



REGISTERED  
SPEED POST

F.NO.198/657/2011-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue: 12/6/13

ORDER NO. 563/2013-Cx DATED 14.06.2013 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 35 EE of the  
Central Excise Act, 1944 against the Order-in-Appeal  
No.90/Kol-VII/2011 dated 25.08.2011 passed by  
Commissioner (Appeal-I) Central Excise Kolkata

APPLICANT : Commissioner of Central Excise Kolkata-VII  
Commissinerate Kolkata

RESPONDENT : M/s Vedik Vanijya Pvt. Ltd., 24-Parganas (South),  
West Bengal

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**ORDER**

This revision application is filed by Commissioner of Central Excise Kolkata-VII Commissionerate Kolkata, against the order-in-appeal No.90/Kol-VII/2011 dated 25.08.2011 passed by Commissioner (Appeal-I) Central Excise Kolkata with respect to order -in-original No.09R/MC/ER/Kol-VII/08 dated 31.03.2008 passed by Maritime Commissioner of Central Excise Kolkata. M/s Vedik Vanijya Pvt. Ltd. is the respondent in this case.

2. M/s Vedik Vanijya Pvt. Ltd. procured certain quantity of inputs on payment of duty from M/s Hanny Fibre Pvt. Ltd., Plot No.1, Hill No.2, EPIP, Byrnihat, Rai-Bhoi District, Meghalaya, State of North-East of India who are availing area-based exemption of Central Excise duty under Notification Nos. 33/99-CE dated 08.07.1999. Such inputs were exported as such by the respondent to SEZ Unit and rebate of excise duty amounting to Rs.18,04,540/- paid on such inputs by the said manufacturer, as mentioned in relevant procurement document, has been claimed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended. SCN dated 09.10.2007 was issued by the Maritime Commissioner, Central Excise, Kolkata-VII Commissionerate proposing for rejection of the claim for rebate of aforesaid amount on the ground of non-compliance of the provisions of Rule 18 and stipulation of Notification No.19/2004 ibid in as much as the term "duty paid" used in Rule 18 does not include that portion of duty which is subsequently refunded to the manufacturer. After following due process of law, the Maritime Commissioner, Central Excise, Kolkata-VII Commissionerate vide order-in-original No. 09R/MC/ER/KOL-VII/08 dated 31.03.2008 rejected the said rebate claim.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals) who allowed the same in favour of respondents by setting aside the impugned order-in-original dated 31.03.2008.

4. Being aggrieved by the impugned order-in-appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The issue relating to amount of duty that is to be rebated under Rule 18, in respect of excisable goods manufactured and cleared availing the area based exemption schemes available for North-East under Notfn. No. 32/99-CE and 33/99-CE both dated 08.07.1999 has been examined by the Central Board of Excise and Customs, who vide its letter F.No.209/11/2005-CX-6 dated 08.12.2006 has confirmed that the same was referred to the Law Ministry, who have opined that the term "duty paid" used in Rule 18 does not include that portion of duty, which is subsequently refunded to the manufacturer. It has further been opined by the Law Ministry that the amount so refunded to the manufacturer is to be treated as an exemption and rebate of the said amount cannot be paid.

4.2 It is evident that the Commissioner (Appeals), while arriving at his decision, has solely based on the Board's Instruction issued under F.No. 209/11/2005-CX-6 dated 03.04.2007 and has applied the clarification of the said authority to the instant case having equated the issue under consideration in the said Instruction with that of the case under decision by him. But the said authority, on scrutiny, reveals that the issue clarified in the said instruction, is completely different from that of the present case and the Commissioner (Appeals) has erred, in considering the said two issues at par, on the following counts:

4.3 The CBEC issued letter F.No. 209/11/2005-CX-6 dated 08.12.2006 on the subject "Rebate on goods manufactured in North-East and subsequently exported under Rule 18 of the Central Excise Rules-2002". And the Instruction under F.No. 209/11/2005-CX-6 dated 03.04.2007 relied upon by the Commissioner (Appeals) has been issued for clarification of certain points of the Instruction of even no. dated 08.12.2006 *ibid*.

