

REGISTERED
SPEED POST



F.NO. 372/61/DBK/2018-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..19/3/21

Order No. 62/2021-Cus dated 19-3-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India under section 129DD of the Custom Act, 1962.

Subject : Revision Applications filed under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 79/CE/RKL-GST/2018 dated 30.07.2018, passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Bhubneshwar.

Applicant : M/s Vedanta Limited

Respondent : Commissioner of CGST & Central Excise, Roukrela

ORDER

Revision Application No. 372/61/DBK/2018-RA dated 25.10.2018, has been filed by M/s Vedanta Limited, SEZ unit, (hereinafter referred to as the applicant) against the Orders-in-Appeal No. 79/CE/RKL-GST/2018 dated 30.07.2018, issued by the Commissioner of CGST, Central Excise & Customs (Appeals), Bhubaneswar. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has allowed the appeal of Assistant Commissioner, Central Excise, Customs and Service Tax, Sambalpur-I Division, Sambalpur, (hereinafter referred to as the respondent) on the ground that the assessment is still provisional with regard to the value of the goods and drawback can not be granted unless the assessment is finalized.

2. Brief facts of the case are that the applicant filed drawback claims, in respect of various items such as Refractory Mortar, Paste, TYP cold Ramming, Barcode Sticker, Resistor Coke 3-6 MM, Aluminium Alloy billet, Clay Refractory, Magnesium ingots, Ceramic Foam, Fused Alumina, Trimetallic Clad, Soda Ash Briquette, etc imported by them from the DTA Units, with the jurisdictional SEZ authorities, in terms of Rule 30(8) of SEZ Rules, 2006 read with the Circular No. 43/2007-Cus dated 05.12.2007 issued by the Board. The said claims were sanctioned by the jurisdictional specified officer, Vedanta Limited-SEZ, Jharsuguda, Odisha. Aggrieved, the respondent department filed appeals before the Commissioner (Appeals) on the ground that the value of the impugned goods in question cleared by the DTA supplier is not final and drawback can be allowed only after finalization of the value

of the goods supplied to the applicant by the excise authorities and, therefore, the drawback claims filed by the applicant were premature. Commissioner (Appeals), vide the impugned Order-in-Appeal, allowed the appeals on the ground that the jurisdictional authority has granted the drawback erroneously as the assessment in question is not final and unless assessment is finalized the drawback cannot be sanctioned.

3. The instant revision applications have been filed mainly on the ground that the amount of drawback is calculated on the FOB price, which is the price contracted in the purchase order. The same rate is also mentioned in the invoices and ARE-1. DTA supplier had not opted for provisional assessment for determining the excisable value of the goods transferred to the sister unit. Thus, the amount of drawback will not change even after final assessment of the value for the excise purposes; that final assessment of the said provisional value has been completed; that drawback is being claimed by them at All Industry Rate of Drawback specified in the Drawback Schedule which is calculated at a percentage of FOB value and, therefore, the provisional assessment with respect to the value of the goods cleared by the supplier to the applicant has no relevance in determining the drawback amount; that final assessment of the Bill of Export has been completed.

4. Personal hearing, in virtual mode, was held on 02.02.2021, which was attended by Sh. Rahul Tangri, Advocate, and Sh. Dipankar Majumdar, Advocate, on behalf of the applicant. Written synopsis filed by the applicant, on 02.02.2021, has been

taken on record. Sh. Tangri stated that in this case the Bills of Export were initially provisionally assessed which were subsequently finally assessed on different dates. Upon being asked, he undertook to furnish the details (including orders if any passed separately) regarding the finalization within 2 weeks. The position in respect of Central Excise assessment shall also be furnished within 2 weeks. Sh. Tangri requested for another hearing after submissions of documents by them. Applicant submitted their written submissions on 18.02.2021 wherein it is stated that the provisional assessment in Bills of Export was only in respect of quantity and the FOB price of the supplied products was same in both provisionally and finally assessed Bill of Exports. It is also submitted that the goods covered under the present revision application were not provisionally assessed under the Central Excise Act, 1944. Another hearing was granted on 18.03.2021, which was attended by Sh. Rahul Tangri, Advocate, and Sh. Dipankar Majumdar, Advocate, on behalf of the applicant. Sh. Tangri submitted that in this case the Central Excise assessment in respect of the exported goods was final and Bills of Export which were earlier provisionally assessed were also finalized. Hence, there was no bar in granting drawback. He further stated that the Commissioner (Appeals) has incorrectly recorded that the Central Excise assessment was provisional and has accordingly proceeded to decide the case against them.

5. Government has examined the matter. It is observed that the drawback has been claimed by the applicant herein on the basis of exports made to them by the DTA units. The Commissioner (Appeals) has allowed the appeals of the respondent

department on the ground that the value (of goods exported to the applicant by the DTA units) assessed by the Central Excise authority was provisional and not final. However, it is contended that the value assessed by the Central Excise authorities in respect of the goods supplied to DTA unit in the instant case was final at the first stage itself. The value was provisionally assessed only in respect of the item calcina whereas in the instant case the items supplied were Refractory Mortar, Paste, TYP Cold Ramming, Barcode Sticker, Resistor Coke 3-6 MM, Aluminium Alloy Billet, Clay Refractory, Magnesium Ingots, Ceramic Foam, Fused Alumina, Trimetallic Clad, Soda Ash Briquette, etc. Hence, the finding of Commissioner (Appeals) that the value was provisionally assessed under the Central Excise Act, 1944 is factually incorrect. Further, the Customs authorities have provisionally assessed the Bill of Exports only in respect of quantity and not value. Later on, these Bills of Exports were finalized by the Customs authorities only in respect of quantity mentioned in the Bills of Export and there was no change in the FOB value per unit of the items exported. On the other hand, the Commissioner (Appeals) has, in paras 5.2 and 5.3 of the impugned OIA, recorded that the applicant herein had imported goods from DTA on provisional prices as per the relevant Purchase Orders. The documents produced before the Government, and, as per contentions based thereon, the Central Excise assessment was never provisional and the Customs authorities have also finalized the assessment. In this background, it would be appropriate if the position is factually verified, with reference to original documents and records, and the matter is decided de-novo based upon such verification.

5. Accordingly, the impugned Order-in-Appeal is set aside and revision application is allowed by way of remand to Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Vedanta Limited, SEZ Unit,
Bhurkhamunda,
Jharsuguda (Odisha) – 768202

Order No. 62/21-Cus dated 19-3-2021

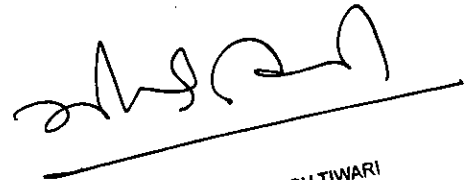
Copy to:

1. The Commissioner of CGST & Central Excise, Rourkela, KK 42, Civil Township, Rourkela - 769102.
2. Commissioner of CGST, Central Excise & Customs (Appeals), Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 7, Odisha
3. Specified Officer, Vedanta Limited-SEZ, Jharsuguda, Odisha
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

Attested

(Nirmla Devi)

Section Officer (REVISION APPLICATION)



आशीष तिवारी / ASHISH TIWARI
सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi