

**REGISTERED  
SPEED POST**



**F.No. 195/135 & 136-137/11-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...22.01.13

ORDER NO. 63-65/13-Cx DATED 22-01-2013 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 35 EE OF THE CENTRAL EXCISE,  
1944 AGAINST THE ORDERS-IN-APPEAL No.  
482 (DKV) CE/JPR-I/10 dated 01/11/2010  
& 457-458 (DKV) CE/JPR-I/10 dated 26/10/2010  
passed by Commissioner of Customs & Central Excise  
(Appeals), Jaipur-I.

APPLICANT : M/s. Indo Alusys Industries Ltd.,  
Bhiwadi.

RESPONDENT : Commissioner of Central Excise,  
Jaipur-I.

\*\*\*\*\*

**ORDER**

These revision applications are filed by M/s. Indo Alusys Industries Ltd., Bhiwadi against the Orders-in-Appeal No. 482 (DKV) CE/JPR-I/10 dated 01/11/2010 & 457-458 (DKV) CE/JPR-I/10 dated 26/10/2010 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur-I with respect to Orders-in Original passed by Assistant Commissioner of Central Excise, Division, Bhiwadi.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Aluminium Alloy Extruded products falling under chapter 76 of the Schedule to the Central Excise Tariff Act, 1985 and has filed claims for rebate claims under Rule 18 of Central Excise Rules 2002 on the ground that they had supplied goods to (i) M/s. DLF Laing O'Rourke India Ltd., for contract with DLF Ltd., SEZ Developer and (ii) M/s. Moser Bear Photo Voltaic Ltd., B-66, Udyog Vihar, SEZ, Greater Noida (UP) India. The original authority found that the applicant's claim is not admissible on ground that as per Sub-Rule (3) of Rule 30 of Special Economic Zone Rules, 2006 and Board's Circular No. 29/2006-Customs dated 27.12.2006, in case where export entitlement are to be availed, the movement of goods from the place of manufacture to the SEZ shall be on the basis of ARE-1 and bill of export. However the applicant has not filed bill of export. Accordingly, original authority rejected the rebate claims of the applicant.
3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who rejected the same.
4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:
  - 4.1 The perusal of the allegations made in the Show Cause Notices while proposing to reject the present refund claims; the findings recorded by the Assistant Commissioner in his Orders-in-Original

whereby the said Assistant Commissioner has rejected the above said refund claim of the Applicants; and the findings recorded by the Commissioner (Appeals) while upholding the above said Orders-in-Original, would show that while in the Show Cause Notice the present refund claims were proposed to be denied on the allegations of non-compliance of Special Economic Zone Rules, 2006 and the Assistant Commissioner has rejected the refund claims of the applicants on the grounds that the applicants have not complied with the provisions contained in Special Economic Zone Rules, 2006, the Commissioner (Appeals) recorded findings that since the applicants have not supplied the goods to a unit of SEZ/Developer of SEZ, the applicants are not entitled to the present rebate claims. The Commissioner (Appeals) while upholding the above said Orders-in-Original has made out absolutely a new case which was never the case of the department in the Show Cause Notices as well as in the Orders-in-Original and the applicants were never out to the notice on the grounds which have been taken by the Commissioner (Appeals).

4.2 In some of the cases, the supply is to DLF Laing O' Rourke India Ltd. for contract with DLF Limited, SEZ Developer vide letter of Approval No. F2/137/05 EPZ dated 06.12.2006, DLF City, Sector-30, Silokhera, Gurgaon. Rule 10 of SEZ Rules, 2006 clearly extend all exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer to the Contractors including Sub-contractors appointed by such Developer or Co-developer and in the instant case DLF Laing O' Rourke India Ltd. is the Contractor for DLF Limited the SEZ Developer and all the documents viz. ARE-1, Invoice etc. bear the name of the Developer along with the Contractor and sufficient proof of exports were submitted to the Jurisdictional Authorities. On this grounds only the impugned Orders-in-Appeal are liable to be set aside. The applicant has relied upon same case laws in favour of their contention.

