REGISTERED
SPEED POST

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.195/50-55/16-RA /1646 Date of Issue: 24.06.2022

652-657
ORDER NO. /2022-CX (SZ)/ASRA/MUMBAI DATED 23.06.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Grundfos Pumps India Pvt. Ltd.
118, Old Mahabalipuram Road,
Thoraipakkam, Chennai – 600 097.

Respondents : Commissioner of CGST, Chennai South.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 443 to 448/2015 (CXA-II) dated 28.12.2015 passed by the Commissioner (Appeals -II), Central Excise, Chennai.

ORDER

These Revision Applications are filed by M/s Grundfos Pumps India Pvt. Ltd. 118, Old Mahabalipuram Road, Thoraipakkam, Chennai – 600 097 (hereinafter referred to as "the applicant") against the Orders-in-Appeal Nos. 443 to 448/2015 (CXA-II) dated 28.12.2015 passed by the Commissioner (Appeals -II), Central Excise, Chennai.

2. The issue in brief is that the applicant is engaged in manufacturing of 'Submersible Pumps' falling under Chapter 84 of the Central Excise Tariff Act, 1985. The applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 in respect of the duty paid on the goods cleared to SEZ located at various places in India. The Original Authority, after following due process of law, partly sanctioned rebate and rejected the amounts as mentioned in the table below :-

Sr. No.	**OIO No. / Date**	**Rebate Sanctioned (Rs)**	**Rebate Rejected(Rs)**	**Reasons for rejection**
1	**2**	**3**	**4**	**5**
1.	172/2014 dated 17.12.2014	8,333/-	7,59,571/-	Invoices raised on third party though goods cleared to SEZ
2	166/2014 dated 27.11.2014	68,332/-	47,780/-	Exports of Inputs cleared as such are not eligible for rebate
3	2,3,4 &5/2014 dated 31.03.2014	9,71,960/-	9,71,960/-	Exports of Inputs cleared as such are not eligible for rebate
4	12,13, &14/2014 dated 28.08.2014	7,53,712/-	7,53,712/-	Exports of Inputs cleared as such are not eligible for rebate

3. Being aggrieved, the applicant filed appeals before Commissioner (Appeals-II), Chennai against the impugned Orders-in-Original. The Appellate Authority vide common Orders-in-Appeal Nos. 443 to 448/2015 (CXA-II) dated 28.12.2015 rejected the appeals on merits. The Appellate Authority while passing the order made the following observations:-

i) That the applicants contention that they had procured orders through dealers and hence the invoices were in the name of dealers but since the goods were meant for SEZ, the transaction was routed through the dealers for commercial and trade reasons, is not tenable under Rule 11 of Central Excise Rules, 2002 states that the invoices should be in the name of the consignee i.e SEZ units and invoices raised on third party cannot be treated as invoice under Rule 11 of the Central Excise Rules 2002.

ii) That nothing is specified in the Cenvat Credit Rules, 2004 with regard to the export of inputs or capital goods as such. Rule 3(5) of CCR, 2004 requires a manufacturer to comply with the same procedure when inputs or capital goods are removed as such and beyond these, the law does not specifically say whether such removal of inputs or capital goods include removal for export also. That the absence of any explicit statutory provisions does not bestow upon a manufacturer to such removal of inputs or capital goods to export.

(iii) That it is crystal clear from bare reading of Rule 18 that grant of rebate of duty paid is available on excisable goods or duty paid on materials used in manufacture or processing of such gods. i.e. on raw material. Rule 18 would apply only when goods manufactured in a factory are exported and not when inputs on which credit is taken are exported. Therefore, denial of rebate by the department on this account is also correct.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant filed six separate Revision Applications for the impugned order-in-originals on the following common grounds :-

4.1 The explanation (A) to Section 11B of the Central Excise Act, 1944 indicates as to what are the categories which are eligible for rebate. Nowhere the said explanation prohibits grant of rebate in case of export of inputs as such. As per para 33.4 of the CBEC Supplementary Instructions, there is no bar for a manufacturer to remove the inputs or capital goods as such for export under bond. In such a situation removal of the same under payment of duty or rebate is also not prohibited, especially in the absence of a statutory

bar. The applicant have relied upon following case laws in support of their contention.

