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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. 195/22/2015-RA 7373 Date of Issue: 09.12.21

ORDER NO. 867/2021-CX (WZ)/ASRA/MUMBAI DATED 09.12.2021 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 : M/s. Hildose, Shivam Chambers, 106/108, 1st Floor, S.V.Road, Goregaon, Mumbai-400 062.

Respondent : Commissioner of Central Excise (Appeals), Mumbai Zone-II.

Subject: Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. CD/113 & 114/RGD/14-15 dated 03.12.2014 passed by the Commissioner (Appeals) Mumbai Zone-II.

ORDER

This revision application is filed by M/s. Hildose, Shivam Chambers, 106/108, 1st Floor, S.V.Road, Goregaon, Mumbai-400 062 (hereinafter referred to as "the applicant") against the Order-in-Appeal No CD/113 & 114/RGD/14-15 dated 03.12.2014 passed by the Commissioner (Appeals) Mumbai Zone-II with respect to the Order-in-Original No.1159/13-14/DC (Rebate)/Raigad dated 02-08-2013 and 1945/13-14/DC (Rebate)/Raigad dated 24.10.2013 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant is merchant exporter who have filed rebate claims under Rule 18 of the CER 2002 read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on goods exported. The rebate sanctioning authority observed that in respect of the said rebate claims the assessable value on the ARE -1 were found to be more than the corresponding F.O.B values. Accordingly, DC, C.Ex. (Rebate) Raigad Commissionerate sanctioned rebate to the extent of Rs. 24,73,957/- instead of the claimed amount of Rs. 24,86,214/- vide OIO No. 1159/13-14/DC (Rebate)/Raigad dated 02-08-2013 and an amount of Rs.32,92,433/- was sanctioned instead of the claimed amount of Rs.35,59,680/- vide 1945/13-14/DC (Rebate)/Raigad dated 24.10.2013. Being aggrieved by the aforesaid Orders-in-Original, the applicant filed two appeals before the Commissioner (Appeals).

3. Commissioner (Appeals) vide his OIA No.CD/113&114/RGD/2014-15 dated 03-12-2014 held that the adjudicating authority had rightly denied the rebate of excess duty paid on the said portion of value which was in the excess of the transaction value.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :-

4.1 The applicant submitted that the following facts & legal provisions were taken on record by the Commissioner Appeals but not implemented or rebutted.

A. The foreign buyer has placed order on CIF basis & the contract price represents the composite price of the goods for delivery of goods at the named destination. Therefore, freight & insurance is includible in the transaction value. The Commissioner (Appeals) has not rebutted this and therefore there is no way to disallow the rebate on the freight & insurance.

B. As per the CBEC circular dtd. 19.12.2000, exclusion of cost of transport can be made only if the assessee has shown the same on actual basis separately in the invoice. However, this is not the case therefore there is no way to disallow the rebate on the freight & insurance.

C. RTI reply vide letter dtd. 4.12.12 has established that freight & insurance is part of the transaction value. The Commissioner (Appeals) has not rebutted this therefore there is no way to disallow the rebate on the freight & insurance.

D. As per Section 4 (3) (d) of the CEA, 1944, the transaction value is complied with by the exporter. Under Section 4, the assessable value is the transaction value at the time & place of removal. Therefore it is self-evident from these submissions taken on record that freight & insurance are part of the transaction value & therefore rebate on this amount cannot be allowed.

E. The difference between the transaction value & the FOB value of exports does not equal to the freight & insurance amount therefore it is ridiculous to conclude that the difference between the two is on account of freight & insurance.

4.2. Further the applicant submitted that the Commissioner himself relies upon Section 4 of the C. Ex. Act, 1944 and has taken on record that Section 4 (3) (d) of the CEA, 1944 of the Act is complied with by the exporter and still he has arrived at a wrong conclusion. The error is apparent & therefore the order of the Commissioner (appeals) needs to be set aside. The applicant has also submitted to refer to the submissions made before the Commissioner (Appeals). It is very elaborately laid out that the legislature has thought it wise to include the definition of transaction value to the Act in itself therefore there is no way that any authority can distort or amend the definition. Thus the Commissioner (Appeals) is in error to defy the act of Parliament.