4.3 The Commissioner (Appeals) has not controverted the claim of the Applicants that exports were not made against any Draw Back Scheme and/or under DEPB Scheme etc. the exports in the present case were not made against any export

entitlements and therefore, the applicants were not required to submit any bill of export for claiming the rebate under Rule 18 of the Central Excise Rules, 2002. Impliedly, therefore, the said claim of the applicants has been accepted by the Commissioner (Appeals) by the theory of Non-Travers. As per of Circular No. 29/2006-Cus dated 27-12-2006, in case the export entitlements are not availed, the movement of goods from the place of manufacture to the SEZ shall be on the basis of ARE-1s. Further, it also shows that such movement of goods manufactured in DTA units to SEZ shall be under Bills of export and AREs-1 only in cases where exporter avails export entitlements. Now, in the present case there is no dispute about the fact that the applicants have not availed any export entitlement with respect to the exports made under ARE-1 Nos. No. 74/07-08 dt. 13-02-2008 to the SEZ unit. Impliedly therefore, as per procedure set out in circular No. 29/2006-Cus dt. 27-12-2006, the applicants have correctly followed the procedure of export goods to SEZ unit under AREs-1 and they were certainly not required to make the movement of the said goods to SEZ under the Bill of Export or Shipping Bill whatever the case may be.

4.4 In any case, when the appellants have substantially complied with the law laid down in Rule 18 of Central Excise Rules, 2002, the failure to file a Shipping Bill boils down to a procedural lapse only. At this point of time kind attention of Hon'ble Commissioner (Appeals) is invited to Board's Circular No. 29/2006-Cus dated 27.12.2006. The perusal of said circular would show that what has been prescribed in the said circular is a procedure for export of goods by the DTA units to SEZ units. It is an established law that for failure to comply with procedural requirements, the substantive right cannot be denied. In support of their contention, the applicant has relied upon same case laws.

4.5 The Assistant Commissioner while not following the ratio of judgment of Commissioner (Appeals) in Order-in-Appeal No. 02 (DK) CE/JPR-I/2009 dated 20-01-2009 has recorded following findings:-

" I further find that the latest Order-in-Appeal no. 02 (DK) CE/jpr-1/2009 DATED 20-01-2009 PASSED BY THE Commissioner (Appeals) Central Excise Jaipur-1 in case of M/s. P.K. Tubes & Fitting Pvt. Ltd. Plot No. A-458, Chopanki involving the same issue in

*favour of the assessee, has not been accepted by the department and an appeal has been filed with the revisionary authority Government of India."*

In this connection it is submitted that it is not the case of department that the said Order-in-Appeal has either been stayed or overruled by the Higher Applicant authority, it would therefore be appreciated by the Joint Secretary to the Government of India that the said Order-in-Appeal is still holding field and the Assistant Commissioner should have followed the ratio of the said Order-in-Appeal. In support of contention as above reliance is placed on Hon'ble Supreme Court of India judgments in the case of Union of India Vs. Kamalakshi Finance Co., Ltd., reported in 1991 (55) ELT 433 (SC).

5. Personal hearing was scheduled in this case on 10-10-2012 & 06-12-2012. Personal hearing held on 06-12-2012 was attended by Shri Pankaj Malik , advocate & Shri M.S. Subramaniam on behalf of the applicant, who reiterated the grounds of Revision Applications. They have relied upon GOI order in case of P.K. Tubes and Fitting Pvt. Ltd. reported in 2012 (276) ELT 113 (GOI). Nobody attended hearing on behalf of respondent department.
6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.
7. Government observes that the applicant supplied their goods to SEZ and filed rebate claims under rule 18 of the Central Excise Rules, 2002. The original authority rejected rebate claims of the applicant on the ground that the applicants failed to export the goods under Bills of export in terms of Board's circular No. 29/2006-Cus dt. 27-12-2006 and hence, are not eligible for rebate claims. Commissioner (Appeals) upheld the impugned Orders-in-Original. Commissioner (Appeals) while upholding impugned Orders-in-Original has observed that the applicants were not required to submit any Bills of export for claiming the rebate under rule 8 of the Central Excise Rules, 2002 and hence, rejection of rebate on ground of non-submission of Bills of Export is not sustainable. However, Commissioner (Appeals) observed that the applicants supplied the goods to buyers

which is neither a unit nor developer of SEZ. Now, applicant has filed these revision application on grounds mentioned in para (4) above.