i) Ford India Pvt. Ltd. Vs. ACCE [(2011) (272) ELT 353 (Mad.)]
ii) CCE Vs. Micro Inks Ltd. [(2011)(270) ELT 360 (Bom)]
iii) Super Spinning Mills Vs. CCE [(2009)(244) ELT 463 (Bom)]
iv) Finolex Cables Ltd. Vs. CCE [(2007) (210) ELT 76 (Tri. Mumbai)]

4.2 That the applicant has cleared the goods to the SEZ unit under cover of ARE-1 mentioning clearly the name of the unit in the SEZ. The duplicate copies of ARE-1 evidencing proof of admission of goods into the SEZ unit duly certified by the Authorized Officer has been furnished by applicant, which is also not in dispute.

4.3 The only reason for denial of rebate by the original authority is that invoice is in the name of third party and this is because they have procured the orders through dealers and hence the invoices were in the name of dealers. However the goods were meant for SEZ and the transaction was routed through dealers for commercial and trade reasons. For supply of goods rebate is eligible in terms of SEZ Act and rules made there under. Non availability of certain documents is only procedural and rebate should not be rejected when the export of goods is not in dispute.

4.3 That the Original Authority held that the invoice under Rule 11 should have been issued in the name of the SEZ unit. That the name of the SEZ unit has been mentioned in the invoice. That there is no prohibition under Rule 11 to supply goods to actual consumer through third party/dealer. Third party exports are also permissible under Central Excise law, and rebate sanctioned to the person who has borne the incidence of duty

The applicant relied upon the following case laws in support of their contention:

i) Shyamaraju & Co India Pvt Ltd Vs UOI [(2010 (256) E.L.T. 193 (Kar.)]
ii) Sujana Metal Products Ltd Vs CCE [(2011 (273) E.L.T. 112 (Tri. Bang.)]
iii) IRe: P.K. Tubes & Fittings Pvt Ltd [(2012 (276) E.L.T. 113]
iv) Re: Indo Amines Ltd [(2012 (284) E.L.T. 147 (G.O.I.)]
v) In Re: Ace Hygiene Products Pvt Ltd [(2012 (276) E.L.T. 131]

5. A personal hearing in the case was scheduled on 10.08.2021, 17.08.2021, 15.12.2021, 21.12.2021, 03.02.2022, 09.02.2022 and 23.02.2022. Shri Srinivasan, Manager (Finance) appeared online on behalf of the applicant for personal hearing on 23.02.2022 and reiterated his earlier submissions. He stated that two grounds on which their rebate claims have been rejected i.e. Invoices are in favour of dealer and goods supplied to SEZ unit and reversal of cenvat when inputs were exported as such is not payment of duty are not valid grounds, as there is no dispute that the goods were exported to SEZ and reversal of cenvat makes imports duty paid. He requested to sanction of rebate.

6. Government observes that the Appellate Authority has dismissed the appeals filed by the applicant on two grounds. They are as follows :-

a) The rebate of duty paid on export of inputs cleared as such is not allowed.

b) That though the goods were cleared to SEZ by the applicant, the invoices were raised on a third party,

7. Government observes one of the grounds for rejection of the claims is that in some of the cases, the applicant supplied the inputs as such to SEZ unit debiting Cenvat Credit account. The impugned rebate claims were denied by lower authorities on the ground that debit under Rule 3(5) of the said Rule is not payment of duty in terms of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the impugned inputs/goods were not cleared directly from the factory or warehouse.

7.1 In this regard, it is pertinent to note the provisions of Rule 4 of the Central Excise Rules, 2002. In terms of the said Rule, every person who produces or manufacturers any excisable goods, or who stores such goods in a warehouse, shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law, and no excisable goods, on which duty is payable, shall be removed without payment of duty from any place,

where they are produced or manufactured, or from a warehouse, unless otherwise provided.

Rule 8 of the Central Excise Rules, 2002 provides for 'Manner of Payment' of duty on the goods removed from the factory or the warehouse registered under the provisions of Central Excise Law. In this regard, the applicant would like to submit that as per explanation inserted by Notification No. 8/2007-C.E. (N.T.), dated 1-3-2007 the duty paid by using Cenvat credit is also to be treated as 'duty of excise'. The relevant explanation is extracted hereunder:

> *"Explanation* - For the purposes of this rule, the expressions 'duty' or 'duty of excise' shall also include the amount payable in terms of the Cenvat Credit Rules, 2004."

In terms of the provisions of sub-rule (5) of Rule 3 of the Rules, an amount equal to Cenvat credit availed on the inputs is liable to be reversed at the time of their clearance from the factory on 'as such basis' and in terms of explanation to sub-rule (4) of Rule 8 of the Central Excise Rules, 2002, the same requires to be treated as "duty" or "duty of excise" and hence the conclusion drawn by the Commissioner (Appeals) is contrary to the law.

7.2 In this regards, the Central Board of Excise and Customs, vide Circular No. 283/117/96-CX, dated 31-12-1996, clarified as under:

> *"4. It is also observed that in case such inputs are cleared on payment of duty by debit in RG 23A part-II account by virtue of Rule 57F(4)(iii), the manufacturer will be entitled for rebate under Rule 12(1)(a) of the Central Excise Rules. He is, however, put to disadvantage if he opts for export under bond procedure. The exports under 'claim of rebate 'and 'export under bond' should be at parity, since, intention of both the procedures are to make duty incidence 'nil'. It is also an established principle that rules should be interpreted in a manner which do not render them redundant*
>
> *5. Accordingly, it is clarified that the Modvat Credit in RG 23A Part-II account against the export of inputs as such under bond can*

be utilized in the same manner as it is provided for a final product under proviso to Rule 57F(4).Obviously, it follows from this that such inputs should be allowed to be exported under bond without any reversal of the credit"

From the above, it is evident that any supplies made to an SEZ unit or SEZ developer needs to be understood as 'exports'. Further, the Circular No. 6/2010-Cus., dated 19-3-2010 issued by the Central Board of Excise and Customs, New Delhi clarifies the issue as under:

"2. A view has been put forth that rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 is admissible only when the goods are exported out of India but not when supplies are made to SEZ.

3. The matter has been examined. The Circular No. 29/2006-Cus., dated 27-12-2006 [2007 (207) E.L.T. T35] was issued that rebate under Rule 18 is admissible when the supplies are made from DTA to SEZ. The Circular also lays down the procedure and the documentation for effecting supply of goods from DTA to SEZ, by modifying the procedure for normal export. Clearance of duty free material for authorized operation in the SEZ is admissible under section 26 of the SEZ Act, 2005 and procedure under Rule 18 or Rule 19 of the Central Excise Act, as envisaged under Rule 30 of the SEZ Rules, 2006.

4. Therefore, it is viewed that the settled position that rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ does not warrant any change even if Rule 18 does not mention such supplies in clear terms. The field formations are required to follow the Circular No. 29/2006 accordingly."

7.3 This issue has been settled by Hon'ble High Court of Bombay in its order, dated 23-3-2011 in the case of *CCE, Raigarh* v. *Micro Ink Ltd.* in W.P. No. 2195/2010, reported as 2011 (270) E.L.T. 360 (Bom.). In the said writ petition

Commissioner of Central Excise, Raigarh had challenged the GOI Order No. 873/10-CX., dated 26-7-2010 passed in the case of *M/s. Micro Inks* with respect to Order-in-Appeal No. SKS/244/RGD/2008, dated 30-4-2008 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II. Government had held in the said order, dated 26-5-2010 that amount reversed under Rule 3(4)/3(5) of Cenvat Credit Rules, 2004 is to be treated as payment of duty for the purpose of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. This view of the Government is upheld by Hon'ble High Court of Bombay in the above said judgment. The observations of High Court in paras 16 to 19 of said order are reproduced below :-

"16. Since rule 3(4) of the 2002 Rules is pari materia with Rule 57(1)(ii) of the Central Excise Rules, 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India that the assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.

