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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/64/2013-RA / 5518 Date of Issue: 21.09.2020

ORDER NO. 623/2020-CX (WZ)/ASRA/MUMBAI DATED 14.09.2020 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 McCom Industries India Pvt. Ltd.

Respondent : Commissioner(Appeals), Central Excise, Mumbai Zone-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No BR/201-202/Th-I/2012 dated 25.09.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by M/s McCom Industries India Pvt. Ltd., Gala No. 01 to 04, Kailash Compound, C/o Tulsa /compound, Anjur Road, Near Valpada Pipe Line, Valgaon, Bhiwandi, Thane-421302 (hereinafter referred to as "the Applicant") against Order-in-Appeal No BR/201-202/Th-I/2012 dated 25.09.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. Briefly the Applicant, holder of Central Excise Registration No. AAECM5983BEM002 had filed 05 rebate claims on 21.02.2012 for an amount Rs. 2,37,083/-(Rupees Two Lakhs Thirty Seven Thousand Eighty Three Only) under Rule 18 of the Central Excise Rules, 2002 towards the Central Excise duty paid on the excisable goods cleared by them to M/s Vishay Semiconductor India Ltd. a unit located at SEEPAZ, Andheri(East), Mumbai. On processing the claims, the Applicant was issued Show Cause Notice dated 28.02.2012. The Deputy Commissioner(Rebate), Central Excise, Kalyan-I Division vide Order-in-Original No. R-99/2012-13 dated 01.05.2012 rejected the rebate claims on the grounds that the clearances to SEZ is not export in terms of Rule 18 of Central Excise Rules, 2002 and the Applicant had not filed Bill of Export which is necessary for claiming the export entitlement i.e. rebate under Rule 18 of Central Excise Rules, 2002 read with sub-rule (3) of Rule 30 of Special Economic Zones Rules, 2006. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No BR/201-202/Th-I/2012 dated 25.09.2012 rejected their appeal and upheld the Order-in-Original.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

(i) The Commissioner(Appeals) had erred in not taking into consideration that fact that the goods in question had been sent and received in SEEPAZ, Andheri(East), Mumbai, which is a duty free zone as per the policy of SEZ as laid down by the Government of India.

(ii) The goods dispatched at any SEZ is an Export of goods as per laid down policy of the Government. The judgment as cited in the Order-in-Appeal by the Commissioner(Appeals) are out of context and not applicable to the facts and circumstances of the matter.

(iii) The basic fact in the matter is not in dispute that the goods in question had been cleared to and received in a recognized SEZ and the Applicant had paid Central Excise duty on these goods.

(iv) The Commissioner(Appeals) erred in holding that clearances to SEZ is not export in terms of 18 of Central Excise Rules, 2002. This is an erroneous assumption and clearly against the clear policy laid down by the Government of India to encourage the SEZ units to procure materials and goods from domestic manufacturers rather than outside countries. This saves a huge amount of foreign exchange for the country.

(v) It is the interest and duty of all stake holders (including the executive wing of GOI) to implement the settled policy of the government of India as clearly laid down in the SEZ Rules and should not be subjected to some wrong assumptions and presumptions.

(vi) The Commissioner(Appeals) has erred in relying upon case laws since these are related to 'import' duties under the Customs Act and not at connected with the issue at hand which is of 'export' of goods and Rebate in terms of 18 of Central Excise Rules, 2002.

(vii) The department in similar cases and situations are granting refund/ rebate of duty on goods sent to SEZ. In this they relied in the case of M/s Vatco Eelec-Power Pvt. Ltd.

(viii) They prayed that the Order-in-Appeal be set aside.

4. Personal hearing in the case was held on 03.10.3019. Shri Aniket Jain, Authorized signatory appeared on behalf of the Applicant. The Applicant submitted written submission 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 Orders-in-Original and Orders-in-Appeal.

6. In terms of Para 5 of Board's Circular No. 29/2006-Cus., dated 27-12-2006, the supply from DTA to SEZ shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to fulfillment of conditions laid thereon. Government further observes that Rule 30 of SEZ Rules, 2006 prescribes for the procedure for procurements from the Domestic Tariff Area. As per sub-rule (1) of the said Rule 30 of SEZ Rules, 2006, DTA may supply the goods to SEZ, as in the case of exports, either under Bond or as duty paid goods under claim of rebate under the cover of ARE-1 form.C.B.E. & C. has further clarified vide Circular No. 6/2010-Cus., dated 19-3-2010 that rebate under Central Excise Rules, 2002 is admissible to supplies made from DTA to SEZ and directed the lower formations to follow Circular No. 29/2006-Cus., dated 27-12-2006. The said clarification is with respect to C.B.E. & C. Circular No. 29/2006-Cus., dated 27.12.2006, as well as to Rule 18 of Central Excise Rules, 2002. So this clarification applies to all the rebate claims filed under Rule 18 of Central Excise Rules, 2002.

7. Government also notes that vide circular No.1001/8/2015-CX.8 dated 28.05.2015 issued under F.No.267/18/2015-CX.8 on *"Clarification on rebate of duty on goods cleared from DTA to SEZ "*, CBEC has clarified that since Special Economic Zone (**"SEZ"**) is deemed to be outside the Customs territory of India in terms of the provisions under the SEZ Act, 2005, any licit clearances of goods to SEZ from Domestic Tariff Area (**"DTA"**) will continue to be Export and therefore are entitled to the benefit of rebate under Rule 18 of the Excise Rules and of refund of accumulated Cenvat credit under Rule 5 of the Credit Rules, as the case may be.

8. In the instant case, the Commissioner (Appeals) has rejected the rebate claims relying on Hon'ble Gujarat High Court decision in the case of Essar Steel Limited v. Union of India - 2010 (249) E.L.T. 3 (Guj.) which observed that movement of goods from Domestic Tariff Area to Special Economic Zone has been treated as export by legal fiction created under SEZ Act, 2005 and such legal fiction should be confined to the purpose for which it has been created and therefore definition given under one statute can't be adopted and substituted for purpose of another act.

9. The case laws relied upon by the Commissioner(Appeal) essentially deals with the definition of term 'Export' and whether the definition prescribed in one act would apply to other. In this connection, the said judgment has been discussed by the Larger Bench of CESTAT, West Zonal Bench Mumbai in its Order dated 17.12.2015 in the case of SaiWardha Power Limited Vs CCE, Nagpur [2016 (332) E.L.T. 529 (Tri. - LB)] in the context of the eligibility of rebate for supplies made to SEZ. The relevant portion of the said order is reproduced below:

> *"8. A striking contention of the ld. AR which appeals to us is that the only statutory provision for grant of rebate lies in Section 11B read with Rule 18 of Central Excise Rules which is for goods exported out of the country. If the supplies to SEZ is not treated as such export, there being no other statutory provisions for grant of rebate under Rule 18, the undisputable consequence and conclusion would be that rebate cannot be sanctioned at all in case of supplies to SEZ from DTA units. Certainly such conclusion would result in a chaotic situation and render all circulars and Rules under SEZ Act ineffective and without jurisdiction as far as grant of rebate on goods supplied to SEZ is concerned. The contra argument is that Section 51 of the SEZ Act would have overriding effect and the rebate can be sanctioned in terms of the provisions of Section 26 of the SEZ Act. We note that Section 26 only provides for exemption of excise duties of goods brought from DTA to SEZ. It does not provide for rebate of duty on goods exported out of the country. Therefore there is no conflict or inconsistency between the provisions of the SEZ Act and Central Excise Act so as to invoke the provisions of Section 51 of the SEZ Act. Our view is strengthened by the Hon'ble High Court judgment in the case of Essar Steel Ltd.*

which held that "Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non obstante clause. In other words, if the provision/s of both the enactments apply in a given case and there is a conflict, the provisions of the Act containing the non obstante clause would ordinarily prevail. In the present case, the movement of goods from the Domestic Tariff Area into the Special Economic Zone is treated as an export under the SEZ Act, 2005, which does not contain any provision for levy of export duty on the same. On the other hand, export duty is levied under the Customs Act, 1962 on export of goods from India to a place outside India and the said Act does not contemplate levy of duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone. Therefore, there is no conflict in applying the respective definitions of export in the two enactments for the purposes of both the Acts and therefore, the non obstante clause cannot be applied or invoked at all."

10. Government observes that the original authority has rejected rebate claims also on the ground that the Applicant failed to produce Bill of Export in term of sub-rule (3) of Rule 30 of SEZ Rules, 2006. Government observes that in terms of Rule 30(5) of the SEZ Rules, Bill of Export should be filed under the claim of drawback or DEPB. Since rebate claim is also export entitlement benefit, the applicant was required to file Bill of export. Though Bill of Export is required to be filed for making clearances to SEZ, still the substantial benefit of rebate claim cannot be denied only for this lapse. Government observes that Authorised Officer of SEZ Unit has endorsed on ARE-1 form that the goods have been duly received in SEZ. As the duty paid nature of goods and supply the same to SEZ is not under dispute, the rebate on duty paid as goods supplied to SEZ is admissible under Rule 18 of Central Excise Rules, 2002. There are catena of judgments that substantial benefit of rebate should not be denied for procedural lapses.

11. In view of above discussions, the Government holds that rebate claims of duty paid on goods cleared to SEZ are admissible to the applicant under Rule 18

of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

12. Hence, Government remands the matter back to the original authority for the limited purpose of verification and to sanction the rebate claims of Rs. 2,37,083/-. The adjudicating authority shall reconsider the claims for rebate on the basis of the documents submitted by the Applicant after satisfying itself in regard to the authenticity of those documents.

13. In view of the above discussions and findings, Government sets aside that part of impugned Order-in-Appeal No BR/201-202/Th-I/2012 dated 25.09.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I in respect of Order-in-Original No. R-99/2012-13 dated 01.05.2012.

14. So ordered.

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

ORDER No. 623/2020-CX (WZ)/ASRA/Mumbai DATED 14.09.2020.

To,
M/s McCom Industries India Pvt. Ltd.,
Gala No. 01 to 04, Kailash Compound,
C/o Tulsa /compound, Anjur Road,
Near Valpada Pipe Line, Valgaon,
Bhiwandi,
Thane-421302.

Copy to:
1. Commissioner of GST & Central Excise, Thane-Rural.
2. Commissioner of GST & Central Excise(Appeals), Thane-Rural, MSEB Bldg, Estralla Battery Compund, Dharavi, Matunga(East), Mumbai 400 019.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare copy