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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.195/368-371/2013-RA/1260

Date of Issue: 23.02.2021

ORDER NO. 54-57 /2021-CX (SZ)/ASRA/MUMBAI DATED 27.01.2021 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,
1944.

Applicants : M/s VTS TF Air Systems Pvt. Ltd.,
No.2150, 2nd floor, 17th Main Road,
HAL, 2nd Stage, Indiranagar, Bangalore,
Karnataka – 560 008.

Respondents : Commissioner of CGST, Bengaluru (East).

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 437-
440/2012-CE dated 14.12.2012 passed by the Commissioner
(Appeals-I), Central Excise, Bangalore.

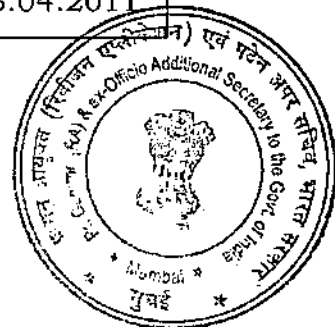


ORDER

These Revision Applications are filed by M/s VTS TF Air Systems Pvt. Ltd., Plot No. 222 to 224 & 229 to 232, KIADB Industrial Area, Malur, Dist Kolar - 563130 (Karnataka) (New Address as informed vide letter dated 02.12.2019 :-M/s VTS TF Air Systems Pvt. Ltd., No.2150, 2nd floor, 17th Main Road, HAL, 2nd Stage, Indiranagar, Bangalore, Karnataka - 560 008) (hereinafter referred to as "the Applicants") against the Order-in-Appeal No. 437-440/2012-CE dated 14.12.2012 passed by the Commissioner (Appeals-I), Central Excise, Bangalore.

2. The issue in brief is that the applicant are the manufacturers and exporters of 'Air Conditioners and Parts of Air Conditioners'. The applicant had cleared excisable goods under various ARE-1 to SEZ during 30/31.03.2010 and filed four rebate claims under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 on 13.04.2011, claiming the rebate of central excise duties paid on the goods so cleared. The amount claimed in the said claims aggregated to Rs. 14,90,422/- (Rupees Fourteen Lakh Ninety Thousand Four Hundred Twenty Two Only). The Rebate Sanctioning Authority found that the impugned rebate claims were filed after one year from the date of payment of duty. As such, the impugned rebate claims, being time barred, were rejected. The details are as under :-

Sr. No.	OIO No./Date	Amount of Rebate rejected	Date of Payment of duty	Date of filing of claim
1	179/2011(R)dt.29.09.2011	4,72,241/-	31.03.2010	13.04.2011
2	178/2011(R)dt.29.09.2011	4,71,831/-	31.03.2010	13.04.2011
3	175/2011(R)dt.29.09.2011	4,23,848/-	31.03.2010	13.04.2011
4	176/2011(R)dt.29.09.2011	1,22,502/-	31.03.2010	13.04.2011



3. Being aggrieved, the Applicant filed an appeal before Commissioner (Appeals-I), Bangalore against the impugned Orders in Original. The Appellate Authority vide common Order in Appeal No. 437-440/2012-CE dated 14.12.2012 rejected the appeals. The Appellate Authority while passing the order had drawn following observations:-

- (i) Provisions of Section 11B of the Central Excise Act, 1944 clearly define 'Relevant Date' under various contexts. On perusal of each of the situation it is found that the provision contained in explanation B(f) under Section 11B ibid which says that "in any other case date of payment of duty" is squarely applicable to the present context as rightly held by the Original Authority.
- (ii) The Contention of the applicant that the provisions as contained in the explanation B(a)(ii) under Section 11B ibid which says that "if the goods are exported by land, the date on which such goods pass the frontier" is not applicable in the present case for the reason that there is no movement of goods to a place outside India as required under the definition of 'exports' and the goods do not pass any frontier.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Applications on following grounds :-

4.1 They had paid the duty on the goods exported to SEZ on 31.03.2010. The authorized officer of Customs in SEZ had acknowledged the receipt of goods into the SEZ on 27.04.2010.

4.2 The applicant had filed the rebate claims before the proper authority on 11.04.2011.

4.3 Rule 30 of the Special Economic Zone, Rules 2006 treats the goods supplied from a DTA manufacturer / supplier to a unit / developer in SEZ for authorized operation as export. The copy of bill of export and ARE-1 with an endorsement of the authorized officer that the goods have been in full shall be treated as proof of export.



