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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. 195/606/2013-RA, Date of Issue:

ORDER NO. 585 /2020-CX (WZ) /ASRA/MUMBAI DATED 10.08.2020 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 Dynemic Products Ltd., Ankleshwar,

Respondent : Commissioner of Central Excise & Customs, Surat-II Commissionerate,

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CCEA-SRT-II/SSP-287/u/s 35A(3) (Final Order) dated 22.02.2013 passed by the Commissioner(Appeals), Central Excise, Customs & Service Tax, Surat-II.

ORDER

This Revision application is filed by M/s Dynemic Products Ltd., Ankleshwar (hereinafter referred to as 'applicant') against the Order-in-Appeal No. CCEA-SRT-II/SSP-287/u/s 35A(3) (Final Order) dated 22.02.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

2. Brief facts of the case are that the applicant, filed a 20 (Twenty) Rebate claims for a total amount of Rs.16,05,754/-(Rupees Sixteen Lakh Five Thousand Seven Hundred Fifty Four only). The applicant were holding License & Manufacturing permission under EOU Scheme and they had cleared the goods for export on payment of Central Excise duties prior to grant of final exit from 100% EOU Scheme & obtaining proper Central Excise Registration for the purpose. The applicant as a 100% EOU were fully and unconditionally exempted from payment of duty vide Notification No.24/2003-CE dated 31.03.2003 read with provisions of Section 5A(1A) of Central Excise Act, 1944, hence the duty paid on the goods exported on their volition was not in accordance with law. Therefore, it appeared that the applicant were ineligible for rebate. A show cause notice was issued to the applicant and after due process of law the adjudicating authority vide Order in Original No. ANK-I/NN/2181-2200/R/11-12 dated 15.12.2011 rejected all the 20 rebate claims filed by the applicant under Section 11B of Central Excise Act, 1944.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals) who vide impugned Order in Appeal No. CCEA-SRT-II/SSP-287/u/s 35A(3) (Final Order) dated 22.02.2013 rejected the applicant's appeal.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed a present Revision Application mainly on the following grounds:

4.1 One of the grounds, canvassed by the Authorities, below, for denial of Rebate Claim, is to the effect that Notification, 24/2003-C.E., dated 313.2003, has been issued under the provisions of Section 5-A(1 A) of the Central Excise Act, vide which, the excisable goods produced by a 100% EOU, have been granted absolute exemption, from payment of Central Excise Duty, even when such excisable goods have been exported by a 100% EOU and accordingly, 100% EOU, is bound by the said Notification, the Assessee shall not pay any Central Excise Duty and therefore, when Central Excise Duty was not payable at all, question of granting any Rebate of such Central Excise Duty, under Rule 18 of the Central Excise Rules, 2002, does not arise.

The said argument, canvassed by the Authorities, below, is not only erroneous but neither legal nor lawful and has been canvassed only to deny Rebate to the Applicants, of Central Excise Duty, paid on export goods. This is in as much as, the purpose and object of enactment of the said Notification, 24/2003-C.E:, dated 31.3.2003, is to grant exemption to all Intermediate Goods, produced in a 100% EOU and utilised within the same Unit, for production of further excisable goods. The said Notification, does not grant any exemption, when such goods are cleared for Home Consumption or when they are exported. If, the said Notification, granted exemption to export goods, produced by a 100% EOU, there was no need to include B-1 Bond, in the Text of B-17 Bond and there was no need for a 100% EOU, to follow ARE-1 Procedure and submit Proof of Export.

4.2 Further, the argument, canvassed by the Authorities, below, while rejecting the Rebate Claim and narrated hereinabove, is improper and illegal, in as much as, any excisable goods, produced by a 100% EOU, in general, are never exempt, from payment of Central Excise Duty, when they are cleared from a 100% EOU, either for Home Consumption or for export. This is very much evident, from the provisions of Notification, 23/2003-C.E., dated 31.3.2003, that out of 23 Entries, contained therein, only the excisable goods, specified at Serial Nos., 11 to 22, no other excisable goods, have been exempt, from payment of Central Excise Duty, when cleared for Home Consumption and the Applicants, have nothing to do with the said Serial Nos., II to 22 and therefore, when their excisable goods are exported, they cannot be said to be exempt, when they are chargeable to Central Excise Duty, at appropriate rate, when cleared for Home Consumption.

