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F.No. 195/466/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...14/6/13

ORDER NO. 562 /13-Cx DATED 13.06.2013 OF THE  
GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE  
CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
29/2011-CE dated 21.2.11 passed by Commissioner of  
Central Excise (Appeal-I), Bangalore.

Applicant : M/s Lineage Power (India) Ltd., Bangalore

Respondent : Commissioner of Central Excise, Bangalore-I

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**ORDER**

This revision application is filed by M/s Lineage Power (India) Ltd., Bangalore against the orders-in-appeal No. 29/2011-CE dated 21.2.11 passed by the Commissioner of Central Excise (Appeals-I), Bangalore with respect to order-in-original passed by the Deputy Commissioner of Central Excise, Bangalore IV-Division.

2. Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods falling under chapter heading 85 of the first schedule to Central Excise Tariff Act 1985. The applicant supplied certain inputs 'as such' viz. Power Modules to a unit in Special Economic Zone (SEZ unit) on reversal of duty in terms of Rule 3(5) of the Cenvat Credit Rules, 2004. Subsequently, the same have been used by the SEZ unit and the resultant finished goods exported out of the country by the said SEZ unit. Then, the applicant filed rebate claim to claim the rebate of the Cenvat Credit so reversed. On scrutiny of the claim, the Original Adjudicating Authority observed that the rebate of duty claimed is not the duty paid on the excisable goods so as to allow rebate/refund under rule 18 of the Central Excise Rules, 2002; that the inputs were cleared as such without payment of duty under Letter of Undertaking (LUT) (under the provisions of Rule 19 of Central Excise Rules, 2002) as clearly indicated on the ARE-1s and not on payment of duty under claim for rebate/refund under Rule 18 of the said rules; that the goods on which the applicant is claiming rebate/refund are neither manufactured in the registered premises of the claimant nor any factory within the jurisdiction of the undersigned. Hence, the authority with whom the claim has been filed is not the proper officer to sanction/grant rebate in the instant case; and that the amount of credit reversed on the inputs cleared as such is in accordance with the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, cannot be treated as duty payment. Under the above circumstances Show cause Notice was issued to the applicant proposing rejection of their claim for

rebate/refund of Cenvat Credit reversed. The original authority rejected the rebate claim of the applicant.

3. Being aggrieved by impugned order-in-original, the applicants 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 Rule 3 of CENVAT Credit Rules, 2004, lists out the duties and taxes on which a manufacturer or a service provider can avail the CENVAT credit. Though CENVAT credit is permissible for the amount of credit reversed at the time of removal of goods as such, it is not specifically mentioned as one of the duties and taxes on which credit may be availed. The Applicant submits that the credit reversed is not specifically mentioned in Rule 3 because the amount is considered to be a duty of excise and is covered in the clauses covering the duties of excise. Further, Rule 9 of the CENVAT Credit Rules, 2004, which specifies the list of documents on the basis of which credit can be availed, includes the invoice issued by a manufacturer for clearance of inputs or capital goods as such. Also, the goods are required to be removed under the cover of invoice prepared as per Rule 11 of Central Excise Rules, 2002, which is used for removal of goods on payment of excise duty. In this regard, the Applicant draws reference to the decision of CESTAT in the case of Grasim Industries Limited (reported in 2003 (155) ELT 200 (Tri. - Del.)), wherein the CESTAT has held that credit reversed on removal of goods as such from the factory is excise duty. Further, Rule 3(6) of the CENVAT Credit Rules, 2004, allows credit to the receiver of the goods, which are removed as such, as if the credit reversed under Rule 3(5) was a duty paid by the person removing the goods.

4.2 The Applicant, after import, had sold certain inputs to M/s Syrma Technologies Private Limited situated in MEPZ - SEZ, Tambaram, Chennai. The Applicant has already received the goods into the factory and had availed credit of the additional duty of customs and special additional duty of customs paid at the time of import. Upon removal of goods from the factory, the Applicant was of the understanding that the transaction would not be liable to any duty as the goods are exported to an SEZ unit. Accordingly, the goods were removed without payment of duty following the procedures of Rule 19. However, subsequently, on realizing that the inputs were removed as such from the factory of the Applicant to the SEZ unit, the Applicant has reversed the CENVAT credit availed on the same. The fact that the goods have been exported is not questioned and the fact that the credit has been reversed on account of this export is also acknowledged. The Applicant has already stated that the reversal of credit ought to be regarded as payment of excise duty.

4.3 The Central Board of Excise and Customs vide Circular No. 807/4/2005-CX dated 10<sup>th</sup> February 2005 has clarified that it is the policy of the Government to grant relief from element of domestic taxes on goods which are exported. Further, vide Circular No. 283/117/96-CX., dated 31<sup>st</sup> December 1996, the Board has clarified that exports under 'claim for rebate' and exports 'under bond' are at parity since the intention of both the procedures is to make the duty incidence 'nil' for exported goods. The CBEC manual, in paragraph No. 3.4 of Chapter 5 allows for duty free export of goods removed as such under bond. The Applicant submits that, the clarification by CBEC in the CBEC manual would equally apply to a claim of rebate under Rule 18.

4.4 In the case of Commissioner of Central Excise, Raigad vs. Micro Inks Ltd, Mumbai and Joint Secretary, Govt. of India, Department of Revenue (reported in 2011-TIOL-199-HC-MUM-CX), the Mumbai High Court has held that CENVAT credit reversed on removal of inputs as such is eligible for rebate of duty.

4.5 The applicant has further relied upon some case laws in favour of their contention.

5. Personal hearing scheduled in the case on 4.3.2013 was attended by Shri R.K.Sharma, Advocate and Shri R.K.Dash, Consultant on behalf of the applicant who reiterated the grounds of revision application. Nobody attended the hearing on behalf of respondent department. The applicants further vide their written reply submitted during personal hearing mainly reiterated contents of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. The original authority rejected the rebate claim mainly 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 cannot be treated as payment of duty and also that goods were cleared under rule 19 and there is no provisions of allowing rebate under rule 19. Commissioner (Appeals) also rejected the appeal. Now the applicant has filed this revision application on the grounds stated in para (4) above.

8. 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.

8.1 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.

8.2 Government of India Revision 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 High Court of Bombay 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.

8.3 GOI Revision Order No.326/10-Cx dated 18.2.10 in the case of M/s Ispat Industries, Raigarh Mumbai.

Department filed W.P.No.88/11 against said order before Hon'ble High Court of Bombay who vide order dated 24.3.2011 upheld the said GOI Revision Order.

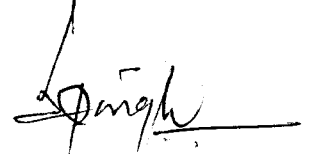
8.4 In view of said judgements, the reversal of cenvat credit under rule 3(5) of Cenvat Credit Rules 2005 on clearance of inputs as such, is to be treated as payment of duty.

9. Government observes that the inputs were cleared as such to SEZ Unit mentioning export under rule 19 of Central Excise Rules, 2002. In fact the reversal of cenvat credit under rule 3(5) of CCR 2004 is a payment of duty as discussed above, so there is no question of clearing goods under LUT or bond. The wrong mentioning of rule 19 cannot be a ground for rejecting substantial benefit of rebate claim. It is not case of export of manufactured excisable goods involving central excise duty but it is a case of clearance of inputs as such. So it cannot be called as export under rule 19.

10. In view of above position, Government sets aside the impugned orders and remands the case back to original authority to decide the matter afresh on merits in accordance with law after taking into account the above said judgements. A reasonable opportunity of hearing will be afforded to the party.

11. Revision application is disposed off in above terms.


12. So, ordered.



(D P Singh)

Joint Secretary (Revision Application)

M/s Lienage Power (India) Private Ltd.  
No.186/3, Ground Floor, Hoodi  
Mahadevapur Post  
Whitefield Road  
Bangalore-560048



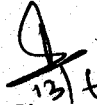
(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C -O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi.

Order No. S62 /2013-Cx dated 13.06.2013

Copy to:

1. Commissioner of Central Excise, Bangalore-I, C.R. Building, Queen's Road, Bangalore - 560 001.
2. Commissioner of Central Excise (Appeals-I), Central Excise, 16/1, 5<sup>th</sup> Floor, S P Complex, Lalbaug Road, Bangalore-560 027.
3. Deputy Commissioner of Central Excise, Bangalore-IV Division, 6<sup>th</sup> Floor, A-Wing, Kendriya Sadana, Koramangala, Bangalore-560034
4. Shri R.K.Sharma, Advocate, 157, 1<sup>st</sup> Floor, DDA Office Complex, CM-Jhandewalan Extension, New Delhi-110055.
- ✓ 5. PA to JS (RA)
6. Guard File
7. Spare copy

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)