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
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Mumbai- 400 005

F NO. 195/140/14-RA/69 Date of Issue: 05.01.2021

ORDER NO.669 /2020-CX (SZ) /ASRA/MUMBAI DATED 24.12.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 145/2014 dated 17.02.2014 passed by the Commissioner of Central Excise, (Appeals-II) Bangalore.

Applicant : M/s T.T.P Technologies (P) Ltd., Bangalore.

Respondent : Commissioner, Central Excise Bangalore-II.

ORDER

This Revision Application has been filed by M/s TTP Technologies (P) Ltd., No. IV Phase, Peenya Industrial Area, Bangalore- 58 (hereinafter referred to as the "applicant") against the Order-in-Appeal No. No. 145/2014 dated 17.02.2014 passed by the Commissioner of Central Excise, (Appeals-II) Bangalore.

2. Brief facts of the case are that the applicant, manufacturers of radiators for Transformers had exported the goods on payment of duty under claim of rebate. The lower authority verified the ARE's Shipping Bills, Bill of Lading/Air way Bills and found them to be in order. The ARE value was more than the FOB value in all the ARE'1s and therefore the rebate in cash was restricted to the extent of duty and cess on FOB value. The claim had been verified by range officer and the claim was for the rebate on the final products exported under DEEC Scheme by paying duty through Cenvat credit availed under Cenvat Credit Rules, 2004 on the inputs/raw materials used in the manufacture of final products. The applicant had not claimed the rebate of duty paid on the inputs used in the manufacture of the goods exported under DECC Scheme. Notification No. 93/2004-Cus, as amended, only prohibits rebate at input stage and therefore, the claimant is eligible for sanction of the rebate claimed, provided the conditions/provisions of the Notification of the scheme being availed are followed. Further the rebate amount actually to be granted was calculated duly taking care of the fact that wherever ARE-1 values are shown over and above the FOB values, then the total rebate amount shall be restricted to such FOB values only. The claim in cash was restricted to transaction value as per Section 4 of Central Excise Act, 1944. Accordingly the lower authority i.e. Assistant Commissioner of Central Excise, E-2 Division, Bangalore-II Commissionerate, Bangalore vide Order in Original No. 13/2009(R) dtd 28.4.2009 sanctioned the rebate to the applicant.

3.1 The Department did not find the OIO to be legal and proper and therefore filed appeal before Commissioner (Appeals). Commissioner of Central Excise, (Appeals-II) Bangalore vide Order-in-Appeal No. No. 145/2014 dated 17.02.2014. Commissioner(Appeals) observed that in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 and CBEC Circular No. 510/06/2000-CX dated 03.02.2000, the whole of the duty of excise would mean the duty payable under the CEA and that any amount paid in excess of duty liability on ones own volition cannot be treated as duty. Such amount has to simply be treated as a voluntary deposit with the Government which was required to be allowed to be re-credited in the

manufacturers CENVAT credit account from where the duty was paid on the exported goods as the said amount cannot be retained by the Government without any authority of law. He further observed that the elements of contract value had not been examined. The Commissioner(Appeals) held that the original authority has to first determine section 4 value of the goods exported with due reference to contract/purchase order etc. and explicitly mention in the order as to how section 4 value has been arrived at and then sanction rebate on that basis.

3.2 With regard to the contention of the Department in appeal that the intention of the DEEC scheme is to make available duty free inputs to the manufacturer of export product, the Commissioner(Appeals) observed that in this case the applicant had procured the inputs indigenously. He therefore averred that the sanction of rebate in such a case would be restricted to the value addition only and the rebate of duty involved on inputs used in the exported goods is barred as per Notification No. 93/2004-Cus dated 10.09.2004 read with the corrigendum dated 17.05.2005. The Commissioner(Appeals) further observed that the applicant had exported goods against fulfillment of export obligation under Advance Authorisation Scheme in terms of Notification No. 93/2004-Cus dated 10.09.2004. He thereafter referred condition (v) in the said notification and the corrigendum thereto dated 17.05.2005. He inferred that a plain reading of the corrigendum makes it clear that the restriction imposed in condition (v) is regarding rebate of duty paid on materials used in the manufacture of resultant product. Therefore when goods are exported under Notification No. 93/2004-Cus dated 10.09.2004, the rebate of duty paid on materials used in the export goods become inadmissible due to the embargo put by condition (v). On the basis of this deduction, the Commissioner(Appeals) accepted the Departments contention on this count. In this regard, reliance was placed upon the decision of the Government of India In Re : Omkar Textile Mills[2012(284)ELT 302(GOI)]. The Commissioner(Appeals) vide Order-in-Appeal No. 145/2014 dated 17.02.2014 disposed off the appeal in the above terms.

