

**REGISTERED
SPEED POST**



F.NO. 195/845 to 1104/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....01/2/13

ORDER NO. 599-858/2013-CX DATED 28.06.2013 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 Orders-in-Appeal No. 447 to 706/2012/COMMR(A)/RBT/RAJ dated 24.07.2012 passed by Commissioner (appeals), Central Excise, Rajkot.

APPLICANT : (1) Welspun Corp, Ltd., Formerly known as M/s Welspun Gujarat Sthal Rohern Ltd.,
Village- Varamedi, Taluka Anjar,
Distt.- Kutch.
(2) M/s Welspun Trading Ltd.,
Village- Versamedi,
Taluka - Anjar, Distt- Kutch.

RESPONDENT : Commissioner of Central Excise & Customs, Rajkot.

ORDER

These revision applications have been filed by the applicants M/s Welspun Corp. Ltd., formerly known as M/s Welspun Guj. Stahl Rohren Ltd., Welspun City, Vill – Varsamedi,, Tal.- Anjar, Dist – Kutchh and M/s Welspun Trading Ltd. against common orders-in-appeal 447 - 706/2012/Commr(A)/RBT/RAJ dt. 24.07.2012 passed by the Commissioner (Appeals), Central Excise, Rajkot.

2. Brief facts of the cases are that the Applicants are units set up under Kutch Area Based Exemption Notification No.39/2001-CE, dated 31.07.2001, as amended and are engaged in manufacture of M. S. Spiral/Section pipes falling under Chapter 73 of First Schedule to Central Excise Tariff Act, 1985 (5 of 1985).

2.1 The Applicants were availing benefit of area based exemption under Notification 39/2001-CE dated 31.07.2001, as amended, and has opted for re-credit of Central Excise duty paid, through PLA, in the next month. The amount of refund by way of re-credit terms of Notification 39/2001-CE dated 31.07.2001 also included the portion of duty which was paid on goods cleared for export under claim of rebate under rule 18 of the Central Excise Rules, 2002. Subsequently, the Applicants filed rebate claims before the jurisdictional Assistant Commissioner, for such exports. However, Government observed that since the amount of duty paid through PLA on such exports was refunded in terms of Notification 39/2001-CE dated 31.07.2001, the rebate claims filed by the applicants were apparently not admissible. Therefore, show cause notices were issued for rejection of the said rebate claims on the ground that the duty paid on same goods cannot be refunded twice under different sections, that is, section 5A and section 11 B of Central Excise Act, 1944 and as refund was already granted by way of self re-credit, the goods became exempted and no rebate can be allowed on such exempted goods.

2.2 The jurisdictional Assistant Commissioner (JAC), in the case of Applicants No.1, vide Order-in-Original No. 875 to 877/ / AC/2007 -08 dated 27.06.2007, 03 to 07/AC/2007-08 dated 25.04.2007 and 1130 to 1331/R/AC/2007-08 dated 21.08.2007, rejected the said rebate claims amounting to Rs. 54,01,74,781/-. Being aggrieved by these Orders-in-Original, the respondents preferred appeals before the Commissioner (Appeals), Rajkot, who, in his Orders-in-Appeal No.269 to 270/2007 dated 26.07.07 and 373/2007 dated 20.12.2007, upheld the Orders-in-Original passed by the JAC rejecting the rebate claims. The applicants filed revision applications before the Revisionary Authority, against the said Orders-in-Appeal.

2.3 The jurisdictional Assistant Commissioner (JAC), in the case of the Applicant No.2 (M/s Welspun Trading Ltd.), vide Order-in-Original No. 13/AC/2006 dated 28.02.2007, rejected the said rebate claim amounting to Rs. 2,22,34,605/- filed by the Applicant. Being aggrieved by the Order-in-Original, the respondent preferred an appeal before the Commissioner (Appeals), Rajkot, who, vide Order-in-Appeal No.271/2007 dated 26.07.07, upheld the Order in Original passed by the JAC rejecting the rebate claim. The applicant filed Revision Applications before the Revisionary Authority, against the said Order in Appeal.

2.4 The retrospective amendment made in rule 18 of the Central Excise Rules, 2002, by virtue of section 88 and sixth schedule of the Finance Act, 2008 enabled rebate on exportation of the goods cleared from factory for Export between 01.03.2002 to 07.12.2006, from the units availing the area based exemption Notification 39/2001-CE dated 31.07.2001, for that portion of duty paid for which the refund was granted in terms of Notification 39/2001 - CE dated 31.07.2001. In pursuance to said retrospective amendment, the jurisdictional Assistant Commissioner of Central Excise in the case of Applicant No.1,

sanctioned the rebate claim of the Applicant for Rs. 54,01,74,781/- vide Orders-in-Original passed in 2008. The jurisdictional Assistant Commissioner of Central Excise also sanctioned the rebate claim of the Applicant No. (2) for Rs.2,22,34,605/-. The applicants request for withdrawal of Revision Applications was allowed by Joint Secretary (Revision Application) vide letter 22.08.2008..

2.5 The aforesaid Orders-in-original granting rebate were reviewed by the Jurisdictional Commissioner of Central Excise, Rajkot and appeals were filed before the Commissioner (Appeals), Central Excise, Rajkot on the ground that adjudicating authority cannot re-open the case, suo moto once it has been adjudicated by him by issuing appealable order.

2.6 The applicants made a fresh request to Joint Secretary (Revision Application) to allow restoration of all the withdrawn Revision Applications. But, the revisionary authority vide letter dated 31.10.2008 declined to accept the said request as there was no provision under the law to restore such withdrawn applications.

2.7 The Commissioner (Appeals), Rajkot, vide his Orders-in-Appeal No.02 to 259/2009/Commr.(A)/RAJ dated 09.01.2009 had allowed the appeals filed by the department and set aside all the Orders-in-Original of the jurisdictional Assistant Commissioner's granting rebate. Being aggrieved by the said Orders-in-Appeal dated 09.01.2009 and Joint Secretary (Revision Application) letter dated 31.10.2008, the applicants filed Writ Petition before Hon'ble Gujarat High Court, who vide order dated 23.09.2009 set aside the Order-in-Appeal No. 02-259/2009/Commr(A)/RAJ dated 09.01.2009 and Joint Secretary (Revision Application) letter dated 31.10.2008 and restored the revision applications before this authority. The revisionary authority decided the said Revision Applications No. 195/3,4 & 100/08-Cx vide G.O.I. Revision order No. 212-214/Cx dated 16.02.2010 in favour of applicants, holding that rebate

claims were admissible to them for the period upto 07.12.2006 in view of the retrospective amendment made in rule 18 vide section 88 of the Finance Act, 2008.

2.8 In pursuance to Order-in-Appeal No. 02 to 259/2009/Commr(A)/RAJ dated 09.01.2009, show cause notices dated 12.02.2009 were issued to applicants for recovery of erroneously sanctioned rebate along with interest. The Additional Commissioner vide his impugned order Nos 9 & 10/ADC/11 dated 25/26.07.2011 dropped the proceedings initiated under the said show cause notices.

2.9 The impugned orders dropping show cause notices for recovery of sanctioned rebate claims were reviewed by the Commissioner and appeals were filed before the Commissioner (Appeals), Central Excise, Rajkot on the following grounds:

(a) The lower authority has failed to observe that the Hon'ble High Court vide order dated 23.09.2009 had restored the appeals of the said party before the Revisionary Authority and also set aside the OIA No. 02 to 259/2008/Comm(A)/Raj dated 09.01.2009 passed by the Commissioner (Appeals), Rajkot. Further, the Hon'ble High Court directed the Commissioner (Appeals), Rajkot to wait till the revision applications are decided by the Revisionary Authority afresh, before deciding the appeal of the department.

(b) It appears that the lower authority has not appreciated the facts that the Hon'ble High Court vide its order dated 23.09.2009 has restored the appeals of the respondents before the Revisionary Authority and also set aside the OIA No. 259/2008/Commr(A)/Raj dated 09.01.2009. The Revisionary Authority vide its order No. 212-214/10 dated 16.02.10 has only set aside the first set of Order-in-original and Order-in-Appeal and has ruled that the rebate is allowed up to the period 07.12.2006. The Revisionary

authority has never gone into the merits of the second order of the commissioner (A) dated 09.01.2009. It is seen that the Commissioner (Appeals) is yet to decide the appeal of the Department based on the directions of the Hon'ble High Court. The adjudicating authority vide impugned order decided the above said show cause notice dated 12.2.2009 prior to the decision of Commissioner (Appeals), Rajkot. Thus, the act of the adjudicating authority of disposing the said SCN dated 12.02.2009 when the commissioner (A) is yet to decide the merits of the case as directed by the high court is not only premature but against the law and therefore requires to be set aside.

(c) The issue involved before the revisionary authority was whether the units availing the benefit of notification No. 39/2001-CE dt. 31-07-2001 were entitled to rebate of duty paid on the goods exported. In that context, the revisionary authority restored the appeal of the party and decided the issue in favour of the party by holding that rebate claims are admissible to them for the period up to 07.12.2006. But the issue before the Commissioner (Appeals) was whether the adjudicating authority can suo mota reopen his own earlier orders and grant rebate when in the first instance he had rejected the same. This has already stated above has not yet been decided by the commissioner (A) and hence the order of the additional commissioner needs to be set aside.

(d) It also appears that the action of the lower authority dropping the demand treating the suo moto sanctioned refund as proper is illegal as the grounds on which suo moto sanction of rebate claim was contested by the Department still continues to exist and are yet to be decided by the appellate authority i.e. the Commissioner (Appeals), Rajkot .

3. Commissioner(appeals) vide impugned Orders-in-Appeal dated 24.07.2012 allowed the appeals of the department and decided the cases in favour of department.

4. Being aggrieved by the impugned Order-in-Appeal, the applicants have filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following common grounds:

4.1 The Commissioner (Appeals) erred in passing the impugned order without granting proper opportunity of personal hearing. The Applicants submit that notice for personal hearing was not issued to the Applicants before deciding the Appeals filed by the Department challenging rebate orders sanctioned in favor of the Applicants. In the absence of giving proper opportunity of the personal hearing, action of the Commissioner (Appeals) deciding the appeals of the Department ex-parte is contrary to the provisions of principles of natural justice and on this ground itself, the impugned order cannot be sustained.

4.2 The Commissioner (Appeals) erred in holding in the impugned order that since the Applicants withdrew the Revision Application from the Revisionary Authority, no any proceedings was pending while sanctioning the rebate claims by the Adjudicating Authority. The Applicants submit that they had never withdrawn revision application from the Revisionary Authority and therefore, the question for withdrawal of Revision Application cannot arise in the present case.

4.3 The Applicants submit that their rebate claim was sanctioned in their favor in terms of the amendment came into force by way of Section 88 of the Finance Act, 2008 while Show Cause Notices were pending for adjudication. The Applicants submit that no any other application before the Revisionary Authority was pending except for challenging Order-In-Appeal Nos. 2 to 259/2009/Commr(A)/Raj dated 09.01.2009.

4.4 The Commissioner (Appeals) erred in holding in Para 10 of the impugned order that the Applicants did not challenge Order-in-Appeal dated 09.01.2009.

