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SPEED POST

F.No.195/489-490/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 16/7/13

Order No. 930-931/13-Cx dated 15-7-2013 of the Government of India, passed by Shri D.P.Singh, Joint Secretary to the Government of India, Under Section 35 EE of the Central Excise Act, 1944.

Subject	:	Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SB/57&58/Th-I/11 dated 03.02.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I.
Applicant	:	M/s Unimix Equipments (P) Ltd., Ambernath, Thane
Respondent	:	Commissioner of Central Excise, Mumbai-I

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ORDER

These revision applications are filed by the applicant M/s Unimix Equipments (P) Ltd., Ambernath, Thane against the Order-in-Appeal No. SB/57&58/Th-I/11 dated 03.02.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I with respect to order-in-original passed by Assistant Commissioner of Central Excise, Kalyan-IV Division.

2. Brief facts of the case are that the applicant filed refund claims of duty paid on goods cleared to SEZ unit. They had cleared goods to SEZ unit without executing the required UT-I/Bond with the proper authority, hence, theywere directed to pay the Central Excise Duty along with the interest, as the goods were neither cleared on payment of duty nor under the UT-I/Bond. Accordingly, the applicants vide letter dated 17.3.2008, informed that they have made payment of duty along with interest on the goods cleared to SEZ units. For the purpose of obtaining rebate/refund of duty in respect of goods cleared to SEZ, it was mandatory to follow the prescribed procedure under Rule 18 of Central Excise Rules, 2002 and also to fulfill all the conditions laid down under the said rule and notification issued there under, which the applicant failed to do. In this background, a Show cause notice was issued to them, asking them as to why the said refund claim should not be rejected under Section 11B of the Central Excise Act 1944. Original authority rejected the refund claims vide impugned orders-in-original.

3. Being aggrieved by the impugned orders-in-original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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

4.1 The applicant had cited and relied upon Board's circulars dated 27.12.2006 and dated 19.3.2010. Under the circumstances, the Commissioner (Appeals) had to

consider whether these circulars applied to the facts of the appeal before him. Regrettably the fact is there is no reference to these two directly applicable circulars in the "DISCUSSIONS & FINDINGS" part of the impugned order. It is submitted with respect the Commissioner (A) had blatantly disregarded the two directly applicable Board's circular, and thus rendered the impugned order bad in law and unsustainable, and accordingly it is submitted the impugned order is liable to be set aside on this ground alone.

4.2 The Commissioner (A) had relied upon the Hon Tribunal's decision in the case of Tiger Steel Engineering (I) Pvt. Ltd. 2010(259)ELT 375(T). It is submitted that the ratio of this decision is not at all applicable to the facts and circumstances of this revision application. At para 11 of the decision the Hon Tribunal stated the subject matter of the appeal before it: "In the present case, the respondent claimed refund of accumulated CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004."
While in the present revision application of the Applicant, the issue involved is the refund of duty paid on goods exported to SEZ unit under Rule 18 of the Central Excise Rules 2002. Accordingly it is submitted that Commissioner (A) manifestly erred in applying the said decision of the Hon Tribunal which is not at all an authority on the facts and circumstances of the Applicant's case

4.3 The Commissioner (A) had also relied upon the Hon Gujarat High Court's judgment in Essar Steel Limited 2010(249) ELT 3(Guj). It is submitted that this case also is not at all applicable to the facts and circumstances of the present revision application. As summarized at para 39 of the judgment, the main issue under consideration by the High Court in this case was whether export duty can be imposed under Customs Act on goods supplied from DTA to the SEZ. As stated above by the Applicant, the issue involved herein is the refund of duty paid on goods exported to SEZ unit under Rule 18 of the Central Excise Rules 2002. Accordingly it is submitted that Commissioner (A) manifestly erred again in applying the said judgment of the Hon High Court which is not at all an authority on the facts and circumstances of the Applicant's case.

5. Personal hearing was scheduled in the case on 4.3.2013 & 27.6.2013. Shri Prem Kumar Francis, Consultant and Shri Balraj Tekchandani, Director attended hearing 27.6.2013 on behalf of applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and orders-in-appeal.

7. Government observes that the applicant's rebate claims were rejected by the original authority mainly on the ground that the clearance to SEZ cannot be treated equivalent to export to other countries and that there is no provision of allowing rebate under Rule 18 of the Central Excise Rules, 2002. Commissioner (Appeals) upheld the impugned Orders-in-Original. Now, the applicant has filed revision applications on the grounds stated in para 4 above.

8. Government notes that applicant has cited Board's Circular No.29/2006-Customs dated 27.12.2006 and Board's Circular 6/2010-Cus dated 19.3.2010, and contended that rebate is admissible to them.