4.3 The basic argument on which, the Rebate Claim has been disallowed, itself being faulty, the Rebate Claim, in question, is admissible and accordingly, it is most humbly and respectfully, requested to direct the Original Authority, to grant the said Rebate Claim, under Section 11-B, read with, Section 11-BB of the Central Excise Act.

4.5 Assuming without admitting that the excisable goods, in question, exported by them on payment of Central Excise Duty, at appropriate rate, with a Claim for Rebate, under the provisions of Rule 18 of the Central Excise Rules, 2002, read with, Notification, 19/2004-C.E. (N.T.), dated 6.9.2004, were exempt, from payment of Central Excise Duty and therefore, there was no need for the Applicants, for paying Central Excise Duty, as per the provisions of Section 5-A(1A) of the Central Excise Act, read with, Notification, 24/2003-C.E., dated 31.3.2003, then in that case, it was the bounden duty of the Original Authority, that though she may deny Rebate Claim of Rs.16,05,754.00 but at the same time, she must have passed the Order for Recredit of the same amount, in the CENVAT Credit Account of the Applicants and to that extent, her Order-in-Original, is bad in

Law. By not allowing Recredit of the said Central Excise Duty, in question, in their CENVAT Credit Account, the Original Authority, has collected the Central Excise Duty, from the Applicants, which was not payable at all, as per the Original Authority and this grants the Government Unjust Enrichment. The aforestated contention was presented by the Applicants, also before the Respondent but he did not respond to the same. However, Rebate is not allowable, then at least, Recredit in CENVAT Account, should be allowed.

4.6 It is not unknown that 100% EOU is eligible to export its finished excisable goods, through Third Party or Merchant-Exporter and if, the Theory canvassed by the Authorities, below, of applicability of Notification, 24/2003-C.E., dated 31.3.2003, is accepted to the effect that excisable goods produced by a Manufacturer, when exported, are exempt under the said Notification, a Third Party or Merchant-Exporter, need not give any C.T.-1 to the 100% EOU and can freely lift the goods, from the premises of the 100% EOU.

4.7 From what is stated hereinabove, it is manifestly clear that if, to the current episode, the provisions of Notification, 24/2003-C.E., dated 31.3.2003 are made applicable, as desired by the Authorities, below, when the scenario is applied to other events, one gets absurd results and therefore, the Theory canvassed by the Authorities, below, is not proper and legal and therefore, they have erred in disallowing Rebate of Central Excise Duty, paid on export goods, by the Applicants, in their status as a 100% EOU.

They rely upon the following Decisions, which say that a 100% EOU is eligible for Rebate of Central Excise Duty, paid on export goods.

• 2008 (228) E.L.T.107 (Tri.-Del.)
WOCO MOTHERSON ELASTOMERS LTD. Vs CCE Noida

• 2011 (269) E.L.T.17 (Guj.)
C.C.E. Vs SHILPA COPPER WIRE INDUSTRIES.

4.8 This is a Revenue Neutral matter and Rebate should be allowed to them. This is in as much as, a 100% EOU is eligible to claim Refund of accumulated CENVAT Credit proportionately, to the extent, Inputs have gone in production of export goods, in terms of the provisions of Rule 5 of the CENVAT Credit Rules, 2004, read with, provisions of Notification, 5/2006-C.E. (MT.), dated 14.3.2006. This provision is fully applicable to 100% EOU and no one should have any apprehension about the same. This means that if, the Applicants, would have exported finished excisable goods, without payment of Central Excise Duty, as most of the 100% EOUs are doing, by using their B-17 Bond, CENVAT Credit would have been accumulated and the same, would have been refunded to them. This means that if, no Rebate of Central Excise Duty, paid on the export goods, then in that case, the Applicants, would have got back the said amount, through Rule 5 of the CENVAT Credit Rules, 2004. This means that there is no

Revenue loss to the Government and Rebate Claim being legitimately eligible to them, the same, should be allowed to them.