4. Aggrieved by the OIA, the applicant has filed revision application on the following grounds :

(a) they had filed appeal before the original authority for goods exported on 03.02.2009 alongwith the required documents. While sanctioning the rebate of duty, the original authority had relied upon Order-in-Appeal No. 96/08

dated 30.05.2008 and Order-in-Appeal No. 397/08 dated 28.11.2008 which involved similar issue.

(b) they averred that the holding of the Commissioner(Appeals) that the original authority has to first determine section 4 value of the goods exported with due reference to the contract/purchase order etc. and explicitly mention as to how the section 4 value has been arrived at and then sanction the rebate on that basis was erroneous.

(c) they submitted that the original authority had verified the rebate claim filed by the applicant with the documents submitted and considered the ARE-1 value vis-à-vis FOB value and the BRC to arrive at the transaction value. The original authority has duly considered the instances wherever the ARE-1 values are shown in excess of FOB value and restricted the rebate amount to the FOB values and restricted the sanction of claim amount in cash to transaction value at the factory gate.

(d) they submitted that they had entered into an agreement with their foreign buyer for exporting transformer radiators @ US $ 1269 per unit/piece which was accepted by the buyer for a total amount of US $ 30,456 i.e. Rs. 13,15,547/- for 24 units/pieces vide purchase order dated 24.03.2008. Against this purchase price, the FOB value actually realized was US $ 30281 i.e. Rs. 13,07,988/- and this variation was only because of change in exchange rate.

(e) they placed reliance upon para 4.1 of chapter 8 of the CBEC Manual of Supplementary Instructions, 2005 wherein it has been stated that the transaction value should conform to Section 4 or Section 4A and that it could be less than, equal to or more than the FOB value indicated by the exporter on the shipping bill. In this regard, they placed reliance upon the judgments In Re : Panacea Biotech Ltd.[2012(276)ELT 412(GOI)], Jewel Packaging Pvt. Ltd. vs. CCE, Bhavnagar[2010(253)ELT 622(Tri-Ahmd)], In Re : Shreyas Packaging[2013(297)ELT 476(GOI)], In Re : GSL (India) Ltd.[2012(276)ELT 116(GOI)] and Commissioner of Customs, Kolkata vs. Peerless Consultancy Services Pvt. Ltd.[2007(213)ELT 481(SC)].

(f) they averred that the discrimination in passing non-concurrent orders by the same authority vis-à-vis decided cases involving similar set of facts and

issues was a case of unequal treatment in granting relief sought and was prima facie violation of constitutional guarantee of equal protection of laws enshrined in Article 14 of the Constitution of India. The applicant pointed out that Order-in-Appeal No. 159/2014 dated 20.02.2014 passed by the Commissioner(Appeals) in their own case decided on rebate of duty paid on final products exported under DFIA scheme directed that the BRC be considered for sanction of rebate. In this regard, they also placed reliance upon the judgment In Re : Cotfab Exports[2006(205)ELT 1027(GOI)].

(g) the applicant referred condition (v) to Notification No. 93/2004-Cus dated 10.09.2004 and the Corrigendum thereto dated 17.05.2005 issued vide F. No. 605/50/2005-DBK and condition no. (v) of Notification No. 40/2006-Cus dated 01.05.2006 and sought to draw parity. They contended that the condition in both Notification No. 93/2004-Cus dated 10.09.2004 read with Corrigendum dated 17.05.2005 and Notification No. 40/2006-Cus dated 01.05.2006 for claiming rebate of duty paid on exported goods under DEEC scheme and DFIA scheme were identical. They contended that the passing of non-concurrent orders by the same authority in cases involving similar facts was discriminatory.

(h) it was submitted that the findings on valuation recorded by the Commissioner(Appeals) were absurd. They stated that they had not availed any export benefits or claimed any export benefits like drawback from the Department. It was further averred that when the declared values of export goods are rejected, Section 14 of the Customs Act, 1962 comes into play. The impugned order upholding the Departments appeal on the issue as to whether rebate had been sanctioned correctly in the OIO after correctly determining the value under Section 4 of CEA, 1944 was without proper reasoning in the facts and circumstances of the case and was therefore liable to be set aside with consequential relief to the applicant.

