F. No. 198/251-267/16-RA
F. No. 198/268-282/16-RA
F. No. 198/37-49/17-RA

REGISTERED SPEED POST AD

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. 198/251-267/16-RA
F. No. 198/268-282/16-RA 13688
F. No. 198/37-49/17-RA Date of Issue: 05.09.2022

ORDER NO. 781-825/2022-CX(WZ)/ASRA/MUMBAI DATED 25.8.2022 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 & Central Excise, Pune-II

Respondent : M/s. Cogeme Precision Parts India Pvt. Ltd.,
Gat No. 427, Hissa No. 13, Village : Mahalunge,
Tal : Khed, Pune-410501.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-001-APP-143-16-17 TO PUN-EXCUS-001-APP-159-16-17 dated 12.09.2016; No. PUN-EXCUS-001-APP-170-16-17 TO PUN-EXCUS-001-APP-184-16-17 dated 22.09.2016; & No. PUN-EXCUS-001-APP-0361-16-17 TO PUN-EXCUS-001-APP-0373-16-17 dated 23.01.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.

ORDER

1. These revision applications have been filed by the Commissioner of CGST & Central Excise, Pune-II (hereinafter referred to as "the applicant" or "the Department") against Orders-in-Appeal No. PUN-EXCUS-001-APP-143-16-17 TO PUN-EXCUS-001-APP-159-16-17 dated 12.09.2016 deciding 17 Appeals; No. PUN-EXCUS-001-APP-170-16-17 TO PUN-EXCUS-001-APP-184-16-17 dated 22.09.2016 deciding 15 Appeals; & No. PUN-EXCUS-001-APP-0361-16-17 TO PUN-EXCUS-001-APP-0373-16-17 dated 23.01.2017 deciding 13 Appeals, passed by the Commissioner (Appeals-I), Central Excise, Pune in respect of M/s. Cogeme Precision Parts India Pvt. Ltd., Gat No. 427, Hissa No. 13, Village : Mahalunge, Tal:Khed, Pune- Pune-410501. (hereinafter referred to as "the respondent").

2. The respondent, ie. M/s. Cogeme Precision Parts India Pvt. Ltd. manufacturers of Shaft and Wheel Assembly and Nozzle Ring Assembly falling under Chapter 84 of the First Schedule to Central Excise Tariff Act, 1985. The respondent had filed several rebate claims before the Assistant/Deputy Commissioner, Division -IV (Chakan-II Division), Pune-II Commissionerate under Rule 18 of the CER, 2002 read with Section 11B of the CEA, 1944, for different amounts on the ground that they had exported their finished goods on payment of Central Excise duty, under Rule 18 of the said Rules.

3. While passing the impugned Orders-in-Original, the adjudicating authority sanctioned full amount of rebate claims, however, part of the sanctioned amounts were sanctioned by way of allowing the respondent to take CENVAT credit in their CENVAT account on the grounds that, the assessable value as per Section 4 of the Central Excise Act, 1944 was more than the FOB value and have thus paid excess excise duty at the time of clearance of goods for export.

4. Being aggrieved with the above, the respondent preferred an appeal with the appellate authority, who, vide impugned appellate orders, held that the respondent is entitled for the entire amount of rebate in cash in all these appeals.

5. Being aggrieved, the Department filed aforementioned revision applications against the impugned Order in Appeal on the following common grounds that: -

5.1 The Hon'ble Commissioner(Appeals-I) has erroneously interpreted the CBEC Circulars viz: (i) Circular No. 203/37/96 CX dated 26-04-1996, and (ii) 510/06/2000-CX dated 03.02.2000 issued from F.No.209/29/99 CX.6 and also erroneously interpreted the provisions of Rule 18 of the Central Excise Rules, 2002 and the Notification no 19/2004-CE (NT) dated 06.09.2004. The procedure for claim of rebate of duty paid on exported goods is prescribed in Notification No. 19/2004 CE (N.T.), dated 06-09-2004 issued under Rule 18 of Central Excise Rules, 2002, where it is stipulated that Central Excise officer if satisfied that the claim is in order, shall sanction the rebate "either in whole or in part", only to the extent it is admissible.