The following Decisions, are relevant:

• 2010 (254) ELT.467 (Tri-Ahmd.)
C.C.E., AHMEDABAD Vs KIRI DYES AND CHEMICALS LTD.

• 2008 (224) E.L.T. 573 (Tri.-Bang.)
ANZ INTERNATIONAL Vs C.C.E., BANGALORE.

• 2012 (276) ELT 9 (Guj.)
C.C.E., & C. VERSUS NBM INDUSTRIES.

5. A Personal hearing was held in this case on 22.01.2020 and Mr. Pravin Dhandharia, Chartered Accountant duly authorized by the applicant appeared for hearing. None appeared on behalf of the respondent department. He iterated that in view of their debonding application dated 09.02.2011, they had paid all the duties as per procedure and final exit from EOU was granted to them on 28.04.2011 and therefore, from 28.04.2011 they should be considered as DTA unit. He also stated that out of 20 Rebate claims 17 claims pertain to exports made prior to applicant's exit from EOU and in respect of 3 rebate claims the exports were made post applicant's exit from EOU and hence, rebate claims in at least post exit cases be allowed. In view of the same it was pleaded that the instant Revision Application be allowed and Order in Appeal be set aside.

6. In its additional submissions dated 24.01.2020 filed by the applicant it was contended as under :-

- The time chart of most relevant dates as below:

Dates of event	Description of the Event	Rebate Status
09.02.2011	De-bonding application done	
28.02.2011	After verification from department complete duty paid off	
02.03.2011	**EOU License Expiry Date**	License was never renewed , hence claiming of benefit of EOU was not possible
28.04.2011	Final Exit given from EOU	3 Rebate cases are for the period from final exit date from EOU till final Central Excise Registration was provided, i.e between 28.04 2011 to 28.06.2011
28.06.2011	Final Central Excise Registration was provided	

- The rebate claim was rejected on the ground that the unit remained as EOU till the final exit was granted on 28.04.2011, hence they should not have discharged Central Excise duty in terms of Notification No.24/2003 CE as amended from time to time, thereby totally ignoring the fact that license of EOU already expired on 02.03.2011 and the same was never renewed.
- If this is the case of the department, the said payment will have to be treated as voluntarily payment of excise duty and shall be treated as deposit which could not have been retained by the department and shall be allowed as refund as held in the various case laws. Some of the case laws are as under. Copies of the same are provided during hearing.

  (i) 2014(313)ELT 913(G0I) in the case of Ginni International Ltd;
  (ii) 2014(313)ELT 876 (GOI) in the case of Watson Pharma Pvt. Ltd;
  (iii) 2014(312)ELT 929 (GOI) in the case of Monomer Chemical Industries Pvt. Ltd.

- They in their appeal before the Commissioner (Appeals) submitted that the payment of duty be considered as voluntarily payment of duty, and be treated as deposit and has to be refunded to them. This fresh ground was arising due to the bona-fide omission while submitting before the Original adjudicating authority. However, the Commissioner (Appeals) while deciding the appeal refused to accept this ground as it being the fresh grounds and was not the part of original appeal. This contention of the Commissioner is not correct and legal in view of section 35A(2) of the Central Excise Act, 1944.
- In case refund is not granted in cash and decided to be given as re-credit, in Cenvat Credit, however post GST (i.e. w.e.f. 01.07 2017) the situation emerges is as under.
- In terms of Section 142(6)(a) of Central Goods and Service Tax Act 2017 (CGST), refund has to be given in cash provided the said amount is not carried forwarded in Trans - I. On this ground also the refund has to be granted in cash.

7. 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. The issue before the Government for consideration is whether the applicant is eligible for rebate claimed for goods exported on payment of duty period June 2011 to December 2011 when the applicant was still

considered a 100% EOU as it had not received final exit Order from the Assistant Development Commissioner of MEPZ.

