



F. No. 195/79/2016-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.....28/10/22.....

Order No. 68 / 2022-CX dated 28-10- 2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional 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. HYD/CEX/003/APP/042/15-16 dated 31.03.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Applicant : M/s Tata Lockheed Martin Aerostructures Ltd., Hyderabad.

Respondent : The Commissioner of CGST & Central Excise, Hyderabad.

.....

ORDER

A Revision Application No. 195/79/2016-R.A. dated 29.06.2016 has been filed by the M/s Tata Lockheed Martin Aerostructures Ltd., Hyderabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD/CEX/003/APP/042/15-16 dated 31.03.2016, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 46/2014-R dated 22.12.2014, passed by the Assistant Commissioner of Central Excise, Uppal Division, Hyderabad.

2. Brief facts of the case are that the Applicant herein was 100% Export Oriented Unit (EOU). They exported aircraft structural assemblies for C-130 Aircraft, vide the two ARE-1s dated 03.12.2013 and 18.12.2013, on payment of duty. The duty was debited from the CENVAT credit account of the Applicant. Thereafter, a rebate claim for Rs. 1,72,25,340/- was filed. The original authority observed that all the goods manufactured and cleared by 100% EOU for export are exempted from whole of duty unconditionally, in terms of Notification No. 24/2003-CE dated 31.03.2003, as amended. Therefore, in terms of sub-section (1A) of Section 5A of the Central Excise Act, 1944, the Applicants herein had no option of paying duty. Accordingly, the rebate claim was rejected by the original authority, vide the aforesaid Order-in-Original dated 22.12.2014. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The Revision Application has been filed, mainly, on the grounds that EOU's are entitled for availing CENVAT credit and consequent rebate in cash as the benefit of CENVAT credit is of no relevance when not refunded; that the Applicant can opt to choose most beneficial notification; that exemption to export without payment of duty, under Notification No. 24/2003-CE, is conditional and not absolute; that beneficial provisions and notifications are to be interpreted liberally; and that the governing Notification No. 19/2004-CE(NT) dated 06.09.2004 does not prohibit an EOU from claiming rebate.

4. Personal hearing in the matter was fixed on 22.03.2022, 29.03.2022. After the change in territorial jurisdiction of the revisional authorities, the matter was taken up for hearing again on 27.10.2022. In the personal hearing held, in virtual mode, on 27.10.2022, Sh. S. Thirumalai, Advocate appeared for the Applicant and requested that the compilation emailed on 27.10.2022 may be taken on record. With the help of case laws cited therein, Sh. Thirumalai requested that the either the rebate should be allowed or in the alternate the Cenvat Credit used to pay duty, which ought not have been paid, should be allowed to be re-credited in the Cenvat Credit account. No one appeared for the

respondent department nor any request for adjournment has been received. It is, therefore, presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. It is undisputed that the Applicants herein were 100% EOU at the relevant time. It is also undisputed that Notification No. 24/2003-CE (NT) dated 31.03.2003 exempts the 100% EOU from payment of duty on export goods. The contention of the Applicants is that this notification is a conditional notification and, hence, it cannot be termed as an absolute exemption, as contemplated under sub-section (1A) of Section 5A *ibid*. However, the Government observes that the Commissioner (Appeals) has repelled this contention by relying upon a Division Bench judgment of the Hon'ble Rajasthan High Court in the case of Vanasthali Textiles Industries Ltd. vs. Union of India {2015(321) E.L.T. 89 (Raj.)}. The Government finds that in the case of Vanasthali Textiles Industries Ltd. (*supra*), a Division Bench of the Hon'ble Rajasthan High Court was seized with an identical issue and answered the same in following terms:

"5. After hearing the submission of the Officer Incharge, appearing on behalf of the respondent-department, no error or infirmity has been noticed by us in the order impugned which was passed by the revisional authority. It would be fruitful to reproduce the Notification No. 24/2003-C.E., dated 31.03.2003 as under:-

"In exercise of the power conferred by sub-section (1) of Section 5A of Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and sub-section (3) of Section 3 of the Additional Duties of Excise (Textiles and Textiles Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby;

(a) Exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of Excise leviable thereon under Section 3 of Central Excise Act, 1944 (1 of 1944) and Additional Duty of Excise leviable thereon under Section 3 of Additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and additional duty of excise leviable thereon under Section 3 of Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978):

Provided that the exemption contained in this Notification in respect of duty of Excise leviable under Section 3 of said Central Excise Act shall not apply to such goods if brought to any other place in India."

6. It would be also fruitful to quote sub-section (1A) of Section 5A of the Act of 1944, which reads *ad-infra*:-

"(1A) For the removal of doubts, it is hereby declared that 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."

7. In view of the aforesaid Notification No. 24/2003-C.E., dated 31.3.2003 and Sec. 5A of the Act of 1944, the exempted goods manufactured by 100% EOU and cleared from export from whole of duty unconditionally. Therefore, in view of the provisions of sub-sec. (1A) of Sec. 5A, the petitioner/manufacturer was not liable to pay any duty. In our view, there is no condition for availing exemption from payment of duty of goods cleared for exports. The 100% EOU has to clear all the goods manufactured by them for exports as per the EOU scheme. Such units can clear the goods in DTA with prior permission of the Development Commissioner and since no prior permission of Commissioner was sought, therefore, the revisional authority has correctly come to this conclusion. Since there is no condition in the notification for availing exemption of goods manufactured by 100% EOU and cleared for export, the provision of sub-sec. (1A) of Sec. 5A (1), are applicable and no duty was required to be paid on such exported goods.

8. Accordingly, in our view, the rebate claimed is not admissible in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6.9.2004.