The Applicants submit that the said Order was challenged before the Revisionary Authority and therefore, the finding of the impugned order is contrary to the facts of the case. The Commissioner (Appeals) failed to appreciate the fact that the Department filed the appeal against Orders-in-Original passed by the Adjudicating Authority for sanctioning rebate claim on the premise that refund cannot be sanctioned suo moto without challenging the withdrawal order. The Commissioner (Appeals) ought to have appreciated the fact that there was no withdrawal order in the Applicants' case and therefore, the impugned order is erroneous and contrary to the facts of the case.

4.5 The Commissioner (Appeals) erred in giving the finding that the Original Authority sanctioned rebate claim even though no any proceeding was pending to give effect of retrospective amendment brought under the Finance Act, 2008. The Commissioner (Appeals) ought to have appreciated the fact that show cause notice alleging for denial of rebate claim was pending when amendment was introduced through the Finance Act, 2008 and therefore, the Adjudicating authority correctly sanctioned rebate claims. Further, it is submitted that on the date of introduction of Section 88, Show Cause Notice of the Applicants was pending. The Finance Act, 2008 came into force on 10.05.2008. As the proceedings were not completed, the question of non-applicability of provision of Section 88 of Finance Act, 2008 does not arise at all. As such both on the dates of introduction of Section 88 and date of sanction of rebate claim, the rebate application was pending for consideration, the question of their being completed the proceedings does not arise at all.

4.6 The Commissioner (Appeals) misdirected himself in law and on the facts and by wrongly applied the judgment of Hon'ble Supreme Court in Mafatlal Industries Ltd. Vs. Union of India 1997 (89) EL T 247 which is not at all applicable in the facts and circumstances of the present case.

4.7 The fact that Section 88 has been given over-writing effect over all orders and decisions of Courts, Tribunals and other Authorities means that the same shall nullify such orders whether or not pending and whether or not the same attained finality so long as the goods manufactured and arrived under the said notification were exported between the period covered therein. Commissioner (A) failed to appreciate that in the present case the rebate was granted by the Assistant Commissioner within the four corners of the law and this is also supported by the provisions of the Finance Act, 2008. In view of the above the granting of the rebate cannot be termed to be erroneous at all. Inasmuch as the grant of rebate was not erroneous there is no question of recovery thereof by means of filing appeal against the Orders sanctioning the same. The impugned Order failed to consider the above submission and, therefore, the same needs to be set aside.

5. Personal hearing was scheduled in these case on 15.05.2013 and 25.06.2013. The personal hearing held on 15.05.2013 was attended by Shri Sushanth Moorthy, Advocate for Economic Law Times Practice, on behalf of both the applicants. He reiterated the submissions made in their revision applications. The respondent department did not attend any of the above said hearings. However, department has filed their written reply reiterating the finding in impugned Orders-in-Appeal.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. The applicants engaged in the manufacturer of M.S. Spiral/section pipes, has availed the benefit of area based exemption notification No. 39/01-CE(NT) dated 31.07.2001 and opted for recredit of Central Excise duty paid through PLA in the next month. The amount of refund by way of recredit in terms of Notification No. 39/01-CE(NT) dated 31.07.2001 also included the portion of duty which was paid on goods cleared for export under claim of rebate under Rule 18