8. Government observes that the rebate claims filed by the applicant for the goods exported on payment of excise duty between period March 2011 & April 2011 amounting to Rs.16,05,754/- were rejected by the original authority on the grounds that the status of the applicant was a 100% EOU till 28.04.2011; that the temporary Central Excise Registration was issued to the claimant on 09.05.2011 and original was issued on 28.06.2011 whereas the applicant had cleared goods for export prior to obtaining proper Central Excise registration; 100% EOU operates under Notification No. 24/2003 CE dated 31-3-2003 issued under Section 5A(1) of Central Excise Act 1944; that Section 5A(1A) of the Central Excise Act, 1944 does not give an option to EOUs to pay duty and thereafter claim rebate of the duty paid; that the applicant cleared the goods for export prior to obtaining proper Central Excise Registration and therefore rebate claims filed for the goods cleared on payment of duty till 09.05.2011 are liable for rejection. This Order in Original rejecting the rebate claims of the applicant was upheld by the Commissioner (Appeals), Surat-II vide impugned Order No. CCEA-SRT-II/SSP-287/u/s35(A) (3) (Final Order) dated 22.02.2013.

9. Government observes that as per EXIM policy a unit goes out of EOU scheme only when the final exit order is given by the Development Commissioner after obtaining a no-objection certificate from the jurisdictional Customs and Central Excise authorities on payment of applicable duties on all capital goods/raw materials/finished goods, etc., in stock and after canceling the customs licence. Further, Appendix 14-I-L of the Hand Book of Procedures of EXIM Policy states that till the date of final exit order the unit will continue to be treated as an EOU.

10. Government in the instant case observes that the final exit from EOU was granted to the applicant w.e.f. 28.04.2011. Hence, Government holds that the applicant was rightly considered as EOU unit by the lower authorities until issuance of Final Exit Order i.e. till 28.04.2011.

11. Government in this regard, also relies on Government of India Order No. 1604/2012-CX. dated 20-11-2012 in RE: Ginni International Ltd. [2014 (313) E.L.T. 913 (G.O.I.)]. In this case, while deciding the identical issue, of denial of rebate of duty paid on finished goods exported under Rule 18 of the Central Excise

Rules, 2002 read with Notification No. 19/2004-C.E. on the ground that the clearances made by the applicants were not liable to duty in terms of Notification No. 24/2003-C.E., since the clearances made prior to issue of debonding certificate shall be deemed to have been made by a 100% EOU, Government, in its above referred Order observed as under :

> 9.4 *As per Para 6.18 of FTP 2004-09 it is clearly mandated that after deposit of duties and obtaining 'No Dues Certificate' the unit would apply to Development Commissioner for final debonding and thereafter the Development Commissioner shall issue the final debonding order. As per Para 6.18 of FTP 2004-09 the unit got debonded on 31-3-2008 vide Development Commissioner (SEZ) final debonding order No. 4-211/94-100% EOU/2009, dated 31-3-2008. Applicant has also declared their status as 100% EOU in the relevant Shipping Bill. Government does not find much force in the contention of the applicants that issuing debonding order is procedural formality only. As such Government agrees with the findings of Commissioner (Appeals), that said 100% EOU got converted into DTA unit on 31-3-2008 after issuance of final debonding order by Development Commissioner, SEZ.*
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> *10. Government further notes that the Notification No. 24/2003-C.E., dated 31-3-2003 issued under Section 5A(1) of Central Excise Act, 1944, exempts goods manufactured by 100% EOU and cleared for export from whole of duty unconditionally. Therefore in view of provisions of sub-section (1A) of Section 5A, the applicant manufacturer has no option to pay duty. Applicant has contended that the said notification is conditional as the duty is payable on DTA clearances. Government notes that there is no condition for availing exemption from payment of duty on goods cleared for exports. Normally the 100% EOU has to clear all the goods manufactured by them for exports as per the EOU scheme. Such units can clear the goods in DTA with prior permission of Development Commissioner. Since there is no condition in the notification for availing exemption to goods manufactured by 100% EOU and cleared for export, the provisions of sub-section (1A) of Section 5A are applicable and no duty was required to be paid on such exported goods. The duty paid without authority of law cannot be treated as duty paid on the exported goods. As such rebate claim is not admissible in terms of Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Government finds support from the observations of Hon'ble Supreme Court in the cases of M/s. ITC Ltd. v. CCE reported as 2004 (171) E.L.T. 433 (S.C.), and M/s. Paper Products v. CCE reported as 1999 (112) E.L.T. 765 (S.C.) that the simple and plain meaning of the wordings of statute are to be strictly adhered to. CBEC has also clarified vide letter F.No. 209/26/09-CX.6, dated 23-4-2010 (para 2) as under:*
>
> *"The matter has been examined, Notification No. 24/2003-C.E., dated 13-3-2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in*