.....
11. We may also observe that a Circular /Letter F. No. 209/26/09-CX-6, dated 23.4.2010 came to be issued by the C.B.E. & C., Para 2 of which is quoted *ad-infra*:-

"The matter has been examined, Notification No. 24/2003-C.E., dated 13.3.2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A (1) of the Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

12. From perusal of the above, it clarifies the situation that the EOU did not have an option to pay duty and thereafter claim rebate of duty paid. The circular has in our view been correctly interpreted by the revisional authority. In view of what we have observed herein above, we do not find force in the instant writ petition and in our view the order of the Revisional Authority is correct and we do not find any adversity, infirmity or perversity in the order impugned so as called for interference by this Court."

5.2 The Applicants have cited the judgments of Hon'ble Madras High Court, in the Case of Orchid Healthcare vs. Union of India {2013 (290) E.L.T. 504 (Mad.)}, and that in the case of Leo Prime Comp. Pvt. Ltd. vs. Dy. Commr. of Central Excise, Puducherry [2020 (2) TMI 1373- Madras High Court] to distinguish the judgment of the Hon'ble Rajasthan High Court in the case of Vanasthali Textiles Industries Ltd. However, the Government is not persuaded to accept this contention of the Applicants herein as the judgments in the case of Orchid Healthcare and Leo Prime Comp. are passed by the Hon'ble Single Judges whereas the judgment in the case of Vanasthali Textiles Industries Ltd. is the judgment of a Division Bench. Further, the judgment in the case of Orchid Healthcare was passed prior to the judgment in the case of Vanasthali Textiles whereas the Hon'ble Madras High Court did not have the occasion to consider the judgment in the case of Vanasthali Textiles Ltd., while passing the judgment in the case of Leo Prime Comp. Furthermore, in the case of Leo Prime Comp., there is no direction by the Hon'ble High Court to allow the rebate claim rather the Hon'ble High Court has directed the Respondents therein to ascertain the amount of CENVAT credit that had remained unutilized in view of the denial of rebate claim and refund the same. Therefore, both these judgments of the Hon'ble Madras High Court are of no assistance to the Applicants' case in the instant revision application.

5.3 The Applicants have also relied upon the judgment of the jurisdictional High Court i.e. Hon'ble Telangana High Court in the case of Vasudha Bommireddy, Hyd Another vs. Assistant Commissioner of Service Tax, Hyd-3 -OT {2020 (2) TMI 632- Telanganā High Court}, in support of their contention that the rebate claim should be allowed. The Government observes that in the case of Vasudha Bommireddy, the issue involved was regarding the refund of amount paid as service tax, which was subsequently held to be not payable in the light of the judgment of Hon'ble Delhi High Court in the case of Suresh Kumar Bansal {2016 (43) STR 3 (Del.)}. The refund claim was rejected by the jurisdictional Assistant Commissioner on the grounds of limitation as the claim was not filed within the period of one year provided under Section 11B of the Central Excise Act, 1944. The Hon'ble Telangana High Court held that in view of the decision in Suresh Kumar Bansal's case, the amount paid was not service tax and, as such, the limitation under Section 11B ibid would not apply. The Hon'ble High Court further held that as the claim was filed barely two months after the decision of Hon'ble Delhi High Court in the case of Suresh Kumar Bansal, it cannot be said that there is inordinate delay in seeking the refund. In this light, the Hon'ble Telanganā High Court directed the refund. Thus, in Vasudha Bommireddy's case the issue involved was regarding rejection of a refund claim, for an amount paid as service tax, which was subsequently found to be not payable as per the Order of Hon'ble Delhi High Court, on the grounds of limitation, whereas in the present case, rebate claim has been rejected as the amount paid was ab-initio not payable as per Section 5A(1A) in view of the absolute exemption granted, vide notification no.

24/2003-CE (NT). The facts and the issues involved are, therefore, entirely different. As such, the judgment in Vasudha Bommireddy is also of no assistance to the Applicant's case herein. Other case laws relied upon by the Applicants are not relevant/applicable in the facts of the present case.

5.4 In view of the above, the Government has no hesitation in holding that the Applicant herein was not required to pay duty on the goods exported by them, in terms of Notification No. 24/2003-CE (NT) dated 31.03.2003, read with Section 5A (1A) of the Central Excise Act, 1944, and as such the rebate claim is not admissible in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004.

6. The Applicants have in the alternate requested that as the duty was not payable, they may be allowed to re-credit the amount paid by them in their CENVAT credit account. The GOI Order No. 1303/13-CX dated 10.10.2013 in the case of M/s. Monomer Chemical Industries Pvt. Ltd. has been cited in support of this contention. Without entering into the details of the facts of Monomer Chemicals Industries Pvt. Ltd., the Government observes that after the introduction of GST, w.e.f. 01.07.2017, the goods manufactured by the Applicants herein are not covered by the Central Excise duties and, as such, there is no CENVAT credit account available where the re-credit could be considered. Therefore, this contention of the Applicant is also not acceptable.

7. In view of the above, the revision application is rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Tata Lockheed Martin Aerostructures
Ltd., Survey No. 255, Adibatla Village,
Ibrahimpattam, Ranga Road Distt.
Telangana-501510.


G.O.I. Order No. 68/22-CX dated 28-10-2022

Copy to:

1. The Commissioner of CGST & Central Excise, GST Bhavan, L.B. Stadium, Basheerbagh, Hyderabad-500004.
2. The Commissioner of Customs & Central Excise (Appeals) 7th Floor, Kendriya Shukl Bhavan, Opp. L.B. Stadium, Basheerbagh, Hyderabad-500004.

3. Sh. Tirumalai, Advocate, 1-8-384, 3rd Floor, Gowra Grand, S.P. Road Begumpet, Secunderabada-500003.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED


28.10.22

(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi