

REGISTERED
SPEED POST



F.No. 195/106 & 418/11-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 26/12/12

ORDER NO. 1772-1773 /12-Cx DATED 24-12-2012 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. 90/2010 dated 23.09.2010 & 115/2010 dated
20.12.2010 passed by Commissioner of Central Excise &
Service Tax (Appeals), LTU, Chennai.

APPLICANT : M/s Brakes India Ltd.,
Foundry Division-Unit-II,
Pulivalam.

RESPONDENT : Commissioner of Central Excise, & Service Tax, Large
Taxpayer Unit-Chennai

Order

These revision application are filed by M/s Brakes India Ltd. Foundry Division-Unit-II, Pulivalam, