F.No.195/88/2013-RA

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SPEED POST

सत्यमेव जयते
GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/88/2013-RA/1515 Date of Issue: 01.03.2021

ORDER NO. 94/2021-CX (WZ)/ASRA/MUMBAI DATED 24.02.2021 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 Innovators Façade Pvt. Ltd.

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

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No BR/244/Th-I/2012 dated 11.10.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by M/s Innovators Façade System Pvt. Ltd., Survey No. 404/B, Chinchghar Village, Kudus Taluka Wada, Thane- 421 303 (hereinafter referred to as "the Applicant") against Order-in-Appeal No BR/244/Th-I/2012 dated 11.10.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. Briefly the Applicant, had filed rebate claim on 21.07.2011 for Rs. 2,18,352/-(Rupees Two Lakhs Eighteen Thousand Three Hundred and Fifty Two Only) under Rule 18 of the Central Excise Rules, 2002 towards the Central Excise duty paid on the excisable goods cleared by them to Special Economic Zone (SEZ) against ARE-1 No. 01/2010-11 dated 14.02.2011. On processing the claims, the Applicant was issued Show Cause Notice dated 03.10.2011. The Deputy Commissioner(Rebate), Central Excise, Kalyan-I Division, Thane-I Commissionerate vide Order-in-Original No. R-444/2011-12 dated 20.10.2011 rejected the rebate claims on the grounds that the clearances to SEZ cannot be considered as export for grant of rebate under Rule 18 of Central Excise Rules, 2002 as SEZ do not qualify to be termed as a country other than Nepal and Bhutan as per the Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No BR/244/Th-I/2012 dated 11.10.2012 rejected their appeal and upheld the Order-in-Original.

3. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

(i) CBEC vide Circular No. 6/2010-CUS dated 19.03.2010 has clarified that rebate under Excise Rule 18 is admissible for clearance made to SEZ unit or developers and the Circular is binding on the Department. They relied on

the judgment of Supreme Court in the case of Ranadev Micronutrients [1996 (87) ELT 19 (SC)] and Paper Products Ltd. [1999 (112) ELT 765 (SC)].

(ii) The Commissioner(Appeals) had relied upon the judgment of the Hon'ble Gujarat High Court in the case of Essar Steel Ltd Vs UOI [2010 (249) ELT 3 (Guj)]. The ratio of this judgment is not relevant in the present case as the same is relate to Export of duty whether can be imposed under Custom Act, 1962 and the present case is related to rebate of duty under Rule 18 of Central Excise Rules 2002. Further, CBEC Circular No. 6/2010-CUS dated 19.03.2010 i.e. after November, 2009 is latest clarification issued on the subject matter which is more relevant in the present case.

(iii) The Commissioner(Appeals) had also relied upon the judgment in the case of CCE Thane-I Vs Tiger Steel Engineering (I) Pvt Ltd [2010 (259) ELT 375 (Tri-Mumbai)]. In this case, the refund was filed under Rule 5 of the Cenvat Credit Rules, 2004 on the premise that their clearance of finished goods to the SEZ unit were "exports" for the purpose of the said Rule. The said order had been stayed by the Hon'ble High Court and pending for final disposal i.e. Tiger Steel Engineering (I) Pvt Ltd Vs CCE [2021 (263)ELT A104 (Bom.)] The judgment was on different law point or refunds as has been prescribed by the statue, which is not relevant in the present case which is related to rebate of duty under Rule 18 of Central Excise Rules 2002.

(iv) The CBEC Circular No. 29/2005-CUS dated 27.12.2006 was issued to clarify certain doubts related with implementation of Rule 30 of SEZ Rules 2006 relating to procurement of goods by SEZ from Domestic Tariff Area DTA)

> *"5.....Similarly such supplies shall be eligble for claim of rebate under Rule 18 of Central Excise Rules , 2002 subject to the fulfillment of condition laid there under. The provision relating to exports under Central Excise Act, 1944 and rules made thre under may be applied, mutatis-mutandis, in case of procurement of SEZ units & SEZ developer from DTA for their authorized operations."*

In view of the said clarification and relevant provisions the Applicant had cleared the goods to SEZ with payment of duty under Rule 18 of Central Excise Rules , 2002 and rebate claim was filed thereafter which is appropriate and valid.

(v) The Show Cause Notice dated 03.10.2011 was issued and the Applicant as directed to filed their reply within 10 days from the date of receipt of SCN. In the said SCN the Personal Hearing date was fixed and the order had been passed on 21.10.2021 i.e. within the period of 18 days from the date of issue of the notice, without giving an opportunity to them to complete their submissions and the Order-in-Original had been passed rejecting the claim on frivolous reasons and without taking into consideration the settled law The said ex-parte order was passed without following natural justice and with prejudged mind should be set aside. In this they relied upon the judgment of Apex Court in the case of Oryx Fisheries Pvt. Ltd. Vs UIO [2011 (266) ELT 422 (SC)]

4. Personal hearing in the case was held on 27.01.2021. Shri Manoj, appeared online behalf of the Applicant. The Applicant submitted that the lower authorities have not treated supplied to SEZ as export inspite of clear provisions of SEZ Act in this regard. He requests to allow rebate.

5. 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.

6. Government observes that the original authority has rejected the rebate claim on the grounds that that the clearances to SEZ cannot be considered as export for grant of rebate under Rule 18 of Central Excise Rules, 2002 as SEZ do not qualify to be termed as a country other than Nepal and Bhutan as per the Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended.

7. Government observes that in terms of Para 5 of Board's Circular No. 29/2006-Cus., dated 27-12-2006, the supply from DTA to SEZ shall be eligible for

claim of rebate under Rule 18 of Central Excise Rules, 2002 subject to fulfillment of conditions laid thereon. Government further observes that Rule 30 of SEZ Rules, 2006 prescribes for the procedure for procurements from the Domestic Tariff Area. As per sub-rule (1) of the said Rule 30 of SEZ Rules, 2006, DTA may supply the goods to SEZ, as in the case of exports, either under Bond or as duty paid goods under claim of rebate under the cover of ARE-1 form. C.B.E. & C. has further clarified vide Circular No. 6/2010-Cus., dated 19-3-2010 that rebate under Central Excise Rules, 2002 is admissible to supplies made from DTA to SEZ and directed the lower formations to follow Circular No. 29/2006-Cus., dated 27-12-2006. The Circular dated 19-3-2010 is reproduced below:-

"Circular No. 6/2010-Cus., dated 19-3-2010

F.No.DGEP/SEZ/13/2009

Sub : Rebate under Rule 18 on clearances made to SEZs reg.

A few representations have been received from various filed formations as well as from various units on the issue of admissibility of rebate on supply of goods by DTA units to SEZ.

2. A view has been put forth that rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification 19/2004-C.E. (N.T.), dated 6-9-2004 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 authorized 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."

The said clarification is with respect to CBEC's Circular No. 29/2006-Cus., dated 27.12.2006, as well as to Rule 18 of Central Excise Rules, 2002. So this clarification applies to all the rebate claims filed under Rule 18 of Central Excise Rules, 2002.

8. Government also notes that vide circular No.1001/8/2015-CX.8 dtd.28th April, 2015 issued under F.No.267/18/2015-CX.8 on *"Clarification on rebate of duty on goods cleared from DTA to SEZ"*, CBEC has clarified that since Special Economic Zone (SEZ) is deemed to be outside the Customs territory of India in terms of the provisions under the SEZ Act, 2005, any licit clearances of goods to SEZ from Domestic Tariff Area (DTA) will continue to be Export and therefore are entitled to the benefit of rebate under Rule 18 of the Excise Rules and of refund of accumulated Cenvat credit under Rule 5 of the Credit Rules, as the case may be. Para No. 3 & 4 of the Circular are reproduced herein below:

> *3. It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per section 51 of the SEZ Act, the provisions of the SEZ Act shall have over riding effect over provisions of any other law in case of any inconsistency. Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India. It is in line of these provisions that rule 30 (1) of the SEZ rules, 2006 provides that the DTA supplier supplying goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-1.*
>
> *4. It was in view of these provisions that the DGEP vide circulars No. 29/2006-customs dated 27/12/2006 and No. 6/2010 dated 19/03/ 2010 clarified that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supply of goods made from DTA to SEZ. The position as explained in these circulars does not change after amendments made vide Notification No. 6/2015-CE (NT) and 8/2015-CE (NT) both dated 01.03.2015, since the definition of export, already given in rule 18 of Central Excise Rules, 2002 has only been made more explicit by incorporating the definition of export as given in the Customs Act, 1962. Since SEZ is deemed to be outside the Customs territory of India, any licit clearances of goods to an SEZ from the DTA will continue to be export and therefore be entitled to the benefit of rebate under rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5 of CCR, 2004, as the case may be."*

9. Government notes that in terms of Rule 30(5) of the SEZ Rules, Bill of Export should be filed under the claim of drawback or DEPB. Since rebate claim is also export entitlement benefit, the Applicant is required to file Bill of export.

Government finds that the Applicant had filed Bill of Export and the Authorised Officer of SEZ Unit had endorsed on ARE-1 dated 14.02.2011 that the goods have been duly received in SEZ. As the duty paid nature of goods and supply the same to SEZ is not under dispute, the rebate on duty paid as goods supplied to SEZ is admissible under Rule 18 of Central Excise Rules, 2002.

