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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.195/521/13-RA

Date of Issue:

ORDER NO. 563 /2020-CX (WZ)/ASRA/MUMBAI DATED 31.07.2020 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 Seimens Ltd.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/939/RGD/2012 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

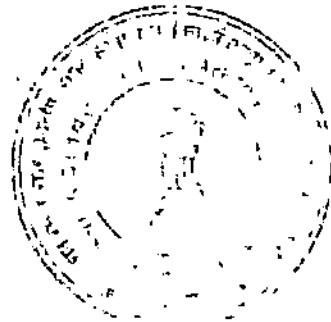


## ORDER

This Revision Application is filed by M/s Seimens Ltd., 130, Pandurang Budhkar Marg, Worli, Mumbai 400 030 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/939/RGD/2012 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the Applicant, a Merchant Exporter had filed two rebate claims both dated 10.02.2010 totally to Rs. 2,57,015/- (Rupees Two Lakhs Fifty Seven Thousand and Fifteen Only). While scrutinizing the said rebate claims, it was inter alia, observed that the goods were cleared by M/s RLC Engineers Pvt Ltd., Thane, Manufacturer, a 100% Export Oriented Unit (EOU) and had paid the duty through PLA. The Applicant was issued a Deficiency Memo Cum SCN dated 21.05.2012 on the grounds that as per Notification No. 24/2003-CE dated 31.03.2003, the goods manufactured in an export oriented undertaking are exempted from payment of duty leviable thereon and therefore the manufacturer being a 100% EOU is bound to export the goods without payment of duty in terms of condition of B-17 Bond and as such rebate is not admissible in such cases and are liable for rejection. The Deputy Commissioner of Central Excise, Rebate, Raigad vide Order-in-Original No. 762/11-12/DC(Rebate)/Raigad dated 31.05.2012 rejected the two rebate claims on the ground that the duty paid by the 100% EOU unit on the export of the goods could not be treated as appropriate duty of Central Excise as such units are exempted under Notification No. 24/2003-CE dated 31.03.2003 from payment of duty and duty is payable by 100% EOU units only on DTA sales. Aggrieved, the Applicant then filed appeal with the Commissioner of Central Excise (Appeals-II), Mumbai, who vide Order-in-Appeal No. US/939/RGD/2012 dated 27.12.2012 rejected their appeal and upheld the Order-in-Original dated 31.05.2012.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :



- (i) The impugned order is a non-speaking order as the Commissioner(Appeals) had not given any finding as to why duty paid on the exported goods is inadmissible for rebate and chose to consider and rely only on a portion of the GOI order in case of RE: Flamingo Pharmaceutical Ltd. [2012 (283) ELT 466 (GOI)], wherein it was mentioned that supplies effected by an EOU for export are exempted from payment of excise duty. Thus, what was paid could be considered as duty but failed to appreciate the overall decision of the Revisionary Authority, which if would had been appreciated then the Commissioner(Appeals) ought not had rejected their appeal. The said judgment clearly provides relief to the Applicant by treating duty paid as voluntary deposit thereby returning the same in the manner in which it was paid.
- (ii) The exported goods by the Applicant procured by the manufacturer 100% EOU are admittedly exported out of India and the manufacturer, had paid the amount by PLA and the Applicant had already paid the amount to the manufacturer. Therefore, the burden of this duty has been borne by the Applicant. This fact had been accepted by the Original authority vide Order-in-Original dated 31.05.2012. Hence, the rebate claim should not have been rejected.
- (iii) Even if it is assumed that the manufacturer, being a 100% EOU, was not liable to pay excise duty on goods cleared to the Applicant for export, then the excise duty paid by the Applicant on the said goods cannot be considered as a deposit with the Central Government without any legal basis. In this they relied on the decision of the Hon'ble Supreme Court in the case of Commr. of C.Ex & Cus Vs MDS Switchgear Ltd. [2008 (229) ELT 485 (SC)].
- (iv) In their present case, the goods had been exported by the Applicant and not the EOU manufacturer. Further, the Applicant had paid the duty to the manufacturer, hence the duty has been borne by the Applicant. Thus, the Applicant should be allowed the rebates claimed.
- (v) It is the policy of the Government to allow refund or Central Excise duty paid on final products exported. The intention of Government is

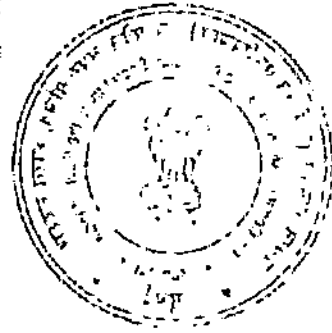


not to export taxes but only to export goods. If refund of duty paid on exported goods is not allowed, the Indian manufacturer will become internationally uncompetitive. This is contrary to the intention of the legislature. Hence, the rebate of excise duty paid by the Applicant must be allowed to the Applicant.

4. A personal hearing in the case was held on 03.12.2019 which was attended by Shri Mahesh Parnerkar, Chief Manager, Indirect Taxes and Shri Anil Kapse, Manager, Indirect tax on behalf of the Applicant. The Applicant submitted that even if tax is not to be paid, it should be refunded as per the case of GOI order in case of RE: Flamingo Pharmaceutical Ltd. [2012 (283) ELT 466 (GOI)] and reiterated the 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 Order-in-Original and Order-in-Appeal.