4.4 Section 53 of the SEZ Act, 2005 provides that with effect from 10.02.2006 a Special Economic Zone shall be deemed to be a Territory outside the Customs Territory of India for the purpose of undertaking the authorized operations.

4.5 Para 5 of the Circular No. 29/2006 dated 27.12.2006 indicate that the e supplies shall be eligible for claim of rebate under Rule 18 of the Central Excise Rules 2002. It is also indicated that the provisions relating to exports under Central Excise Act, 1944 and Rules made thereunder may be applied mutatis mutandis in case of procurement by SEZ unit and SEZ developer from DTA for their authorized operations.

4.6 The goods have been exported by land. In such situation in the ordinary case, the date on which such goods pass the frontier shall be the relevant date.

5. A personal hearing in the case was held on 08.01.2021. Shri The Genesh K.B. Iyer, Advocate attended the same on behalf of the applicant. He reiterated the submissions made and contended that instead of date of payment, relevant date should be the date on which endorsement certificate has been issued as that would be let export order.

6. Government finds that the rebate claims filed by the applicant were rejected by the original authority on grounds that the same were filed beyond the time limit of one year from the date of payment of duty. The appeal filed by the applicant in this regard was rejected by the appellate authority vide impugned Order in Appeal. The contention of the applicant in this regard is that the relevant date in the instant case should be the date of endorsement by the authorized officer of SEZ unit to the effect of receipt of goods.

7. It is pertinent to note the relevant provisions of SEZ Act, 2005 and Rules made thereunder to arrive at the decision in the matter.

7.1 Section 2m of the SEZ, Act 2005 read as under :

“ Section 2 : Definitions :-



(m) "export" means--

(i)

(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or

(iii) ...".

7.2 Section 53 (1) of the SEZ Act, 2005 states that :-

" Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.

(1) A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations."

7.4 On perusal of above provisions, it is observed that as per the scheme and specific provisions of the Special Economic Zones Act, 2005, SEZs created under the said Act are seen as foreign countries for the purposes of trade and hence, when the goods sold to such SEZ unit from the DTA, there is an export of the goods. It is also observed that the supply by unit in Domestic Tariff Area (DTA) to a unit in Special Economic Zone falls under the definition of 'export' and further SEZ is a territory outside the Customs territory of India. In view of above provisions, the Government finds that it is an undisputed fact that the goods had been exported, in the instant case, to an area which is deemed to be territory outside the customs territory of India in the instant case.

8. Further, the Circular No. 29/2006-Cus dated 27.12.2006 has clarified certain aspects relating to supplies from DTA to SEZ unit / developer for authorized operations.

8.1 As per para 5 of the said circular, the supplies to SEZ shall be eligible for claim of rebate under Rule 18 of the Central Excise Rules, 2002 subject to fulfilment of the conditions laid thereunder. Further, it is also stated that the provisions relating to exports under Central Excise Act, 1944 may be applied mutatis mutandis in the case of procurement by SEZ unit from DTA for their authorized operations. Thus, the supply of goods from DTA to SEZ unit would amount to export and the rebate of duty paid on such supplies shall be granted under Rule 18 subject to the conditions and limitation and procedure laid down under the relevant Notifications issued thereunder. It is pertinent



to note that Notification No. 19/2004-CE (NT) dated 06.09.2004 prescribes the procedure for the rebate of duty on goods exported to all countries.

8.2 The Government also finds that there are no changes / amendments made to in Rule 18 or Rule 19 of Central Excise Rules 2002 or in Section 11B of the Central Excise Act 1944 for the clearances made from DTA to SEZ Units subsequent to introduction of the SEZ ACT, 2005 and Rules made thereunder. As such, the provisions relating to exports under Central Excise Act, 1944 and Rules thereunder are applicable mutatis mutandis in case of supply of goods from DTA unit to SEZ unit for their authorized operations.

8.3 It is observed that the Section 11B of the Central Excise Act, 1944 provides that the refund claim shall be filed before expiry of one year from the relevant date. Here, the term 'relevant date' has been defined under Section 11(5)(B) which reads as under :-

" (B) "relevant date" means,—

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or -

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India; "

8.4 On plain reading of the above provisions it is clear that situation under Section 5(B)(a)(ii) is appositely applicable in the instant case i.e. for supply of goods from DTA unit to SEZ unit.