It has been explicitly mentioned in the said Instruction dated 03.04.2007 that the issue under consideration therein was on "... applicability of instruction of even no. dated

08.12.2006 to the goods exported by units using inputs manufactured and cleared by units availing the area based exemption scheme." More precisely, it relates to export of "goods manufactured by units using inputs manufactured and cleared by units availing the area based exemption scheme" and not 'as such' export of inputs manufactured and cleared by units availing the area based exemption scheme. This is further confirmed in the later part of the said Instructions through the following sentences :

"The units located in other parts of the country manufacture the goods, and pay the applicable excise duty on export of goods, and therefore, they are eligible to claim rebate of said duties under Rule 18 of the Central Excise Rules, 2002. The Board's instructions dated 08.12.2006 cannot be applied to such units as it clarifies that the term 'duty paid' used in Rule 18 of the Central Excise Rules, 2002 does not include that portion of duty, which is subsequently refunded to the 'manufacturer' (units availing area based exemption). In the present case, the units located in other parts of the country are the manufacturers, and no portion of duty paid by them is refunded to them, therefore, rebate cannot be denied to such units."

4.4 In other words, the rebate under examination in the said instruction is in respect of goods manufactured by the units located in other parts of the country (i.e., by units other than those located within the area specified for area based exemption) using inputs manufactured by units availing area based exemption and the amount of rebate obviously refers to the amount of duty paid by such manufacturers on such manufactured goods.

4.5 Contents as above of said instructions, when read with the Instruction under F.No.209/11/2005-CX-6 dated 08.12.2006 leaves no scope to hold that the same allows rebate of duty for "as such" export of inputs manufactured and cleared by units availing the area based exemption scheme.

In view of the facts and legal provisions as above, Commissioner of Central Excise, Kolkata-VII Commissionerate is of the opinion that the instant Order-in-appeal

No. 90/KOL-VII/2011 dated 25.08.2011 passed by Commissioner of Central Excise (Appeal-I) is not proper and legal.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. No reply was received till the personal hearing held on 4.4.2013. However during hearing, 7 days time was sought to file reply. Respondent filed written submission vide letter dated nil received on 7.5.2013 stating as under :-

5.1 We carry on business inter alia, for purchasing duty paid goods directly from manufacturer under cover of invoices issued under section Rule 11 of the said Rules duly registered with the department as a dealer of excisable goods having registration No. AACCV1793QXD001, we purchased excisable goods namely Coper Strips (hereinafter referred to as "said goods") under Central Excise Tariff Sub Heading 74091900 from the manufacturer M/s Hanny Fibre Private Limited, Plot No. 1, Hill NO.2, EPIP, Byruhat, Ri-Bhoi District, Meghalaya – 793101. The said manufacturer has been availing Area Based Exemption in terms of Notification No. 32/99 & 33/99 CE both dated 08.07.1999.

5.2 We exported the said goods to M/s Infinity Electric Private Limited, Falta Special Economic Zone (SEZ), Falta, 24-Parganas (South), West Bengal following the procedures enumerated under Rule 18 of the said Rules read with Notification No. 19/2004-CE(\*NT) dated 06.09.2004(as amended) further read with the clarification given by the Board vide Circular No.29/2006-CUS dated 27.12.2006 issued in context of implementation of SEZ Act 2005 and SEZ Rules 2006. Said goods were removed from our registered premises under cover of among other documents and we filed claim of Rebate of duty paid.

5.3 Departmental instructions restricting payment of rebate under Rule 18 given vide Board's letter F.No. 209/11/2005-CX-6 dated 08.12.2006 were issued relating to rebate of the duty paid to the manufacturer availing the said Area based exemptions only and not to units located in other parts of the country. While issuing further instructions on

the subject rebate on goods manufactured in North-East etc. F.No. 209/11/2005-CX-6 dated 03.04.2007, it has been clarified inter alia, that "there is no bar on utilizing this credit for payment of duty on goods cleared for exports. The units located in other parts of the country manufacture the goods and pay the applicable excise duty on export of goods, and therefore, they are eligible to claim rebate of said duties under Rule 18 of the said Rules. The Board's instructions dated 08.12.2006 cannot be applied to such units as it clarifies that the term duty paid sued in Rule 18 does not include that portion of duty, which is subsequently referred to "the manufacturers" (units availing are based exemption). In the present case, the units located in other parts of the country are the manufacturers, and no portion of duty paid by them is refunded to them, therefore, rebate cannot be denied to such units.