6. Government observe that the Applicant had procured goods from their manufacturer M/s RLC Engineers Pvt. Ltd. who is 100% EOU. The manufacturer had paid duty through PLA vide E.No. 30/25 dated 17.08.2009 and 31/33 dated 30.9.2009 and then the goods were exported through two separate ARE-1s. The Applicant paid the invoice value to the manufacturer and claimed rebate. The Deputy Commissioner of Central Excise, Rebate, Raigad vide Order-in-Original dated 31.05.2012 rejected the two rebate claims on the ground that the duty paid by the 100% EOU unit on the export of the goods could not be treated as appropriate duty of Central Excise as such units are exempted under Notification No. 24/2003-CE dated 31.03.2003 from payment of duty and duty is payable by 100% EOU units only on DTA sales. The Commissioner(Appeals) in rejecting the Applicant's appeal has relied on the case of RE: Flamingo Pharmaceutical Ltd. [2012 (283) ELT 466 (GOI)] in upholding the Order-in-Original dated 31.05.2012.



7. Government is in agreement of the finding of the Commissioner(Appeals) that no duty was required to be paid by the 100% EOU under Notification No. 24/2003-CE dated 31.03.2003. However, Government observes that the Commissioner(Appeals) had considered only a portion i.e. Para 10 and 11 of the GOI Order Nos 1234-1236/2011-CX dated 22.09.2011 in the case of RE: Flamingo Pharmaceutical Ltd. [2012. (283) ELT 466 (GOI)]. Rest of the important paras of the said order is reproduced below:

*"12. Regarding respondents pleading that amount paid by them may be allowed re-credit in cenvat credit account, if rebate is held inadmissible. Government observes that the amount so paid by applicant is a voluntary deposit made by respondent on their volition with the department and same is to be returned in the way it was initially paid. Therefore, government directs that the said excess paid amount may be allowed to be re credited in their cenvat credit amount. Government accordingly sets aside the impugned order in-appeal and partially allows the revision application.*

*13. The revision applications are disposed off in terms of above.*

*14. So ordered."*

8. In this regard, Government observes that the identical issue has been decided by Government vide Revisionary Order No. 97/2014-Cx, dated 26-3-2014 in Re: Sumitomo Chemicals India Pvt. Ltd. reported in 2014 (308) E.L.T. 198 (G.O.I.). -

*"it has been stipulated in the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the CBEC Circular No. 510/06/2000-CX, dated 3-2-2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provisions of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government, which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11 9 2008 in CWP Nos. 2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. v. UOI reported in 2009 (235) E.L.T. 22 (P&H).*



*Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.*

9. Government also places its reliance on the Hon'ble Gujarat High Court order dated 09.01.2016 in the In RE:Garden Silk Mills Ltd Vs UOI [2018 (2) TMI 15 Gujart High Court] where in it was held that

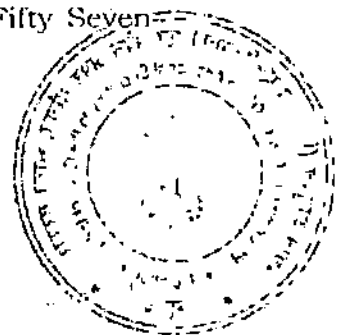
*"9. Coming to the merits of the case, again undisputed facts are that the petitioner had paid excise duty on CIF value of goods exported. The petitioner does not dispute the stand of the Government of India that excise duty was payable on FOB value and not on CIF value. The Government of India also does not dispute the petitioner's stand that in such a case the additional amount paid by the petitioner would be in the nature of deposit with the Government which the Government cannot withhold without the authority of law. If these facts are established, a simple corollary thereof would be that the amount has to be returned to the petitioner. If therefore, the petitioner's request was for re-credit of such amount in Cenvat account, the same was perfectly legitimate. The Government of India should not have asked the petitioner to file separate application for such purpose.*

*10. In the result, the respondents are directed to recredit the excess amount paid by the petitioner categorizing as excise duty of CIF value of the goods to the Cenvat credit account.*

*11. Petition is disposed of."*


10. Government finds that as the facts of the present Revision Application are similar to the above quoted cases, the ratio of the same is squarely applicable to the current case.

11. In view of the above discussions and findings, Government modifies the Order-in-Appeal No. US/939/RGD/2012 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and holds that the total amount of duty of Rs. 2,57,015/- (Rupees Two Lakhs Fifty Seven



Hundred and Fifteen Only) paid through PLA be refunded to the Applicant in the manner in which they paid. Hence the case is remanded back to the original authority, who shall pass appropriate refund order in accordance with law within four weeks from receipt of this order.

12. Revision Application is allowed in terms of above.
13. So, ordered.

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

ORDER No.563/2020-CX (WZ)/ASRA/Mumbai DATED 31.07.2020.

To,  
M/s Seimens Ltd.,  
130, Pandurang Budhkar Marg,  
Worli,  
Mumbai 400 030.

Copy to:

1. Commissioner of Central Excise(Appeals-II), Mumbai.
2. The Commissioner of CGST, Belapur Commissionerate, 1<sup>st</sup> floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file

**ATTESTED**

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