8.5 In view of above, it is deduced that the relevant date for computing the time limit for filing rebate in the case of supply to the SEZ unit would appropriately be the date on which such goods pass the frontier. However, in the instant case the date of passing the land frontier has not been provided by the applicant to substantiate their claim in this regard.



9. As regards, provisions of Rule 30 of the SEZ Rules, 2006. The sub-rule (3) (4)(7)&(9) of Rule 30 of SEZ Rules, 2006, it is observed that the supplier needs to get the endorsements on the supply Invoices. Rule 30 of SEZ Rules, 2006 reads as under :-

"Rule 30. Procedure for procurements from the Domestic Tariff Area.—

(1) ..

(2) ..

(3) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of ARE-1 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods:

Provided that if the goods arrive before a Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export.

(4) A copy of the ARE-1 and/or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that goods have been admitted in full into the Special Economic Zone shall be forwarded to the Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Central Excise Officer shall raise demand of duty against the Domestic Tariff Area supplier.

(5) ..

(6) ..

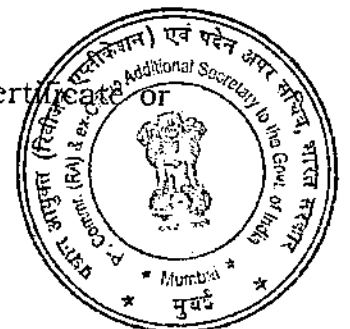
(7) On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer shall examine the goods in respect of description, quantity, marks and other relevant particulars given in the ARE-1, invoice, Bill of Export of packing list and also as per the examination norms laid down in respect of export goods in cases where the goods are being procured under claim of an export entitlement.

(8)...

(9) A copy of the Bill of Export and ARE-1 with an endorsement of the Authorised Officer that the goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.

(10) ..."

10. From the above it is very clear that the rewarehousing certificate



confirmation of receipt of goods in SEZ is to be given by way of endorsement by the proper officer of the particular SEZ zone certifying that the goods are admitted in full. This is required to be done in 45 days. It may further get delayed. Therefore, this endorsement does not correctly reflect actual date of crossing land frontier. It is also observed that the endorsement by the authorised officer would represent the proof of export as per Sub-rule (9) above. It is opined that such endorsement is only in confirmation of the fact that the identity of the goods has been verified / established and the goods mentioned therein the Bill of Exports have been admitted in full (or as the case may be) in the SEZ unit and thus the export of goods has taken place. The Government finds that endorsement to the above effect is more or less related to proof that export has taken place. The authorised officer will certainly take reasonable time to verify the goods and identification of same with relevant Bill of Exports and thereby endorse bill of entry on his satisfaction to the same. Under such circumstances, Government holds that it would be incorrect to adopt the date of endorsement as relevant date in the instant case.

11. In view of above, the Government holds that in the instant case, the date of payment of duty on exported goods can be aptly termed as 'relevant date' for computation of the limitation of time under Section 11(B) of Central Excise Act, 1944.

12. In view of the above, Government finds no infirmity in Order-in-Appeal No. 440/2012-CE dated 14.12.2012 passed by the Commissioner (Appeals-I), Central Excise, Bangalore and therefore refrains from exercising its revisionary powers in the instant case.

13. The Revision Application is disposed off on above terms.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई, मुंबई
Mumbai Unit, Mumbai



Shrawan
27/01/24
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

54-57
ORDER No. /2021-CX (SZ)/ASRA/Mumbai DATED 27.01.2021.

To,
M/s VTS TF Air Systems Pvt. Ltd.,
No.2150, 2nd floor, 17th Main Road,
HAL, 2nd Stage, Indiranagar, Bangalore,
Karnataka - 560 008.

Copy to:

1. The Commissioner of Goods & Service Tax, Bengaluru (East), BMTC Building, Old Air Port Road, Domlur, Bengaluru- 560 071.
2. The Commissioner of Central Tax (Appeals-I), Bengaluru, BMTC Building, Old Air Port Road, Domlur, Bengaluru- 560 071.
3. The Dy. Commissioner, CGST, Bengaluru East Division 2, BMTC Building, Old Air Port Road, Domlur, Bengaluru- 560 071.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