4.3. The Commissioner (Appeals) conclusion that port is the place of removal, is totally wrong because the goods are removed from the factory of manufacture under an Invoice. The port does not belong to the exporter & no invoice is raised from there.

4.4. The Commissioner (Appeals) further relies up on Revision Orders passed in case of M/s. Sumitomo Chemicals P. Ltd, United Phosphorus Ltd. without specifying the legal basis & without establishing that how the case relates to the present case. Therefore, there is no way that such decisions can be relied upon in this case when the Section 4 (3) (d) of the CEA, 1944 is clear that the duty is payable on the transaction value & the transaction value includes outward handling i.e. freight & insurance.

4.5. The Commissioner (Appeals) has not said anything about the submissions made by the exporter on record though these are simply mentioned in the order. They prayed to direct the Astt. Commissioner to release the rebate withheld without any delay with interest as per law.

5. A Personal hearing was held in this case on 17.08.2021 and Shri Rajiv Gupta, Consultant, appeared online for hearing on behalf of the applicant and

submitted that short point is that rebate is to be allowed on transaction value. He submitted that freight and expenditure beyond departure port should also be part of the transaction value and rebated to them.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. Government finds that the issue for decision in these revision applications is whether the freight and insurance charges incurred beyond the port of export upto the port of the importer is part of the transaction value of the exported goods.

7. Commissioner (Appeals) while deciding had observed that :

"under new Section 4 of CEA 1944 , the assessable value is the transaction value at the time and place of removal. Where the place of removal is different from the place of manufacture, the freight (including freight Insurance) incurred on transportation of goods from the place of manufacture to place of removal has to be included for determination of the assessable value. In the instant case the appellants have apparently assessed the goods for payment of duty on the basis of value determined beyond the place of removal. Under Rule 5 of Valuation Rules, 2000 read with Section 4 of CEA 1944, where the price charged is for delivery at a place different than the place of removal the cost of transportation from the place of removal to the place of delivery only has to be excluded. Under Section 4(3) (c) of the Act, 'place of removal' includes depot, place of consignment agent and any other place from where the goods are sold. In the instant case, the place of removal is the port and therefore freight and insurance incurred for transport of the goods and other charges incurred beyond the port of export are not required to be included in the transaction value. Further, I find that the appellants have paid excise duty on the value which is inclusive of freight and other expenses incurred beyond the

place of removal. Also, the CBEC vide circular No. 510/06/2000-CX dated 3.2.2000 has clarified that duty on excisable goods is to be paid on the value determined in accordance with Section 4 of the Act".

8. Government observes that the applicant in their grounds of appeal made to Commissioner Appeal at para 2B has contended as under:-

"2B. In the present case, the foreign buyer has placed order on CIF basis & the contract represents the composite price of the goods for the delivery of goods at the named destination in the contract i.e. Ashdod. Thus in case of CIF contract, the expenditure on freight & insurance is includible for determination of transaction value as it is in connection with sale and by reason of sale. The freight & insurance is being charged on fixed amount basis/estimated value instead of actual freight and as per the definition of transaction value in the statute, freight & insurance i.e. outward handling charges is includible in the transaction value of the goods for determination of excise duty.

Further, it is pertinent to point that the freight is not shown separately in the excise invoice pertaining to the removal of goods for the purpose of exports. The said invoices show the composite price. This composite price is the transaction value as per the C. Ex. Act, 1944 & the binding circular No. 354/81/2000-TRU dtd. 30.6.2000 issued by the CBEC. This is the document, which certifies that composite price correctly shown in the Excise invoice is the true transaction value & the duty liability is correctly discharged. The excise invoices pertaining to the removal of the goods represent composite price therefore there is no discrepancy in terms of section 4(d) of the CEA, 1944. The title to the goods passes to the buyer once the documents are accepted/released by the buyer or goods received by the buyer in sound condition and not at the port of

shipment.....Therefore it is wrong to conclude that sale completes at the port of shipment in case of exports effected by the company".

