed

"11. The lower authorities have not considered the pleas of the applicant to at least granting remaining rebate claim of Rs. 3616398/ since duty on exports relating to said claims were paid from undisputed Cenvat Credit. Government finds considerable force in the said pleas of applicant. Therefore, Government is of the view that the remaining rebate claims are admissible to the Applicant subject to verification that duty involved was paid from undisputed Cenvat credit and claim was otherwise in order. And directed the original authority to sanction the balance rebate claim of Rs. 3616398/ . if the duty was found to be paid from undisputed cenvat credit. The impugned Orders-in-Appeal is modified to this extent.", the Assistant Commissioner of Central Excise, Puducherry II Division vide Refund Sanction Order C.No. V/Ch.85/18/25/2013-RF dated 10.05.2013 granted a rebate of Rs. 16,07,774/- out of the total amount of Rs. 36,16,398/- and the balance amount of Rs. 20,08,624/- was rejected on the grounds that there was no sufficient Cenvat Credit balance.

7. On perusal of documents furnished by the Applicant such as copies of Monthly ER-1 returns for the period July 2008 to January 2009, it is noticed that while undertaking the verification, the Superintendent of Central Excise, in the report dated 28.12.2012, instead of attributing the undisputed Cenvat Credit only for the duty paid exports made, had also taken into account the home consumption and thus has erroneously calculated the undisputed Cenvat credit. If the home consumption clearance are also taken into account, then all credits should also be taken into account for the purpose of computing the undisputed Cenvat credit.



8. Further, payment of monthly Central Excise duty payment is in terms of Rule 8 of Central Excise Rules, 2002. The said rule is reproduced for ease of reference:

"RULE 8. Manner of payment. — (1) *The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case :*

Provided

Provided further.....

Provided also that.....

Provided that

(2) The duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub rule (1) and the credit of such duty allowed, as provided by or under any rule."

The duty payment for exports under claim for rebate can also be made at the end of the month is explicitly said in the CBEC's Manual, Chapter 8, Part-I Para 1.1, Table serial no: (i) as —

<p><i>"(i) It is essential that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse. The condition of 'payment of duty' is satisfied once the exporter records the details of the removals in the Daily Stock Account maintained under rule 10 of the said Rules, whereas the duty may be discharged in the manner specified under rule 8 of the said Rules, i.e. monthly basis"</i></p>
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Therefore, it appears that the manner of calculation of undisputed credit is not consistent with the Rules of Central Excise Rules, 2002. The documents produced and submissions made by the Applicant deserve consideration in calculation of undisputed Cenvat credit available to them.

9. In view of the above, Government remands the matter back to the original authority for the limited purpose of verification and to sanction the balance rebate claim of Rs. 3616398/-, if the duty was found to be paid




from undisputed Cenvat Credit. The adjudicating authority shall reconsider the claims for rebate on the basis of the documents submitted by the applicant after satisfying itself in regard to the authenticity of those documents.

10. In view of the above discussions and findings, Government sets aside the impugned Order-in-Appeal No. 27/2014(P) dated 05.11.2014 passed by the Commissioner of Central Excise (Appeals-II), Chennai.

11. The revision application is allowed in terms of above.

12. So ordered.


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

ORDER No. 53 / 2020-CX (WZ)/ASRA/Mumbai DATED 06/07/2020.

To,
M/s Reil Electricals Ltd.,
Thondamanatham Village,
Villianur Commune,
Puducherry-605 502.

Copy to:

1. The Commissioner of Central Excise, Puducherry.
2. Commissioner of Central Excise (Appeals-II), Chennai.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.

ATTESTED

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