5.2 The Hon'ble Commissioner (Appeals-I) has failed to appreciate that as per Rule 18 of the Central Excise Rules, 2002 duty paid on the Transaction Value in terms of Section 4 of the Central Excise Act, 1944 is to be rebated. In the instant case transaction value was the FOB value appearing on the Shipping Bills where the duly paid as per ARE -1 was higher than the Transaction value. As per Rule 18 of the Central Excise Rules, 2002 extra duty paid would constitute an amount erroneously paid which is liable to be refunded by allowing credit in their Cenvat credit in terms of Section 11B of the Central Excise Act, 1944. Any excess duty paid is required to be refunded in the manner it was paid. Hon'ble Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. v. UOI (2009 (235)ELT 22 (P&H), has held that

"Rebate/Refund Made of payment Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable Also not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty- Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate - Board's Circular No. 687/3/2003-CX dated 03-01-2003 distinguished Rule 18 of Central Excise Rules, 2002."

In view of above, the excess paid amount of duty which is not held for being rebated under Rule 15 of CER, 2002, is to be allowed as re-credit in the Cenvat credit account from where said duty was initially paid.

5.3 The judgment of Hon'ble Commissioner Appeals- sub-silentio. The Hon'ble Commissioner (Appeals) has overruled the settled law in following cases without specifically stating it is doing so:

(i) Nahar Industrial Enterprises Ltd. Vs Union of India 2009 (235) ELT 22 (P&H)

(ii) Order Nos. 1757-1767/ 2012-CX dated 18.12.2012 in F. No. 195/ 242-250/ 2011-RA-CX passed by Joint Secretary, Revisionary Authority, Department of Revenue, Ministry of Finance-IN RE. Sulzer India Ltd- 2014 (313) E.L.T. 929 (G.O.I.)

(iii) Order No. 1275/ 2013- CX dated 19.09.2013 in F. No 195/ 1049/ 11-RA passed by Joint Secretary, Revisionary Authority, Department of Revenue, Ministry of Finance-IN RE: Narendra Plastic Pvt. Ltd. 2014 (313) E.L.T. 833 (G.O.I.)

(iv) Order Nos. 576-598/2013-CX dated 27.06.2013 in F. No. 195/ 1043-1048/ 11-RA & 195/ 1228-1244/ 11-RA passed by Joint Secretary, Revisionary Authority, Department of Revenue, Ministry of Finance-IN RE Aarti Industries Ltd. 2014 (312) ELT 872 (G.O.I.)

(v) Order No. 97/2014 CX dated 26.03.2014 in F. No. 195/ 126/ 2012-RA passed by Joint Secretary, Revisionary Authority, Department of Revenue, Ministry of Finance-IN RE Sumitomo Chemicals India Pvt Ltd 2014 (308) E.L.T 198 (G.O.I.)

(vi) Order No 34-40/2013-CX, dated 15.01.2013 in F. Nos, 195/ 60-64, 578-579/ 2012-RA-CX passed by Joint Secretary, Revisionary Authority, Department of Revenue, Ministry of Finance-IN RE Unique Pharmaceutical Laboratories.

5.4 The Hon'ble Commissioner (Appeals I) has relied upon the CBEC Circular 203/37/96- CX, dated 26-4-1996 and Circular No. 510/06/2000-CX, dated 3-2-2000, but has failed to interpret the same harmoniously and holistically with other relevant provisions that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provisions of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to

be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of Law

5.5 The Hon'ble Commissioner (Appeals-I) has not taken a holistic view of the CBEC's Central Excise Manual and read the manual only on piecemeal basis i.e. he has quoted only the para 4.1 of Chapter 8. He has failed to appreciate that the para 8.4 of Chapter 8 of the CBEC's Central Excise Manual states that "After satisfying himself that the goods cleared for export under the relevant A.R.E1 application mentioned in the claim were actually exported, an evident by the original and duplicate copies of A.R.E duly certified by Customs, and that the goods are of duty-paid' character as certified on the triplicate copy of ARE 1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, "in part or full."

5.6. The Hon'ble Commissioner(Appeals-I) has erroneously observed that the Respondent has wrongly interpreted and applied the instruction dated 10.04.1986 issued vide letter No. 209/21/85-CX.6. A plain reading of the above letter dated 10.04.1986 makes it quite clear that it had been decided by the Board to accept the f.o.b value as assessable value for goods meant for export and the value for exports under claim for rebate and for adjustments in the Bond Account for exports under Bond would henceforth be based on f.o.b value. Further, the instructions dated 10.04.1986 issued vide letter no. 209/21/ 85-CX.6 do not appear to have been rescinded/ superseded.

6. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. However, the Respondent failed to make any submissions.