of Central Excise Rules, 2002. Subsequently, the applicants filed rebate claims before jurisdictional Assistant Commissioner of Central Excise. Show cause notices were issued proposing rejection of rebate claims on the ground that amount of duty paid through PLA on such exported goods was already refunded to them by way of self recredit in terms of Notification No. 39/01-CE(NT) dated 31.07.2001. The adjudicating authority rejected the said rebate claims. Being aggrieved by the said orders-in-original rejecting the applicant's rebate claims, the applicants filed appeals before Commissioner (Appeals), who rejected the same vide orders-in-appeal No.269-270/2007 dated 26.7.2007, 271/2007 dated 26.7.07 and 373/2007 dated 20.12.2007. The applicants filed revision applications before Joint Secretary (Revision Application). Meanwhile, the Rule 18 of Central Excise Rules, 2002 was amended vide section 88, sixth schedule of Finance Act, 2008 with retrospective effect (01.03.2002 to 07.12.2006) to allow such rebates on goods exported upto 07.12.2006. The applicants requested to withdraw said revision application filed before this authority. Applicant's request for withdrawing the revision application was allowed by their authority vide letter dated 22.08.2008. Subsequently, the original authority impugned orders-in-original of 2008 sanctioned the rebate claims in terms of above said amendment vide Section 88 sixth schedule of the Finance Act, 2008. The department reviewed the said rebate sanction orders and filed appeals before Commissioner (Appeals) on the ground the original authority has no power to reopen the case suo moto once it has been adjudicated & rejected by him by issuing an appealable order. Commissioner (Appeals) vide orders-in-appeal No.2 to 259/2009/Comm(R)/ RAJ dated 09.01.2009 allowed the department's appeals by setting aside impugned rebate sanction orders of the original authority. The show cause notices dated 12.02.2009 were issued for recovery of sanctioned rebate claims, pursuant to said orders-in-appeal dated 09.01.2009. Applicant made another request for restoration of earlier revision applications. But, the revisionary authority vide letter dated 31.10.2008 declined to accept the said request as there was no provision under law to restore such withdrawn

applications. Being aggrieved by the said orders-in-appeal dated 2.9.2009 and the revisionary authority letter dated 31.10.2008, the applicants filed writ petitions before the Hon'ble Gujarat High Court who vide order dated 23.9.2009 restored the above said revision applications No.195/3,4,100/08-RA-Cx and directed this authority to decide the same within 3 months time. The Hon'ble High Court also set aside the said orders-in-appeal No.2 to 259/2009/Comm(R)/RA dated 9.1.2009 and directed that it will be open for the Commissioner (Appeals) to decide the appeals contained in said orders-in-appeal dated 9.1.2009 after the decision in Revision Applications. This authority decided the said revision applications vide G.O.I. Revision Order No.212-214/10-Cx dated 16.2.2010, holding that in view of retrospective amendment of Rule 18 of Central Excise Rules, 2002 vide section 88 (sixth schedule) of Finance Act, 2008, the rebate claims were admissible to the applicants. Thereafter the Additional Commissioner of Central Excise, Rajkot vide orders-in-original No. 9 & 10/11 dated 25/26.07.2011 dropped the show cause notices issued for the recovery of sanctioned rebate. The department filed appeals before Commissioner (Appeals) against the said two orders-in-original dropping show cause notice issued for recovery of already sanctioned rebate claims. Commissioner (Appeals) vide impugned orders-in-appeal No. 447 to 706/2012/Commr(A)/RBT/RAJ dated 24.7.2012, decided the department appeals, first relating to orders-in-original dated 25/26.07.2011 passed by the Additional Commissioner dropping show cause notices and second against sanction orders of 2008 (pertaining to earlier order-in-appeal No.02 to 259/2009/Commr(A)/RAJ dated 9.1.2009). Commissioner (Appeals) decided the cases in favour of department and set aside all these Orders-in-Original. The applicants have now filed these revision applications on grounds mentioned in para (4) above. Meanwhile, the department initiated action for recovery of sanctioned rebate claims pursuant to impugned orders-in-appeal dated 29.7.2012. The applicants filed Special Civil Application No.14733 of 2012 and 14735 of 2012 against the said action of recovery of sanctioned rebate. The Hon'ble High Court vide order dated

12.12.2012 restrained the department from taking further action of recovery of sanctioned drawback till the final disposal of these impugned revision applications.

8. Government observes that the Commissioner (Appeals) decided the cases vide impugned orders-in-appeal dated 24.07.2012 in favour of the department by holding that the jurisdictional adjudicating authority having rejected the rebate claims initially, cannot reopen his own orders suo moto and sanction the rebate to the applicants and set aside the impugned Orders-in-Original No. 9 & 10/11 dated 25/26.07.2011 and all rebate sanction orders of 2008 (which were also earlier set aside vide Orders-in-Appeal No. 2-259 dated 09.01.2009).