10. In the instant case, the Commissioner (Appeals) has rejected the rebate claims relying on Hon'ble Gujarat High Court decision in the case of Essar Steel Limited v. Union of India - 2010 (249) E.L.T. 3 (Guj.) which observed that movement of goods from Domestic Tariff Area to Special Economic Zone has been treated as export by legal fiction created under SEZ Act, 2005 and such legal fiction should be confined to the purpose for which it has been created and therefore definition given under one statute can't be adopted and substituted for purpose of another act.

11. The case laws relied upon by the Commissioner(Appeal) essentially deals with the definition of term 'Export' and whether the definition prescribed in one act would apply to other. In this connection, the said judgment has been discussed by the Larger Bench of CESTAT, West Zonal Bench Mumbai in its Order dated 17.12.2015 in the case of Sai Wardha Power Limited Vs CCE, Nagpur [2016 (332) E.L.T. 529 (Tri. - LB)] in the context of the eligibility of rebate for supplies made to SEZ. The relevant portion of the said order is reproduced below:

> *"8. A striking contention of the ld. AR which appeals to us is that the only statutory provision for grant of rebate lies in Section 11B read with Rule 18 of Central Excise Rules which is for goods exported out of the country. If the supplies to SEZ is not treated as such export, there being no other statutory provisions for grant of rebate under Rule 18, the undisputable consequence and conclusion would be that rebate cannot be sanctioned at all in case of supplies to SEZ from DTA units. Certainly such conclusion would result in a chaotic situation and render all circulars and Rules under SEZ Act ineffective and without jurisdiction as far as grant of rebate on goods supplied to SEZ is concerned. The contra argument is that Section 51 of the SEZ Act would have overriding effect and the rebate can be sanctioned in terms of the provisions of Section 26 of the SEZ Act. We note that Section 26 only provides for exemption of excise duties of goods brought from DTA to SEZ. It does not provide for rebate of duty on goods exported out of the country. Therefore there is no*

conflict or inconsistency between the provisions of the SEZ Act and Central Excise Act so as to invoke the provisions of Section 51 of the SEZ Act. Our view is strengthened by the Hon'ble High Court judgment in the case of Essar Steel Ltd. which held that "Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non obstante clause. In other words, if the provision/s of both the enactments apply in a given case and there is a conflict, the provisions of the Act containing the non obstante clause would ordinarily prevail. In the present case, the movement of goods from the Domestic Tariff Area into the Special Economic Zone is treated as an export under the SEZ Act, 2005, which does not contain any provision for levy of export duty on the same. On the other hand, export duty is levied under the Customs Act, 1962 on export of goods from India to a place outside India and the said Act does not contemplate levy of duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone. Therefore, there is no conflict in applying the respective definitions of export in the two enactments for the purposes of both the Acts and therefore, the non obstante clause cannot be applied or invoked at all."

12. Government further notes that the judgment of Hon'ble CESTAT in the case of M/s. Tiger Steel Engineering Pvt. Ltd. [2010 (259) ELT 375 (Tri.Mumbai)] cited by Commissioner(Appeals) relates to the issue of refund of accumulated Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004. Hon'ble Tribunal in para 12 of said judgment has observed as under:

"....The Board's clarification is in the context of applicability of Rules 18 and 19 of the Central Excise Rules, 2002 to a DTA supplier who might claim duty-free clearance of goods under Bond/Letter of Undertaking or rebate of duty paid on such goods or on raw materials used therein. Such limited clarification offered by the Board cannot be applied to the instant case where the issue under consideration is altogether different."

From above it is quite clear that CESTAT has not given any finding on the admissibility of rebate claim of duty paid on goods cleared to SEZ/SEZ Units. Further, above said order had been stayed by the Hon'ble High Court and pending for final disposal i.e. Tiger Steel Engineering (I) Pvt Ltd Vs CCE [2011 (263)ELT A104 (Bom.)].

13. In view of above discussions, the Government holds that rebate claims of duty paid goods cleared to SEZ are admissible to the Applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004.

14. Hence, Government remands the matter back to the original authority for the limited purpose of verification and to sanction the rebate claims of Rs. 2,18,352/-. The adjudicating authority shall reconsider the claims for rebate on the basis of the documents submitted by the Applicant after satisfying itself in regard to the authenticity of those documents.

15. In view of the above discussions and findings, Government sets aside the impugned Order-in-Appeal No BR/244/Th-I/2012 dated 11.10.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I and the matter is remanded to the Original Adjudicating Authority.

16. The Revision Application is allowed in above terms.

Shrawan 24/2/21

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

ORDER No. 94/2021-CX (WZ)/ASRA/Mumbai Dated 24.02.2021

To,
M/s Innovators Façade System Pvt. Ltd.,
Survey No. 404/B, Chinchghar Village,
Kudus Taluka Wada,
Thane- 421 303.

Copy to:

1. Commissioner of Central Goods & Service Tax, Thane-Rural Commissionerate, 4th floor, Utpad Shulk Bhavan, Plot No. 24-C, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare copy