7. Personal hearing in this case was scheduled on 26.10.2021/02.11.2021, 18.11.2021/25.11.2021 and 16.12.2021. Shri Ambarish Kumar, Assistant Commissioner duly authorized, appeared online on behalf of the applicant and submitted that rebate is admissible on the FOB value only. He requested not to allow cash rebate on balance amount. Respondent did not appear for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

8. The issue involved in all these Revision Applications being common, they are taken up together and are disposed off vide this common order.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal and the RA.

10. Government notes that the Adjudicating authority in his order has observed that the respondent has paid excess excise duty at the time of export of their product; that the duty was required to be paid on the FOB Value and the amount of rebate claim pertaining to the said excess payment i.e. the difference between the ARE-1 value and FOB value was allowed in the form of CENVAT Credit in their CENVAT account.

11. Government observes that Commissioner (Appeals), on the other hand has mainly relied on clarification issued in Board Circular No.510/06/2000-CX dated 03.02.2000 and Circular No. 687/3/2003-CX dated 03.01.2003 to arrive at a conclusion that the duty paid through the actual credit or deemed credit account on the goods exported must be refunded in cash.

12. Government observes that Adjudicating authority in his order has observed that the subject goods have been exported directly from the factory of the assessee. The relevant statutory provisions for determination of value of excisable goods have been duly examined in GOI order No. 97/2014-Cx dated 26.03.2014 In Re: Sumitomo Chemicals Pvt. Ltd. [2014(308) E.L.T. 198 (G.O.I.)] which are reproduced below for proper understanding of the issue of valuation:-

> ***8.1*** *As per basic applicable Section 4(1)(a) of Central Excise Act, 1944 where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall,*

(a) In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b) In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

8.2 *Word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows :*

"'Sale' and 'Purchase' with their grammatical variations and cognate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

8.3 *Place of Removal has been defined under Section 4(3)(c)(i), (ii), (iii) as :*

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

8.4 *The Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 is also relevant which is reproduced below :-*

"Rule 5. *Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of Section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal up to the place of delivery of such excisable goods.*

Explanation 1. - "Cost of transportation" includes -

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

8.5 *Government observes that from the perusal of above provisions it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. Under such circumstances, the place of removal is the port of export where sale takes place. The GOI Order No. 271/2005, dated 25-7-2005 in the case of CCE, Nagpur v. M/s. Bhagirth Textiles Ltd. reported in 2006 (202) E.L.T. 147 (GOI) has also held as under :-*

"the exporter is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on the transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944". It is clear from the order that in any case duty is not to be paid on the CIF value.

8.6 *Supreme Court in its order in Civil Appeal No. 7230/1999 and CA No. 1163 of 2000 in the case of M/s. Escorts JCB Ltd. v. CCE, Delhi reported in 2002 (146) E.L.T. 31 (S.C.) observed (in para 13 of the said judgment) that*

"in view of the discussions held above in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable".

Further, CBEC vide it (Section) 37B Order 59/1/2003-CX, dated 3-3-2003 has clarified as under :-

"7. Assessable value' is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [Section 4(4)(b), sub-clauses (i), (ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under Section 4 remained substantially the same. Section 4(3)(c)(i) [as on 1-7-2000] was identical to the earlier provision contained in Section 4(4)(b)(i), Section 4(3)(c)(ii) was identical to the earlier provision in Section 4(4)(b)(ii) and Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier Section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods."

13. As regards rebating in cash, only the duty worked out on FOB value in respect of the rebate claims treating it as a transaction value Government relies on GOI Order dated 26.03.2014 in Re: Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] wherein GOI held that:

"9. Government notes that in this case the duty was paid on CIF value as admitted by applicant. The ocean freight and insurance incurred

beyond the port, being place of removal in the case cannot be part of transaction value in terms of statutory provisions discussed above. Therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied. Applicant has contended that if rebate is not allowed then the said amount may be allowed to be re-credited in the Cenvat credit account. Applicant is merchant-exporter and then re-credit of excess paid duty may be allowed in Cenvat credit account from where it was paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944".

Government therefore, holds that the excess duty paid by the applicant over and above the FOB value has to be re-credited in the Cenvat Credit account from where it was paid subject to compliance of the provisions of Section 12 B of Central Excise Act, 1944.

