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**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. 198/96-105/15-RA / 3234

Date of Issue: 28.07.2022

ORDER NO. 704-713/2022-CEX (SZ)/ASRA/MUMBAI DATED 26.07.2022
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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of CGST, Kozhikode Commissionerate.

Respondent : M/s Precot Meridian Limited.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. – CAL-EXCUS-
000-APP-080to089/15-16 dated 21.07.2015 passed by the
Commissioner(Appeals-II), Cochin.

ORDER

This Revision Application has been filed by the Commissioner of Kozhikode Commissionerate (hereinafter referred to as "Applicant") against the Order-in-Appeal No.- CAL-EXCUS-000-APP-080 to 089/15-16 dated 21.07.2015 passed by the Commissioner(Appeals-II), Cochin.

2. The brief facts of the case are that M/s Precot Meridian Limited (hereinafter referred as "the Respondent") is manufacturer of cotton yarn. They have filed refund/Rebate claims for duty of excise paid at the time of de-bonding on Export of Cotton yarn from the factory. The lower Adjudicating authority vide orders-in-original No. 04-13/2012 CE(R), has restricted the Rebate/Refund claims to avail duty at 5% payable on the transaction value (without including freight and insurance) of cotton yarn exported. Aggrieved by the aforesaid OIOs, the Respondent filed appeal with the Commissioner Appeal. The Commissioner Appeal vides his Order-in-Appeal No. CAL-EXCUS-000-APP-080 to 089/15-16 dated 21.07.2015 allowed the appeal by modifying the OIOs to the extent that the respondent is rightly eligible for full rebate of the duty at the time of de-bonding without restricting to transaction value.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. Under the provisions of Section 11 B, which governs the refund of duty, the duty paid, if any, but not liable be paid by a person, shall only be sanctioned as refund; wherein (i) rebate of duty of excise on excisable goods exported out of India, (ii) unspent advance deposits lying in balance in applicant's account current, (iii) refund of credit of duty paid on excisable goods used as inputs, and (iv) excess duty, if not passed on the incidence are only refundable to the applicant. In this case, the Respondent is actually liable for payment of amount equal to duty on de-bonding of unit from EOU to DTA, which they have correctly complied

with, based on which only the unit was de-bonded. So, the Respondent is not eligible for refund of duty paid on de-bonding, which was statutorily required to be complied thereof under the provisions of FTP.

- ii. However, the duty paid on excisable goods exported out of India is an eligible rebate on fulfilment of conditions specified under Notification No. 19/2004-CE (NT). Moreover, the Respondent clarified in their letter dated 22.02.2012 that the applications were actually filed for rebate of duty. As per explanation-I appended to Notification No. 19/2004-CE (NT), "duty" for the purpose of this notification means duties of excise collected under the Central excise act, 1944 and the 'education cess' and 'secondary and higher education cess' collected under respective Finance Acts. As per Rule 2(e) of the Central Excise Rules, 2002, "duty" means the duty payable under Section 3 of the Central excise act, 1944. As per Section 3 of the Central excise act, 1944 duty means the amount leviable at the rates set forth in the First Schedule to the Central Excise Tariff Act, 1985. But, as per sub section (1A) to Section 5A of the Central excise Act, 1944, where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.
- iii. In respect of cotton yarn, by virtue of Notification No. 29/2004-CE, the effective rate of duty is @ 5% and the manufacturer is liable to pay the duty @ 5% only on the assessable value. Section 4 of the Central excise Act, 1944 governs the valuation of excisable goods to arrive at the assessable value, as per which the duty is payable on the transaction value. The term "transaction value" is defined under Section 4 to mean as "the price actually paid or payable for goods, when sold"..So, the amount of duty paid on transaction value of cotton yarn only be considered for rebate. Hence, the Respondent is eligible for refund of an amount equal to

5.15% (including Education Cess and Secondary Higher Education Cess) of sale price of cotton yarn exported out of India.