8.1. In first round of revision while deciding the revision application of the applicant vide G.O.I. Revision Order No.212-214/10-Cx dated 16.2.2010 Government had observed as under:

"11. Government observes that the department has decided to file SLP in the Hon'ble Supreme Court against the order of the Hon'ble Gujarat High Court in which the Hon'ble High Court has directed the revisionary authority to decide the cases afresh within 3 months of the receipt of certified copy of the order. As SLP has not been filed in the Hon'ble Supreme Court so far and no stay on the orders of the Hon'ble High court has been given, so this authority is left with no other alternative but to decide the cases within the prescribed time limit.

*12. Govt. observes that the Rebate claim were rejected on the basis of the double benefit i.e. refund of the Excise Duty under the **area based** Notification (39/2001-CE) and under Rule 18 of the Central Excise Rules 2002, as rebate on the exported goods. As the issue has been settled by Finance Bill 2008 under clause 88 thereby amending Rule 18 of Central Excise rule 2002 with retrospective effect (01-03-2002 to 07-12-2006). The said amendment is reproduced below for ready reference:-*

"88 Amendment of Central Excise Rules; 2002 - (1) In the Central Excise Rules, 2002, made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, rule 18 thereof as published in the Official Gazette vide

notification of the Government of India in the Ministry of Finance (Department of Revenue), number G.S.R. 143(E), dated the 1st March, 2002 shall stand amended and shall be deemed to have been amended retrospectively in the manner specified in column (2) of Sixth Schedule on and from the corresponding date specified in column (3) of that Schedule against the rule specified in column (1) of that Schedule.

(2) Notwithstanding anything contained in any judgment, decree or Order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done at any time during the period commencing on and from the 1st day of March, 2002 and ending with the 7th day of December, 2006 under the rule as amended by sub-section(1), shall be deemed to be and always to have been, for all the purposes, as validly and effectively as if the amendment made by sub-section (1) had been in force at all material times.

(3) For the purposes of sub-Section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, retrospectively, at all material times".

Explanation - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence, which would not have been so punishable if this section had not come into force.

THE SIXTH SCHEDULE
(See Section 88)

Provisions of the Central Excise Rules, 2002, to be amended	Amendment	Period of effect of amendment
(1)	(2)	(3)
Rule 18 of the Central Excise Rules, 2002 as published vide notification number GSR 143(E), dated the 1 st March, 2002.	In the Central Excise Rules, 2002, in Rule 18 before the Explanation, the following proviso shall be inserted, namely:- "Provided that the rebate of duty paid 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 notifications of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 508(E), dated the 8th July, 1999 [32/99-Central Excise, dated the 8th July, 1999] or number G.S.R. 509(E), dated the 8th July, 1999[33/99-Central Excise; dated the 8th July,1999], number G.S.R. 565(E), dated the 31st July, 2001, or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs(Department of Revenue) number GSR 764(E), dated the 14th November, 2002 [56/2002-CE dated 14-11-02], number GSR 765(E), dated the 14th November,2002 [57/2002-Central Excise dated the 14th November, 2002. Notification of the Government of India in Ministry of Finance (Deptt. of Revenue) Number GSR 513 (E), dated the 25th June	1st day of March, 2002 to 7 th day of December, 2006 (both days inclusive)

	2003 [56/2003-Central, Excise dated 25th June 2003], number G.S.R. 717 (E) dated the 9 th September, 2003 [71/2003-Central Excise, dated the 9 th September 2003."	
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13. From the records, it is observed that the some of rebate claims pertains to the period after 7-12-2006. The applicant has made a request for the sanction of rebate claims prior to 7-12-2006, for which they are otherwise eligible as per the amended Rule 18 of Central Excise Rules 2002 quoted above. The rebate for the period after 7.12.06 is not admissible as this period is not covered under the amended Rule 18 of the Central Excise Rules, 2002 and as the CBEC vide its circular F.No. 209/11/2006 dated 08.12.06 has clearly clarified that "duty paid" used in Rule 18 does not include that portion of duty which is subsequently refunded to the manufacturer. In view of this, the applicant having already obtained refund on the duty paid goods under area-based exemption, the goods are exempted and rebate is not admissible under Rule 18 of the Central excise Rules, 2002 for the rebate claims pertaining to period after 7.12.06.