(i) they submitted that the rebate of duty was not barred as per Notification No. 93/2004-Cus dated 10.09.2004 read with corrigendum dated 17.05.2005. They further opined that the finding recorded by the Commissioner(Appeals) that since they had procured inputs indigenously the sanction of rebate would be restricted to the value addition and that the rebate of duty involved on inputs used in exported goods would be barred is untenable.

(j) it was submitted that plain reading of the Notification No. 93/2004-Cus dated 10.09.2004 and corrigendum thereto dated 17.05.2005, it was clear that the restriction imposed in condition (v) was regarding rebate of duty paid on materials used in the manufacture of the resultant product. The applicant asserted that they had claimed rebate of duty paid on final products and that there was no bar on such rebate claim.

(k) the applicant submitted that there was no deeming fiction either under Notification No. 93/2004-Cus dated 10.09.2004 or under the provisions of CCR, 2004 or under the CER, 2002 to presume that domestically procured duty paid inputs/raw materials used in the export goods would be deemed to have been procured under the DEEC scheme.

(l) the reliance placed by the Commissioner(Appeals) on the judgment In Re : Omkar Textile Mills[2012(284)ELT 302(GOI)] wherein the availability of input stage rebate for exports made under Notification No. 93/2004-Cus dated 10.09.2004 was the reason for double benefit was misplaced and not relevant to the facts of the present case where the applicant had claimed rebate of duty paid on final products. Moreover, they had not utilised the inputs in the manufacture of non-dutiable goods and had exported the goods on payment of excise duty under claim of rebate.

(m) the Commissioner(Appeals) has misconstrued that the applicant had availed dual benefit of CENVAT credit on inputs procured under authorization and rebate of duty paid on exported goods. The applicant submitted that there was no dual benefit as it was merely a case of taking credit and utilizing it in the manner prescribed under the CCR, 2004.

(n) the applicant averred that the entire scheme of grant of rebate and the relevant notifications do not carry any reference to the DEEC scheme to exclude DEEC exports from the scope of rebate claim. They stated that it was not permissible to read any extraneous elements such as DEEC and its benefits into the scheme of rebate. In this regard, they relied upon the judgment In Re : Banswara Syntex Ltd.[2005(170)ELT 124(GOI)] and CBEC Circular No. 510/06/2000-CX. dated 03.02.2000.

(o) the applicant contended that the Department had raised and contested the issue due to divergent opinions prevailing within the Department and not due to any violation of the CER, 2002 or the CCR, 2004.

(p) the order passed by the Commissioner(Appeals) ignored the order passed by his predecessor on an identical issue vide OIA No. 270/2008 dated 30.09.2008 upholding rebate claim. The applicant averred that the impugned order was a violation of a binding precedent and placed reliance upon the judgments/decisions in the case of Big Bags India Pvt. Ltd., Bangalore vide Order No. 432-434/12-CX dated 13.04.2012.

(q) the applicant further pointed out that the Commissioner(Appeals) had vide OIA No. 122 to 125/2008-CE dated 28.03.2008 in the case of Modern Processors dismissed the Departments appeal challenging the sanction of rebate. Thereafter, the succeeding Commissioner(Appeals) had also decided in favour of other assessees; viz. M/s Big Bags India Pvt. Ltd. and M/s Big Bags International Pvt. Ltd. vide OIA No. 93 & 94 of 2008-CE dated 22.05.2008. Similarly, the CESTAT had vide its Final Order No. 118 to 120/2009 dated 18.02.2009 allowed appeals filed by the same applicant holding that there was no violation of condition (v) of Notification No. 40/2006-Cus dated 01.05.2006 and allowed the appeals filed by the applicant. The applicant also placed reliance upon the decision In Re : Shubhada Polymer Products Pvt. Ltd.[2009(237)ELT 623(GOI)].

(r) On the above grounds, the applicant submits that the impugned order is liable to be set aside with consequential relief.

5. A Personal Hearing in this matter was held on 10.12.2020 through video conferencing. Shri M.S. Nagraja, Advocate appeared for online hearing on behalf of the applicant company and submitted that Commissioner (Appeals) ignored retrospective amendment of Notification No.40/2006-Cus which was considered in earlier R.A. Order. He stated that further written submission would be submitted in two days.

6. In their additional written submissions dated 11.12.2020(received through email) the applicant reiterated their grounds for revision. They submitted that the impugned order on both the issues is contrary to facts and law and hence deserves

to be quashed. The applicant requested that the written submission be taken on record.

7. Government has carefully gone through the relevant case records & written submissions and the impugned Order-in-Original and Order-in-Appeal. The issues to be decided in the instant revision application are twofold; viz. whether the original authority is required to determine section 4 value of the exported goods with reference to the contract/purchase order etc. and whether the sanction of rebate would be restricted only to the value addition and duty involved and rebate of duty involved on inputs used in the exported goods is barred as per Notification No. 93/2004-Cus dated 10.09.2004.

8.1 Before proceeding to decide on the merits of the case, it would be apposite to examine condition (v) of Notification No. 93/2004-Cus dated 10.09.2004 which goes to the heart of the matter in so far as sanction of rebate is concerned. The text of the condition is reproduced below.

> *"(v) that the export obligation as specified in the said licence(both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed :"*

The above condition (v) in Notification No. 93/2004-Cus dated 10.09.2004 was corrected by the issue of Corrigendum dated 17.05.2005. The text of the said condition is reproduced below.

> *"In condition (v) of opening paragraph of the Notification of the Government of India, in the Ministry of Finance(Department of Revenue) No. 93/2004-Customs, dated the 10th September, 2004, published in the Gazette of India(Extraordinary), vide GSR 606(E), the words & figures "under rule 18" shall be corrected to read as "under rule 18(rebate of duty paid on materials used in the manufacture of resultant product)".*

8.2 It would be clear from the text of the corrigendum that the addition of the words "rebate of duty paid on materials used in the manufacture of resultant product" is not an amendment. The addition of these words is a correction making

it part of the text of the notification from the date of its issue. Therefore, it is explicit that only the rebate of duty paid on materials used in export is barred and there is no embargo on the rebate of duty paid on finished goods which are exported. Government observes that the applicant in the present case has claimed rebate of duty paid on the exported goods and not the rebate of duty paid on materials used in the manufacture of the exported goods. It is clear that the applicant had filed a rebate claim which was entertainable.

8.3 The Commissioner(Appeals) has in the impugned order arrived at the conclusion that the rebate claim would have to be restricted to the extent of the value addition in the exported goods. This inference has been derived on the basis of the fact that the notification does not allow rebate of duty paid on materials used in the manufacture of the resultant product. Government observes that there is no such restriction laid down by the notification. There is a catena of judgments which enunciate the principle that the words of an exemption notification must be given simple interpretation and that there is no scope for intendment. In other words, once the assessee satisfies the conditions imposed by an exemption notification, they become eligible for the exemption granted in public interest. Other extraneous factors or the intention of the government to prohibit the rebate of duty paid on materials used in the manufacture of exported goods cannot be read into the words of the exemption notification. Needless to say, if the legislature had intended to restrict the rebate of duty paid on the exported goods in any manner, the corrigendum issued to correct the error in the notification originally issued would have incorporated such limitation.

8.4 Government places reliance upon the judgment of the Hon'ble High Court of Delhi in CCE, Delhi-I vs. Joint Secretary(Revisionary Authority)[2013(287)ELT 177(Del)] wherein their Lordships have made clear the manner in which an exemption notification is to be construed. Para 28 thereof is reproduced below.

> *"28. There is law in which it has been held that exemption notification should be construed strictly and literally. There are also observations that notification should be interpreted in the light of the words employed and there is no room for intendment, (see Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal, (2011) 1 SCC 236 = 2010(260)ELT 3(SC)], quoting from Novapan India Ltd. v. Commissioner of Customs & Excise, 1994 Supp. (3) SCC 606 = 1994(73)ELT 769(SC) and TISCO Ltd. v. State of Jharkhand*

(2005) 4 SCC 272). These are decisions relating to eligibility clause in which it has been held that strict interpretation and meaning should be given. The person who claims exemption or concession has to establish that he is entitled to the concession or exemption. However, once the assessee satisfies the eligibility clause/criteria, exemption therein to be construed liberally if the contextual construction does not deserve the strict meaning. Meaning of the exemption notification has to be gathered from the language employed without ignoring the reason and cause why the Government has issued the said notification and purpose behind the said notification. The purpose should not be defeated so as to deny and deprive what is clearly flowing from it. But no violence should be done to the language employed and it should be borne in mind that absurd results and constructions should be avoided, (see Bhai Jaspal Singh v. Asstt. Commissioner of Commercial Taxes, (2011) 1 SCC 39; G. P. Ceramic (P) Ltd. v. CTT, (2009)2 SCC 90; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala, (2007) 2 SCC 725 and Govt. of India v. Indian Tobacco Assn., (2005) 7 SCC 396 = 2005(187)ELT 162(SC), CCE v. Parle Exports Pvt. Ltd., (1989) 1 SCC 345 = 1988(38)ELT 741(SC)."

