

REGISTERED SPEED POST



**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. 195/453/14-RA/5670

Date of Issue: 14.09.2020

ORDER NO. 626/2020-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 Metrolla Steels Ltd.,
Pezhakkapally, Paipra,
Moovattupuzha, Kerala - 686 673.

Respondent : Commissioner, Central Excise & Customs, Cochin.

Subject : Revision Applications filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
No. 148/2014-CE dated 29.10.2014 passed by the
Commissioner of Central Excise (Appeals), Kochi.

ORDER

This Revision Application has been filed by M/s Metrolla Steels Ltd., Pezhakkapally, Paipra, Moovattupuzha, Kerala - 686 673 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 148/2014-CE dated 29.10.2014 passed by the Commissioner of Central Excise (Appeals), Kochi.

2. Brief facts of the case are that the applicant are manufacturers of M.S. Bars & Rods falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. The applicant filed a rebate claim on 17.08.2009 claiming refund of duty paid on goods exported by them to units in SEZ during August / September, 2008 under various ARE-1s. The applicant exported 69 Tons of steel to M/s Leela Soft (P) Ltd., SEZ, Kokanad under invoice Nos. 3528/25.08.2008, 3743/02.09.2008, 3904/08.09.2008 and 4002/16.09.2008. The clearances were made without payment of duty as the sale of goods in units in SEZ is to be treated as deemed export and are eligible for all export benefits. Since the condition to produce necessary certificate of receipt of goods in SEZ on ARE-1 was not fulfilled in time, the applicant have paid duty for clearances made in October 2008 and issued a separate invoice No. 4598/13.10.2008. Subsequently on receipt of the requisite certificate of receipt of the goods in SEZ on the ARE-1s by the authorized officer, the applicant took credit of the amount so paid in their CENVAT Credit account. On objection raised by the department, the applicant reversed the credit taken and filed the impugned refund claim. The Rebate Sanctioning Officer sanctioned the rebate vide Order in Original No. 177/2009(R) dated 06.11.2009.

3. The Jurisdictional Commissioner reviewed the impugned Order and observed that the refund was sanctioned on the duty paid by the applicant on the failure of production of proof of export within stipulated time period. Further, the proof of exports was not submitted in time as provided under Sub Rule 12(d) of Rule 30 of SEZ Rules 2006 (i.e. within 45 days from the date of clearances). The Reviewing Authority found that since the duty was paid on the failure on the part of applicant in meeting the statutory

conditions, the same could not be refunded subsequently. As such, the appeal was filed against the said OIO to the Appellate Authority.

4. The appellate authority vide impugned Order in Appeal allowed the appeal filed by the department. The appellate authority observed that the goods were not exported to claim rebate under Rule 12(1) of the Central Excise Rules, 1944. The refund claim is on the duty paid by the applicant on their failure in meeting the statutory conditions as laid down by the laws. In this case the applicant is not eligible for refund itself and hence the question of refund by cash does not arise.

5. Being aggrieved with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

5.1 The views of the appellate authority are not acceptable since Rule 12(d) of Rule 30 of SEZ Rules states that the SEZ Authorities should return ARE-1s within a period of 45 days and not the time limit for submitting proof of export.

5.2 IF duty is paid for failure to produce the proof of export, when the same is produced, the duty paid should be rebated. Further, the rebate is claimed under Rule 18 of the Central Excise, Rules 2002 and the procedure prescribed therein.

5.3 As regards the objection of payment of rebate in cash, it is legal as clarified by CBEC in Customs Circular No. 06/2020-Cus. dated 19.03.2010, that rebate under Rule 18 of Central Excise Rule 2002 is admissible for supplies made from DTA to SEZ and that the sanctioning authority has no discretion to credit the refund in Cenvat Credit Account.

6. A Personal hearing held in this Revision Application was attended by Shri Raymond George, Advocate on behalf of the applicant. They reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and Order in Appeal be set aside.

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.

8. Government observes that the applicant had originally cleared the goods to SEZ unit without payment of duty. As per the provisions of Rule 30(4) of Special Economic Zone (SEZ) Rules, 2006, a copy of the ARE-1 and/or copy of Bill of Export, as the case may be, with an endorsement by the authorized officer that goods have been admitted in full into the Special Economic Zone should be forwarded to the Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Central Excise Officer shall raise demand of duty against the Domestic Tariff Area supplier. In the instant case, the applicant failed to produce the certificate of receipt of goods by SEZ unit as envisaged under Rule 30(4) of SEZ, Rule 2006. Thus, they failed to submit the proof of export within the stipulated time frame as provided under Rule 30(12d) of SEZ, Rules 2006. Subsequently the applicant had paid duty for the said clearances and on receipt of the required certificate of receipt of the goods in SEZ under impugned AREs by the authorized officer, the assessee took credit of the amount so paid in their cenvat credit account. The applicant reversed the credit so taken on objection taken by the department and filed the impugned refund claim.

9. In this regard, it is observed that the applicant removed impugned goods from their factory and cleared the same without payment of duty to SEZ unit. The Government opines that the transaction for said clearances to SEZ Unit has attained its finality on submission of certificate of receipt of goods issued by the Authorized Officer in SEZ to the Central Excise Officer having jurisdiction over the Domestic Tariff Area as per the procedure laid down under Rule 30 of the SEZ Rules, 2006.


10. The Government notes that Para 5 of the Board's Circular No. 29/2006-Cus. Dated 27.12.2006 states that the supply from DTA unit to SEZ shall be entitled for claim of rebate under Rule 18 of the Central Excise, Rule, 2002 subject to fulfillment of conditions laid thereon. However, in the instant case, it is observed that the applicant had not followed the procedure laid down under Rule 18 of the Central Excise Rules, 2002 and Notifications issued thereof. The applicant, in this case, did not pay duty at

the time of clearances but debited the same only on their failure to produce the certificate of receipt of goods in SEZ unit by Authorized Officer within stipulated time limit i.e. 45 days as required under deemed export. In view of non fulfillment of necessary conditions/ procedure laid down under Rule 18 of Central Excise Rules, 2002 by the applicant, it is held that the applicant were not eligible for rebate of duty so paid on their failure to produce necessary certificate in respect of goods cleared to SEZ unit.

11. However, it is observed that the applicant had paid the duty diligently on their own on completion of stipulated time of 45 days of submission of such certificate. Hence the Government opines that whatever is not due to the exchequer cannot be held by the Department and hence the duty paid by the applicant needs to be refunded. The applicant is at liberty to approach the refund sanctioning authority for refund under Section 11B for the amount deposited by them.

12. Revision application is disposed off in above terms.

13. So ordered.


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

ORDER No. ⁶²⁶/2020-CX (SZ) /ASRA/Mumbai

DATED 14.09.2020

To,
 M/s Metrolla Steels Ltd.,
 Pezhakkapally, Paipra,
 Moovattupuzha, Kerala - 686 673.

Copy to:

1. The Commissioner of GST & CX, C.R. Building, I.S. Press Road, Cochin - 628 018.
2. The Assistant Commissioner of Central Excise, Muvattupuzha Division, K.P.C. Tower, Muvattupuzha, Kerala - 686 673
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.