5.4 For that the Maritime Commissioner has completely failed to appreciate that the notification no. 37/2007-CE(N) dated 17.09.2007 laying down the barring conditions in allowing rebate of duty on export of goods manufactured by a manufacturer availing the said notifications has only prospective effect and cannot be implied retrospectively. He has failed to follow the settled law that notification comes into operation from the date. This vital change in non-granting rebate of duty paid on export of goods in a given situation having been introduced first time vide clause (h) para (2) in Notification No. 19/2004-CE(NT) dated 06.09.2004 inserted by said Notification dated 17.09.2007, concerned trade and industry could only know about the change in the stand of the department only on and from 17.09.2007 and never prior to that date. In order to ensure that public is aware of the change, a notification issued is required to publish and made available for sale on the day the notification is issued. The effect of said vital amendments is of prime importance in the present case that the amended legal provisions are effective only from 17.09.2007, i.e. that date of the said notification, which he has failed to evaluate but our dispute period from 31.05.2007 to 25.06.2007.

5.5 In identical set of facts and circumstances of the instant case, Hon'ble Tribunal in the case decision Dujowala Products Ltd. vs. CCE [2008 (223) ELT 499 (T)] wherein it has been held inter alia, that "since the goods are treated as duty paid for the purpose

of availing cenvat credit, they cannot be treated as duty paid for the purpose of availing cenvat credit, they cannot be treated as non-duty paid for the purpose of grant of rebate in terms of Rule 18 of the Central Excise Rules.”

Though the said decision was relied upon by the appellant, he has neither discussed nor analysed the same rendering the said order non-speaking order liable to be set aside. In absence of any evidence regarding any double or extra benefit taken by the appellant in respect of the goods which is ultimately exported, being no existed, he should have allowed the instant rebate.

6. Personal hearing was scheduled in this case on 22.02.2013 and 04.04.2013. Shri Biswajit Bhowmik, Accountant, authorized representative of respondent appeared for hearing on 04.04.2013 on behalf of the respondent who reiterated the submissions made their written reply and requested to uphold the impugned order-in-appeal.

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

8. On perusal of records, Government notes that Maritime Commissioner had rejected the rebate claim relying on CBEC Circular dated 8.12.2006, 3.4.2007 and Not. No. 37/2007-CE(NT) dated 17.09.2007 which has amended Not. No. 19/04-CE(NT) dated 6.9.2004. However, Commissioner (Appeals) has decided the case in favour of respondents. Now department has filed this revision application on the ground stated in para 4 above.

9. Government notes that the respondent procured the said goods from a manufacturing unit M/s Hanny Fibre Pvt. Ltd. located in North-East who was availing area based exemption of Central Excise duty under Not. No. 32/09-CE dated 8.7.1999 and 33/99-CE dated 8.7.1999 and cleared / exported the same to SEZ Unit in Falta, West Bengal. Applicant department has contended that the manufacturing unit in North East area is getting refund of the portion of duty paid in cash and therefore in view of CBEC clarification vide circular dated 8.122006, M/s Vedik Vanijya (P) Ltd. the

respondent is entitled for rebate claim under rule 18 of Central Excise Rules 2002. In this regard, Government observes that CBEC vide circular dated 3.4.2007 has further clarified the instructions contained in circular dated 8.12.2006. The circular dated 3.4.2007 reads as under :-

“ Subject: Rebate on goods manufactured in North East etc., and subsequently exported under Rule 18 of the Central Excise Rules, 2002 – Reg.

Please refer to the instructions issued under letter of even number dated 8.12.2006 [2006 (204) ELT T12] on the above subject. In this regard, references have been received from the field formations as well as the trade and industry seeking clarification on applicability of said instructions to the goods exported by units using the inputs manufactured and cleared by units availing the area based exemption scheme.

2. The issue has been examined. It is seen that the units located in other parts of the country are permitted to take full credit of duty paid on the inputs (procured from J&K, North East, Sikkim and Kutch) under Rule 12 of the Cenvat Credit Rules, 2004. This rule is a special dispensation to ensure that the manufacturing units in North East, etc. are not placed at disadvantage vis-à-vis units outside such area. Further, there is no bar on utilizing this credit for payment of duty on goods cleared for exports. The units located in other parts of the country manufacture the goods, and pay the applicable excise duty on export of goods, and therefore they are eligible to claim rebate of said duties under Rule 18 of the Central Excise Rules, 2002. The Board's instructions dated 8.12.2006 cannot be applied to such units as it clarifies that the term 'duty paid' used in Rule 18 of the Central Excise Rules, 2002 does not include that portion of duty, which is subsequently refunded to the 'manufacturer' (units availing area based exemption). In the present case, the units located in other parts of the country are the manufacturers, and no portion of duty paid by them is refunded to them, therefore, rebate cannot be denied to such units.”

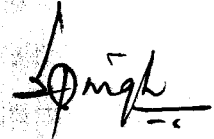
The said clarification relates to the issue of rebate on goods manufactured in North East etc. and subsequently exported under rule 18 of CER 2002. It has been specifically clarified that unit located in other parts of the country are permitted to take full credit of duty paid on the inputs under rule 12 of Cenvat Credit Rules 2004 and there is no bar on utilizing this credit for payment of duty on goods cleared for exports under claim of rebate in terms of rule 18 of CER 2002. The said circular further clarified that units located in other parts of the country are the manufacturers and no portion of duty paid



by them is refunded to them and therefore rebate cannot be denied to them. Government finds no ambiguity in said clarification and it is applicable to the instant case since the respondent after procuring goods from manufacturer in North East on payment of duty has exported the same to SEZ Unit. The department has not disputed the fact that duty paid goods procured from a unit availing area based exemption Not. No. 32/99-CE and 33/99-CE both dated 8.7.1999, have been exported to SEZ Unit. In view of clarification contained in circular dated 3.4.2007, Commissioner (Appeals) has rightly allowed rebate claims to the respondents.

10. It is pertinent to mention here that as per section 88 of Finance Act 2008, rule 18 of Central Excise Rules 2002 was amended retrospectively to the effect that rebate of duty on excisable goods cleared from factory for export shall also be admissible for that portion of duty paid for which the refund has been granted in terms of the notification 32/99-CE dated 8.7.99 and 33/99-CE dated 8.7.99 and other area based exemption notifications, during the period 1.3.2002 to 7.12.2006. Further Hon'ble High Court of Gujrat in its judgment dated 25.2.2010 in SCA No. 12638/08 with SCA No. 12369/08 filed by M/s Welspun Gujrat State Rohren Ltd. reported as 2010 (254) ELT 551 (Guj.), has held that by inserting clause (h) in the notification No.19/04-CE(NT) dated 6.9.2004 vide Not. No. 37/07-CE(NT) dated 17.09.2007 in case of export of goods which are manufactured availing notifications 32/99 and 33/99-CE both dated 8.7.99 and other such notifications, the rebate shall not be admissible under this notification. Hon'ble High Court has held that said notification is applicable prospectively and despite amendment made in rule 18 as per section 88 of Finance Act, 2008, the right vested in the exporter to claim rebate in respect of export of goods after 8.12.2006 till 17.9.2007 continued and its validity and enforceability could not be affected. Government notes that in view of said judgment the rebate claims were admissible upto 17.9.2007.

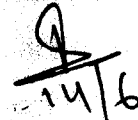
11. In view of position explained above, Government do not find any infirmity in the impugned order-in-appeal and therefore upholds the same.
12. The revision application is rejected being devoid of merit.
13. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise  
Kolkata-VII Commissionerate,  
Bamboo Villa (5<sup>th</sup> Floor),  
169, A.J.C. Bose Road,  
Kolkata - 700 014



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Reva)  
भारत सरकार/Govt of India  
नई दिल्ली/New Delhi

**Order No. 563 /2013-Cx dated 14.06.2013**

Copy to:


1. Commissioner of Central Excise (Appeal-I), Bamboo Villa (4<sup>th</sup> Floor),169, A.J.C. Bose Road,Kolkata – 700 014
2. Maritime Commissioner of Central Excise (Appeal-I), Bamboo Villa (4<sup>th</sup> Floor),169, A.J.C. Bose Road,Kolkata – 700 014
3. M/s Vedik Vanijya Pvt. Ltd., Plot No.20 (1<sup>st</sup> & 2<sup>nd</sup> Floor), Palm Village, Bhasa, Bishnupur, 24 Parganas (South), West Bengal

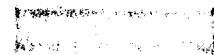
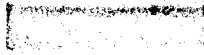
~~4. PA to JS(RA)~~

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ATTESTED

  
14/6  
(Bhagwat P. Sharma)  
OSD (RA)



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