8. Government observes that in terms of para (5) of Board's Circular No. 29/2006-Cus dated 27.12.06, 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. The said 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 on the cover of ARE-1. The original authority has rejected rebate claim as the applicant failed to produce bills of Export in term of sub-Rule (3) of Rule 30 of SEZ Rules, 2006 and Board's Circular No. 29/2006-Cus dated 27.12.06. Government observes that the meaning of export entitlement as given in sub-Rule (3) of SEZ Rules, 2006 should be read with sub-Rule (5) of the said rule. In terms of sub-rule (5) of the said rule, Bill of export should be filed under the claim of drawback or DEPB. Though Bill of Export is required to be filed for making clearances to SEZ, yet the substantial benefit of rebate claim cannot be denied only for this lapse. Government further observes that Custom Officer of SEZ Unit has endorsed on relevant ARE-1 Form that the goods have been duly received by them. The Customs Officer should have asked for Bill of Export while accepting the receipt of goods. As such duty paid nature of goods and supply of such duty paid goods to SEZ is not under dispute. As such, rejection of rebate claims by the original authority on the ground of non-submission of Bills of Export is not sustainable, as correctly held by the Commissioner (Appeals).

9. Government observes that the appellate authority held that the applicant could not produce any evidence to prove that they supplied impugned goods to SEZ unit or developer in order to be eligible of rebate benefit under rule 18 of the Central Excise Rules, 2002 r/w the Board's Circular No. 29/2006-Cus dt. 29-12-2006.

9.1 Government finds that in order to decide the issue, it is necessary to peruse the relevant legal/statutory provision which are reproduced below:-

**Rule (10) of the SEZ Rules, 2006, reads as follows:-**

-----  
-----  
" Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, as the case may be, shall also be available to the contractors including subcontractors appointed by such Developer or Co-developer, and all the documents in such cases shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be: Provided also that the Developer or Co-developer, as the case may be, or the Special Economic Zone Unit shall be responsible and liable for proper utilization of such goods in all cases. "

**Para (5) of the Board's Circular No. 029/2006-Cus dt. 27-12-2006, reads as follows:-**

-----  
-----  
" The existing SEZs, i.e., the ones notified under section 76A of Chapter X A of the Customs Act, 1962 shall be deemed to have been notified under Section 4 of the Act. Supplies from DTA to SEZ shall be exempt from payment of any Central Excise duty under Rule 19 of Central Excise Rules, 2002. Similarly, such supplies shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfilment of conditions laid there under. The provisions relating to exports under Central Excise Act, 1944 and rules made there under may be applied, mutatis-mutandis, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations. "

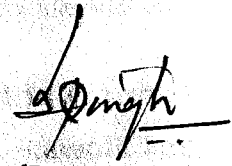
From harmonious perusal of above said provisions, it be come clear that benefit of rebate can be allowed to supplies made to SEZ unit/Developer/Co-developer/contractor/sub-contractor. In the instant case, the applicants claimed to have supplied goods to two entiles i.e M/s. DLF Laing 'O' Rourke India Ltd., and M/s. Moser Baer Photo Voltaic Ltd., Greater Noida. The applicant in their grounds of revision application has claimed that in the instant case, the supplies were to DLF Laing 'O' Rourke India Ltd. for contract with DLF Limited, SEZ Developer vide letter of Approval No. F2/137/05 EPZ dt. 06-12-2006, DLF City, Gurgaon. Under such circumstances supplies made to M/s. DLF Laing 'O' Rourke India Ltd., a contractor will be eligible for benefit of rebate claim. Government further notes that original authority did not discuss this issue in either Show Cause Notices or in Order-in-Original. However, the applicant has elaborated the factual issue in respect of said

supplies to both the parties in SEZ. Government is of opinion that the original authority may verify this aspect and if the supply in these cases is found to be in terms of provision of Rule 10 of SEZ Rules then, claim rebate may be sanctioned.

10. In view of above discussions, the Government sets aside impugned Orders-in-Appeal and remands the case back to original authority for deciding the matter afresh taking into account the above observations. A reasonable opportunity of hearing may be granted to the applicants.

11. These Revision Applications are disposed off in above terms.

12. So ordered.



(D.P. Singh)  
Joint Secretary to the Govt. of India

M/s. Indo Alusys Industries Ltd.,  
SP-2/333, Industrial Area, Bhiwadi.

ATTESTED



Chief Officer (Accounts)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi



Order No. 63-65 /13-Cx dated 22.01.2013

Copy to:

1. The Commissioner, Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
2. The Commissioner (Appeal-I), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
3. The Assistant Commissioner of Central Excise, Biwadi.
4. Shri Pankaj Malik, Pankaj Malik & Co., Chartered Accountants 207-208, Shree Gopal Tower, Krishna Marg, C-Scheme, Jaipur-302001.
5. Guard File.
6. PS to JS (Revision Application)
7. Spare Copy

ATTESTED

  
(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)

1950

...

...

...

...

...

...

...

...

...