From the above, Government observes that the applicant in the present application has sought to claim freight and insurance charges incurred beyond the port of export as a part of the transaction value and duty paid on such value is sought to be rebated to them in cash. The rebate of duty is the refund of duties of excise paid on excisable goods or the materials used in the manufacture of goods exported out of India. After introduction of new Section 4 w.e.f. 01.07.2000 by the Finance Act, 2000, excise duty is chargeable on the transaction value of the goods at the place of removal. The transactional value in case of export goods would be their price at the place of removal which would be the port of export. Undoubtedly, only the price of the goods within territory of India can be subjected to levy of central excise duty and the port of export is the last point where the excisable goods remain within the country. Government observes that the FOB value has been approved as the 'transaction value for grant of rebate on export goods in various decisions. The Para 10 in case of M/s Banwara Syntex Ltd.[2014(314)ELT886(GOI)] is reproduced below:

"10. From above, it is clear that expenses incurred upto the place of removal/point of sale are includible in the value determined under Section 4 of Central Excise Act, 1944. In this case, there is no dispute about place of removal which is stated as port of export where ownership of goods is transferred to the buyer. Applicant's claim that in this case place of removal is not factory but the port of export, is not disputed by department Since applicant has included only local freight for transportation of export goods from factory to port of export and not the ocean freight or freight incurred beyond port of export, there is no reason for not considering the local freight as part of value in view of above discussed statutory provisions. As such the demand of duty and interest as confirmed with the impugned orders is not sustainable. Government therefore set aside the impugned orders and holds that initial sanction of rebate claims was in order".

9. Government also observes that this issue resonates with the issues which have received the attention of the Hon'ble Supreme Court in the case of

CC & CE, Aurangabad vs. Roofit Industries Ltd.[2015(319)ELT 221(SC)] in respect of domestic clearances. In that case, the Apex Court has very categorically held that expenses incurred after removal of goods from factory gate: viz. freight, insurance and unloading charges etc. are not to be included in valuation of excisable goods. Needless to say, the same principle would be applicable to goods cleared for export.

10. Government observes that the applicant finds the judgement relied by Commissioner Appeals in case GOI's Order No. 97/ 2014-Cx dated 26.03.2014 In re : Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198(G.O.I.)] is not related to the present case. However Government finds this issue a identical issue. While deciding the issue Government, in its aforesaid Order discussed the provisions of Section 4(1)(a) of Central Excise Act, 1944, Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as well as the definitions of 'Sale' and 'Place of Removal' as per Section 2(h) and Section 4(3)(c)(i), (ii), (iii) of Central Excise Act, 1944 respectively, and observed as under:

> *"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 4 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. It can either be factory, warehouse or port/Customs Land Station of export and expenses of freight / insurance etc. incurred upto place of removal form part of assessable value. Under such circumstances, the place of removal is the port/place of export since sale takes place at the port /place of export.*

At para 9 of its Order dated 26.03.2014 in Re: Sumitomo Chemicals India Pvt. Ltd. [2014(308) E.L.T.198 (G.O.I.)] 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".

11. The facts of the present Revision Application being similar to the facts in the decision cited above, the ratio of the same is squarely applicable to this case. The place of removal has been extended upto the port of export in the case of export goods. Be that as it may, CIF value cannot be transaction value and therefore as a corollary freight and insurance beyond the port of export cannot be the part of transaction value. Moreover, any expenditure incurred beyond the international borders cannot be a part of valuation under Central Excise Act, 1944 in view of the provisions of Section 4 of Central Excise Act, 1944 which stipulates that the jurisdiction of the said Act extends only within the territory of the whole of India and not beyond.

12. Government notes that in the case applicant has paid duty on CIF value which was declared as value in Central Excise Invoice for payment of duty. In view of position explained above, the freight & insurance expenses incurred beyond place of removal cannot form part of transaction value. In this case the lower authorities has determined the FOE value as transaction value since goods stand sold at the port of export where possession of goods is transferred. Accordingly, Government holds that freight and insurance for transport of

goods and other charges incurred beyond port of export cannot be part of the transaction value. As such, the rebate of duty paid on FOB value is rightly sanctioned and the excess paid amount is allowed as re-credit in the Cenvat credit account from where it was paid/debited.

13. In view of the above, Government finds no legal infirmity in the impugned Order-in-Appeal and hence upholds the same.

14. The revision application is, therefore, rejected being devoid of merit.

9/12/21

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

ORDER No867/2021-CX (WZ) /ASRA/Mumbai DATED 09.12.2021

To,
M/s. Hildose,
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Copy to :

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner, Central Excise, (Appeals) –II, 3rd Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.