14. In view of said amendment in Rule 18 of Central excise Rules, 2002, effected retrospectively vide Section 88 of Finance Act, 2008, rebate claims are admissible to the applicants for the period upto 7.12.06. Therefore, the impugned orders-in-original and orders-in-appeal are set aside to this extent and revision applications also succeed to above extent."

8.2 In the above said G.O.I. order, the rebate claims for the period prior to 07.12. 2006 were held admissible by setting aside the impugned Orders-in-Appeal i.e. 269-270/07 dated 26.07.2007 and 373/07 dated 07.07.2007. Commissioner (appeals) in his Orders-in-Appeal dated 24.07.2012 has neither considered the amendment of Rule 18 of Central Excise Rules, 2002 as made vide section 88 sixth schedule of Finance Act, 2008 nor G.O.I. Revision order No. 212-214/10-Cx dated 16.02.2010 which have granted the benefit of rebate of duty on said exported goods for the period upto 07.12.2006.

8.3 In impugned orders-in-appeal, the appellate authority has observed that the Revisionary Authority had not gone into aspect of merit that the jurisdictional Assistant Commissioner cannot reopen his own order rejecting rebate claims of the applicant and subsequently, allow sanction of rebate.

8.4 Government observes that the said issue was not involved in the revision applications in question i.e. Revision Application No. 195/3,4 & 100/08-RA, and therefore the said issue was not considered. This issue is raised in the present revision applications and as such it is to be considered as per law. In this regard, Government notes that it is a well settled legal position on this issue that after passing an appealable order, the authority become functus officio and can not re open the case suo moto to re-decide the same. The original authority had no option to reopen the rebate claim which were already rejected and rejection order was upheld by Commissioner (appeals). The provision of section 88(2) of Finance Act, 2002 do not permit the authority reopen the decided cases suo moto. The observation of Commissioner (appeals) as contained in para 12.2 of the Order-in-Appeal are reproduced below:-

"12.2 On careful reading of the amended provisions in rule 18 supra, it is quite palpable that said provisions of retrospective amendment introduced in Rule 18 of Central Excise Rules only validates and legitimize or protects the action already taken, in consonance with the amendment, as if the law existed on the relevant date. The Retrospective amendment does not confer any power to the original authority to undo or alter any action already taken or completed by him. The words and phrases employed in sub-section (2) of section 88 of the Finance Act, 2002 categorically emphasize that any action taken or done or purported to have been done at any time during the period commencing on and from the 1st day of March, 2002 and ending with the 7th day of December, 2006 under the rule as amended by sub-section (1) shall be deemed to be and always to have been, for all the purposes, as validly and effectively taken or done, as if the amendment made by sub-section (1) had been in force at all material times. The amendment, thus, emphasized that if any benefit had been extended or allowed before this retrospective amendment, it protects the action already taken during the said period, as if validly and effectively taken during the aforesaid material period between 01.03.2002 to 07.12.2006. At the cost of reiterating, it has to be observed that it is not intended to undo an action taken by the lower authority, let alone re-opening of cases.

Any retrospective amendment enacted by the legislature is intended to validate and to decide the case pending at various levels whether it is before adjudicating authority or before appellate level. Had the intention of the amendment in Rule 18 of Central Excise Rules, been to start the proceedings of rebate/refund claims afresh from scratch from the level of the lower authority/Assistant-Deputy Commissioner, it would have expressly stated therein. However, there is no such provisions in the amendment in the said rule."