terms of Section 5A (1A) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

12. Government relying on EXIM Policy and also applying the rationale of the aforesaid GOI Order (which is also relied upon by the applicant), holds that the applicant who was 100% EOU till 28.04.2011, had no an option to pay duty and thereafter claim rebate of duty so paid in terms of Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Similar view is taken by Government in its GOI Order Nos. 1234-1236/2011-CX, dated 22-9-2011 in Re: Flamingo Pharmaceuticals Ltd. [2012 (283) E.L.T. 466 (G.O.I.)] and 695/2011-CX., dated 3-6-2011 in Re : Honeywell Automation (India) Ltd. [2012 (278) E.L.T. 401 (G.O.I.)].

13. As regards contention of the applicant that that out of 20 rebate claims 3 Rebate cases are for the period from final exit date from EOU till final Central Excise Registration was provided and hence may be considered for grant of rebate, Government observes that in respect of all the 20 rebate claims the applicant had cleared the goods for export on payment of duty through their Cenvat credit account under all 20 ARE-1s /shipping bills which bear the dates prior to 28.04.2011. Though the sailing date as per Mate's receipt in these 3 cases show the dates after 28.04.2011 i.e. the date applicant officially exited from EOU status, the goods were cleared for export (as evidenced from ARE-1s and Shipping bill dates) very much before 28.04.2011 when the applicant was an EOU unit. Hence, the applicant is not eligible for rebate in these cases also.

14. As held in all the GOI Orders discussed supra,, Government is of opinion that the duty paid in this instant case is to be treated as voluntary deposit made by the applicants at their own volition which is required to be returned to them in the manner it was initially paid, because the Government cannot retain the same without any authority of law as held by Hon'ble High Court of Rajasthan in the case of CCE, Jaipur v. Suncity Alloys Pvt. Ltd. reported as 2007 (218) E.L.T. 174 (Rajasthan H.C.). Therefore, government directs that the said amount may be allowed to be re-credited in their cenvat credit account. To this extent, Government modifies the Order in Appeal No. CCEA-SRT-II/SSP-287/u/s 35A(3) (Final Order) dated 22.02.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Surat-II.

15. As regards the applicant's contention that any amount allowable as re-credit of CENVAT credit has to be granted as cash refund in terms of Section 142(3) of the CGST Act, 2017, Government observes that the present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The provisions of the CGST Act, 2017 are not exercisable in revision.

16. The revision application is disposed off in the above terms.

17. So ordered.

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

ORDER No. 585 /2020-CX (SZ) /ASRA/Mumbai Dated 10·8·2020

To,

M/s. Dynemic Products Ltd.,
Plot No. 3709/6, 3710/1, 3710/3,
GIDC Industrial Estate,
Ankleshwar-393 002

Copy to:

1. Commissioner of CGST & Central Excise, Vadodara-II, GST Bhavan, Nr. Subhanpura Telephone Exchange, Subhanpura, Vadodara-390 023.
2. The Commissioner of CGST & Central Excise (Appeals) Vadodara, Central Excise Building, 6th Floor, Race course Circle, Vadodara-390 007.
3. The Deputy / Assistant Commissioner of Central Goods & Service Tax, Division-IX [Ankleshwar] GST Bhavan, Plot No.C/4/9, Behind Roshan Cinema, GIDC, Ankleshwar-393002.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file
6. Spare Copy.

ATTESTED

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