17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does loose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No. 283/1996, dated 31st December, 1996 has held that amount paid under Rule

57F(1)(ii) of Central Excise Rules, 1944 (which is analogous to the Cenvat Credit Rules, 2002/Cenvat Credit Rules, 2004) on export of inputs/capital goods by debiting RG 23A Part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.

18. The argument of the Revenue that identity of the exported inputs/capital goods could not be correlated with the inputs/capital goods brought into the factory is also without any merit because, in the present case the goods were exported under ARE 1 form and the same were duly certified by the Customs Authorities. The certificate under the ARE 1 form is issued with a view to facilitate grant of rebate by establishing identity of the duty paid inputs/capital goods with the inputs/capital goods which are exported.

19. For all the aforesaid reason, we see no infirmity in the order passed by the Joint Secretary to the Government of India. Accordingly, rule is discharged with no order as to costs."

7.4 The ratio of the abovesaid order of Hon'ble High Court of Bombay is squarely applicable to this case on the subject issue. Government therefore holds that the reversal of Cenvat Credit under Rules 3(4) and 3(5) is nothing but payment of duty on the goods exported/supplied to SEZ. Rule 3(6) of Cenvat Credit Rules, 2004 clearly stipulates that the amount paid under Rule 3(5) shall be eligible as Cenvat credit as if it was a duty paid by the person who removed such goods under Rule 3(5) of Cenvat Credit Rules, 2004. Further, in terms of explanation to sub-rule (4) of Rule 8 of Central Excise Rules, 2002 that the expression duty or duty of excise shall also include amount payable in terms of Cenvat Credit Rules, 2004. Since the fundamental requirement of export of duty paid same very goods gets satisfied in these cases for claiming rebate claim under Rule 18 of Central Excise Rules, 2002, therefore, Government observes that rebate claim is 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 on this issue.

8. As regards the cases where the rebate claim has been rejected as the invoice were raised on the third party, Government notes that the clearance and receipt of goods by the SEZ unit has not been questioned and the genuineness of the clearances to the SEZ has not been doubted by the Original Authority or the Appellate Authority. Government also notes that the applicant in Revision applications has stated that the name of the SEZ unit has been mentioned on the invoices and that the invoices have been raised on the dealers for commercial and trade reasons.

9. In view of the above discussion and findings, the Government sets aside the order of the Appellate Authority order and directs the Original Authority

a) to allow the rebate of duty paid on inputs cleared as such to the SEZ units for export subject to the verification of proper reversal of duty involved therein.

b) to reconsider the claims of applicant after verification regarding the claim of the applicant regarding mention of name of the consignee i.e SEZ units, on the invoices and also verify the documentary evidence of the receipt of the goods into the SEZ.

9.1 The Original Authority shall pass the order within eight weeks from the receipt of this order.

10. The Revision Applications are allowed on the above terms.

Shrawan 23/6/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

652-657

ORDER No. /2022-CX (SZ)/ASRA/Mumbai DATED 23.06.2022.

To,
M/s Grundfos Pumps India Pvt. Ltd.
118, Old Mahabalipuram Road,
Thoraipakkam, Chennai – 600 097

Copy to:

1. The Commissioner of Goods & Service Tax, Chennai South Commissionerate, 5th floor, 692, M.H.U. Complex, Anna Salai, Nandanam , Chennai – 600 035.
2. The Commissioner of Goods & Service Tax, (Appeals-II), Newry Towers, No.2054, I Block, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040.
3. The Deputy Commissioner, CGST, Thuraipakkam Division, Chennai South Commissionerate, 5th floor, 692, M.H.U. Complex, Anna Salai, Nandanam , Chennai – 600 035.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board
6. Guard file.