- iv. It is also settled law that freight is not includable while arriving at the assessable value for payment of duty, when the excisable goods are cleared for export directly from factory; and as such duty paid on freight also is not eligible for rebate.
- v. The Respondent is not eligible for refund of duty paid on de-bonding of unit from EOU to DTA, which was statutorily required to be complied with by them as per provisions of law. In fact they are eligible for that part of duty determined on transaction value excluding freight and insurance. In this case, the original authority correctly determined the rebate eligibility (on verifying each of ARE-1), without including freight and insurance, on transaction value.
- vi. Commissioner (Appeals) failed to appreciate in the right perspective, the reasons put forth by the rebate sanctioning authority in restricting the rebate amount to the amount of duty paid by the Respondent.
- vii. whether the order of the Commissioner (Appeals-II), Cochin is legal and proper taking into account the facts and circumstances of the case and prayed to set aside the order of the Commissioner of Central Excise (Appeals-II) and pass such other order as deemed fit.

4. Personal hearing in the matter was fixed on 29.03.2022, Archana Jain, CA and Vishal Poddar, CA appeared online on behalf of the Respondent for the hearing. They submitted that they have been correctly sanctioned rebate of duty actually paid rather than restricting the amount. They submitted that Department has no ground in the case, and requested to maintain the Commissioner Appeal order.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds the issue to be decided in the instant case is whether the rebate be allowed on the amount of duty paid while de-bonding or the actual duty payable by them on the transaction value of cotton yarn exported.

7. Government notes that the payment of duty at the time of de-bonding as required by the Foreign trade policy is to ensure that the goods which were imported by the Respondent without payment of Customs, suffers the same when the unit is converted from an EOU to a DTA unit. The de-bonded goods on which proper duty has been discharged at the time of de-bonding would be treated on par with other goods procured from the DTA. Thus, Government does not find any merit in the argument of the Department that the rebate sought on duty paid while de-bonding by the Respondent would not be eligible for the reason that it was statutorily required to be complied thereof under the provisions of FTP.

8. Applicant's argument that in respect of cotton yarn, by virtue of Notification No. 29/2004-CE, the effective rate of duty is @ 5% and the manufacturer is liable to pay the duty @ 5% only on the assessable value and therefore respondent is eligible for refund not more than the actual liability at the time of export. Government notes that Department cannot force the respondent to take the benefit of notification and it's up to the respondent to avail it or not. Therefore, non availment of benefits of any notification does not make them ineligible for the rebate of duty which they had actually paid at the time of debonding on exported goods. The same has been correctly discussed under para 12 of the OIA passed by the appellate authority and found respondent entitled for full rebate of the duty paid at the time of de-bonding without restricting to transaction value. The Applicant has not been able to counter the points made by the appellate authority. Department's contention seeking to reject the rebate claim at this stage without sufficient reason is incorrect and not legal.

9. In the light of the detailed discussions hereinbefore, the Government has come to the conclusion that since the duty has been paid by the respondent against their export, the same has to be returned to them by way of refund/rebate as per rule 18 of Central Excise rules, 2002.

10. In view of above discussions, Government upholds the Order-in-Appeal No. – CAL-EXCUS-000-APP-080to089/15-16 dated 21.07.2015 passed by the Commissioner (Appeals-II), Cochin. Therefore, adjudicating authority is directed to disburse the rebate claim within 8 weeks of the receipt of the said order.

11. The Revision application is disposed off on the above terms.

Shrawan
26/07/22
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 704-713 /2022-CEX (SZ) /ASRA/Mumbai Dated 26.07.2022

To,

1. The Principal Commissioner of Central Excise Calicut, Commissioner of central Revenue Building, Manachira Calicut-673001.
2. M/s Precot Meridian Limited,C, Unit Chandrapuram Walayar Dam, Post Palakkad-678624.

Copy to:

1. The Commissioner(Appeals-II),Cochin ,C. R. Building, I.S. Press Road, Cochin-18..
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard file.