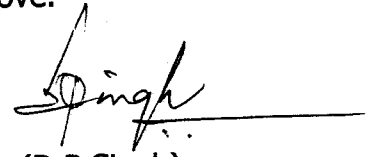
Government is in agreement with these findings of Commissioner (appeals) and holds that the provisions of section 88(2) of Finance Act, 2008 do not mandate the reopening of already decided cases suo moto as is done in this case by original authority. Therefore, Government do not find any legal infirmity in the impugned Orders-in-Appeal w.r.t. said issue and upholds the impugned Orders-in-Appeal dated 24.07.2012 to this extent.

8.5 As far as the Orders-in-Appeal relating to Orders-in-Original No. 9 & 10/11 dated 25/26.07.2011 is concerned, the Government is not in agreement with Commissioner (appeals). The show cause notices dated 12.02.2009, were issued in pursuance to Order-in-Appeal dated 09.01.2009 for recovery of wrongly sanctioned rebate claims. The said show cause notices were dropped by Additional Commissioner of Central Excise vide Order-in-Original No. 9 & 10/11 dated 25/26.07.2011, in the light of G.O.I. Revision order No. 212-214/1-Cx dated 16.02.2010, where under said rebate claims were held admissible. The adjudicating authority has acted in accordance with law and rightly dropped the said show cause notices. The Commissioner (appeals) has erred in setting aside the said Orders-in-Original dated 25/26.07.2011 as this said show cause notices did not legally survive in view of G.O.I. Revision order dated 16.02.2010. Therefore, Government set aside the impugned Orders-in-Appeal dated 24.07.2012 to this extent and restores the impugned Orders-in-Original No. 09 & 10/ADC/11 dated 25/26.07.2011.

9. Government observes that the other aspect of issue regarding admissibility of rebate claims to the applicants in view of retrospective amendment in Rule 18 of Central Excise Rules, 2002 vide section 88/sixth schedule of Finance Act, 2008 and GOI Revision Order No. 212-214/10-Cx dated 16.02.2010 is completely ignored by Commissioner (appeals). Any error committed by departmental officer (as happened in this case) can not be a ground to hold back the legitimate rebate claims benefits of the applicants. While correcting the illegality involved in the matter, one can not loose sight of other vital aspect of extending benefit of rebate claims already held admissible. As such, the said rebate claims, were required to be sanctioned by original authority expeditiously in accordance with the law in pursuance to G.O.I. Revision orders dated 16.02.2010. Hence, the original authority is directed to take further appropriate action in the matter as per law. The impugned Orders-in-Appeal dated 24.07.2012 are modified to above extent.

10. Thus, the revision applications are disposed off in terms of above.

11. So, ordered.



(D P Singh)

Joint Secretary(Revision Application)

(1) M/s Welspun Gujarat Sthal Rohern Ltd.,
Village- Varamedi, Taluka Anjar,
Distt.- Kutch.

(2) M/s Welspun Trading Ltd.,
Village- Versamed, Taluka – Anjar,
Distt- Kutch.

(Attested)




(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. 599-858 /2013-Cx dated 28/06/2013

Copy to:

1. Commissioner Central Excise & Customs, 6th Floor, Central Excise Bhavan, Race Court Ring Road, Rajkot-360 001.
2. Commissioner of Central Excise (Appeals), 2nd Floor, Central Excise Bhavan, Race Court Ring Road, Rajkot-360 001.
3. Additional Commissioner of Central Excise, Central Excise Bhavan, Race Court Ring Road, Rajkot-360 001.
4. Economic Laws Practice, 801, Abhijeet – III, Nr. Mithakhali Cross Road, Opp, Mayors Bunglow, Ellisbridge, Ahmedabad – 380 006.
- ✓ 5. PS to JS(RA)
6. Guard File.
7. Spare Copy


(Bhagwat P. Sharma)
OSD (RA)