The ratio of the said judgment denotes that once the assessee satisfies the eligibility clause, the exemption should be construed liberally. In the present case, the exemption notification in its original form barred rebate of both inputs as well as final products. The sole reason why the corrigendum was issued was to allow the rebate on the final product; viz. the exported goods. Therefore, the interpretation put forth by the Commissioner(Appeals) in the impugned order defeats that very purpose. The interpretation has led to the absurd conclusion that the rebate claim must be reworked to exclude the duty involved on inputs. The Commissioner(Appeals) order in this regard cannot be sustained.

9.1 In the context of the findings recorded by the Commissioner(Appeals) vis-à-vis the valuation of the exported goods, it is observed that there are several decisions of the Government of India to the effect that the FOB value of the exported goods is to be treated as their transaction value. Government observes that the rebate sanctioning authority has very meticulously calculated rebate amount to be granted by restricting the rebate amount to FOB values where the ARE-1 values shown are over and above the FOB values. The Commissioner(Appeals) has referred the CBEC Circular No. 510/06/2000-CX.

dated 03.02.2000. Government observes that the said circular has been issued by the Board before the introduction of the concept of "transaction value" in section 4 of the Central Excise Act, 1944 whereas the exports in the present case have been effected in 2008. The assessment of central excise duty for the period after the introduction of section 4 from 01.07.2000 onwards would be covered by the new valuation rules. Hence, the instructions contained in the Board Circular dated 03.02.2000 would not be applicable to the new section 4 of the CEA, 1944.

9.2 With regard to the finding that the original authority has to first determine Section 4 value of the exported goods with reference to contract/purchase price, Government observes that this holding by the Commissioner(Appeals) effectively causes re-assessment on the exported goods. Government finds that in terms of the Section 4 which was in force from 01.07.2000 and in vogue during the period of dispute in 2008, where the price is the sole consideration for sale, the transaction value cannot be rejected. The aspect of whether the price was the sole consideration for sale was within the knowledge of the Range Officer and the jurisdictional Assistant Commissioner who has sanctioned rebate. Since the jurisdictional Commissioner had reservations about the admissibility of rebate, their contentions would not have been that there was additional consideration flowing to the applicant to necessitate resort to the valuation rules. It would therefore follow that when the jurisdictional officers have accepted the value declared by restricting the rebate claim to the FOB value of the goods and accepting the transaction value, the question of re-opening the assessment and examining the contract/purchase order etc. would not arise. Hence, this finding recorded by the Commissioner(Appeals) regarding the valuation of the exported goods cannot sustain.

10. Government observes that the applicant has raised several grounds in the grounds for revision which carry substantial force. The applicant has also relied on various case laws. However, the contentions based on which the lower appellate authority has passed the impugned order itself are untenable. Therefore, there is no necessity to delve into these contentions individually.

11. Government hereby modifies the OIA No. 145/2014 dated 17.02.2014 passed by the Commissioner(Appeals-II), Bangalore by confirming and upholding the OIO No. 13/2009(R) dated 28.04.2009.

12. Revision Application is disposed off in the above terms.

Shrawan 24/12/2020

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

ORDER No. 669 /2020-CX (SZ)/ASRA/Mumbai

To,
M/s TTP Technologies (P) Ltd.,
No. IV Phase, Peenya Industrial Area,
Bangalore- 58

Copy to:

1. Commissioner of Central Taxes & Central Excise, Bangalore North West Commissionerate,
2. Commissioner(Appeals), Bangalore-II, Central Taxes & Central Excise,
3. Deputy Commissioner, Central Taxes & Central Excise, North West Division-2, Bangalore North West Commissionerate,
4. Sr. P.S. to AS (RA), Mumbai,
5. Guard file,
6. Spare Copy