8.1 The relevant provision of Circular No.29/2006-Cus dated 27.12.2006 reads as under:

> *"1. ....*
>
> *2. ....*
>
> *3. ....*
>
> *4. In the light of the aforesaid provisions, with effect from 14.03.2006, Chapter X A of the Customs Act, 1962, the SEZ Rules, 2003, the SEZ (Customs Procedure) Regulations, 2003, and the exemption notification no. 58/2003-CE dated 22.7.2003 regarding the supply of goods to SEZ units & SEZ developers have become redundant. Consequently the supplies from DTA to a SEZ unit, or to SEZ developers for their authorized operations inside a SEZ notified under sub-section (1) of section 4 of the Act, may be treated as in the nature of exports.*

5. The existing SEZs, i.e., the ones notified under section 76A of Chapter X A of the Customs Act, 1962 shall be deemed to have been notified under Section 4 of the Act. Supplies from DTA to SEZ shall be exempt from payment of any Central Excise duty under Rule 19 of Central Excise Rules, 2002. Similarly, such supplies shall be eligible for claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to the fulfillment of conditions laid there under. The provisions relating to exports under Central Excise Act, 1944 and rules made there under may be applied, mutatis-mutandis, in case of procurement by SEZ units & SEZ developer from DTA for their authorized operations.

6. The provisions of Regulation 10 of the Special Economic Zone (Custom Procedure) Regulation, 2003 for requirement of issuance of Domestic Procurement Certificate (DPC) have been dispensed with in the SEZ Rules, 2006. Now the procedure for procurements of goods from Domestic Tariff Area to a SEZ Developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006, and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Annexure-I and Annexure-II, under notification no. 42/2001-C.E.(N.T.) dated 26.06.2001 as amended, and furnished by the DTA supplier to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. In the event of non-receipt of proof of export in form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and /or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from the DTA supplier by the jurisdictional Central Excise Officer as is done in the case of non-availability of proof of export for normal export of goods, without payment of Central Excise duty, under Rule 19 of Central Excise Rules, 2002.

7. Clearance of goods at the place of dispatch, i. e., at the factory or warehouse may be, at the option of the exporter (DTA Supplier), either 'under examination and sealing of goods by the Central Excise officer', or, 'under self- sealing and self examination', as is applicable in the case of export of goods under Rule 18 or 19 of

Central Excise Rules, 2002. The manner of disposal of copies of ARE1, monitoring of proof of exports, demand of duty in case of non - submission of proof of exports, etc. shall be the same as is applicable in case of exports made under Rule 18 or Rule 19 of the Central Excise Rules, 2002. The DTA supplier shall ensure the bonafides of the SEZ unit or SEZ developer to whom duty free goods are being supplied. In the event of non receipt of proof of export due to loss of goods in transit due to theft, illegal diversion or any other reason, or in the event of proof of export being found to be fraudulent, the liability of payment of duty, fine, penalty and interest relating thereto, would lie with the supplier in DTA, in addition to any other liability under any law in force."

Further, relevant para of Board's Circular 6/2010-Cus dated 19.3.2010 reads as under:

"1. ....

2. A view has been put forth that rebate under Rule 18 of the central Excise Rules, 2002 read with Notification 19/2004- CE (NT) dated 06.09.2004 is admissible only when the goods are exported out of India and not when supplies are made to SEZ.

3. The matter has been examined. The circular No. 29/2006- Cus dated 27.12.2006 was issued after considering all the relevant points and it was clarified 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 authorised 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 Rules is followed to give effect to this provision of the SEZ 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."

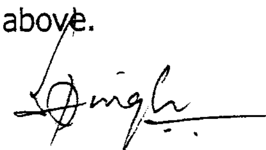
From perusal of above provision, it is clear that the supplies made to SEZ are treated as export and such supplies are eligible for rebate claim under Rule 18 of the Central Excise Rules, 2002. Hence, the lower authorities have erred in holding to the extent that supplies to SEZ are not eligible for rebate benefit by ignoring the provisions of above said CBEC Circulars.

9. Further, on perusal of records, Government notes that applicant initially sought to supply the impugned goods to the SEZ Unit under Rule 19 of the Central excise Rules 2002. Subsequently on being pointed out above non-execution of UT-I, they paid central excise duties through debit entries in cenvat account and claimed refund/rebate of such said duty. In these cases there is no allegation that said goods were not received by the SEZ unit. As such the payment of duty and export of goods is not in dispute. Therefore, rebate claim is required to be considered in accordance with law on merit in the light of above said CBEC circulars.

10. In view of above, Government sets aside the impugned orders and remands the matter back to original authority for fresh consideration of case in accordance with alw on merits by taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties.

11. The Revision applications are disposed of in terms of above.

12. So ordered.



(D.P.Singh)
Joint Secretary (Revision Application)

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Attested.

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

F.No.195/489-490/11-RA

G.O.I. Order No. 930 – 931/13-Cx dated 15-7-2013

Copy to:-

1. Commissioner of Central Excise & Customs, Thane-I Commissionerate, Navprabhat Chambers, Ranade Road, Dadar (W), Mumbai-400028
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Dadi Seth Lane, Chowpatty, Mumbai- 400 007.
3. The Assistant Commissioner of Central Excise, Kalyan-IV Division Bhagwandas Mansion, Shivaji Chowk, Kalyan(W) 421301 Distt. Thani
4. PS to JS (Revision Application)
5. Guard File
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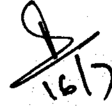

(B.P.Sharma)
OSD (Revision Application)