14. Government observes that the Commissioner (Appeals) in his impugned order has relied upon Board Circular No.510/06/2000-CX dated 03.02.2000 and Circular No.687/3/2003-CX dated 03.01.2003. In this regard, the Government observes that w.e.f. 01-07-2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act and therefore said Circular issued prior to the introduction of transaction value concept, cannot be strictly applied after 01-07-2000. Further, as per para 3(b)(ii) of Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004, the rebate sanctioning authority has to satisfy himself that rebate claim is in order before sanctioning the same. If the claim is in order he shall sanction the rebate either in whole or in part. The said para 3(b)(ii) is reproduced below :

"3(b) Presentation of claim for rebate to Central Excise :-

(i) .....

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime

> Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The said provisions of this notification clearly stipulate that after examining the rebate claim, the rebate sanctioning authority will sanction the claim in whole or in part as the case may be depending on facts of the case. Government notes that said notification issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be following for claiming as well as sanctioning rebate claims of duty paid on exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions is in order. Therefore, the circular of 2000 cannot supersede the provisions of Notification No. 19/2004-C.E. (N.T.).

15.1.1 Hon'ble Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. v. UOI (2009 (235)ELT 22 (P&H), has held that

> *"Rebate/Refund Made of payment Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable Also not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty- Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate - Board's Circular No. 687/3/2003-CX dated 03-01-2003 distinguished Rule 18 of Central Excise Rules, 2002."*

15.1.2 The Nahar Industrial Enterprises Ltd. v. UOI (2009 (235)ELT 22 (P&H) judgement was affirmed by Hon'ble Supreme Court in Civil Appeal Nos. 7409 & 7425 of 2012, dated 10-3-2022(2022 (380) ELT 129 (Supreme Court))

15.2 Also, in case of Panacea Biotech Ltd. reported in 2012 (276) ELT-412 (GOI), while deciding the rebate amount and manner of rebate, it is held by the Government as under :-

> *"11. Govt. is therefore, of the considered opinion that the rebate in cash is admissible only on the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act and not in the excess amount paid on differential value not forming part of transaction value. However, Government permits the applicant to take re-credit in cenvat credit account of the excess amount/deposit which was paid as Central Excise Duty erroneously on the goods exported by the applicant. Government accordingly, sets aside the impugned order-in-appeal and upholds the order-in-original."*

15.3 Hon'ble Bombay High Court vide Order dated 17th November 2014 dismissed the Writ Petition No 2693/2013 filed by the Commissioner of Central Excise Mumbai-III [2015 (320) E.L.T. 419 (Bom.)] holding that -

> *8.....The direction to allow the amount to be re-credited in the Cenvat credit account of the concerned manufacturer does not require any interference by us because even if the impugned order of the Appellate Authority and the Order-in-Original was modified by the Joint Secretary (Revisional Authority), what is the material to note is that relief has not been granted in its entirety to the first respondent. The first respondent may have come in the form of an applicant who has exported goods, either procured from other manufacturer or manufactured by it. Looked at from any angle, we do not find that any observation at all has made which can be construed as a positive direction or as a command as is now being understood. It was an observation made in the context of the amounts lying in excess. How they are to be dealt with and in what terms and under what provisions of law is a matter which can be looked into by the Government or even by the Commissioner who is before us. That on some apprehension and which does not have any basis in the present case, we cannot reverse the order or clarify anything in relation thereto particularly when that it is in favour of the authority. For all these reasons, the Writ Petition is misconceived and disposed of.*

In view of above, the excess paid amount of duty, is to be allowed as re-credit in the Cenvat credit account from where said duty was initially paid.

16. Government accordingly, sets aside the impugned orders-in-appeal and decides the revision applications on above terms.

Shrawan 25/8/22

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

781-
ORDER No. 825/2022-CX(WZ)/ASRA/MUMBAI DATED 25.8.2022.

To,
Commissioner of Central Goods and Service Tax,
Pune-II Commissionerate,
GST Bhavan, 41/A Sasoon Road,
Opp. Ness Wadia College,
Pune-411 001.

Copy to:

1. Commissioner, Central GST, (Appeals-I) Pune, "F" wing, 3rd Floor, GST Bhavan, 41/A, Sassoon Road, Pune 411001.
2. M/s. Cogeme Precision Parts India Pvt. Ltd., Gat No. 427, Hissa No. 13, Village : Mahalunge, Tal:Khed, Pune-410501.
3. Assistant / Deputy Commissioner, Division -IV (Chakan-II Division), Pune-II Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.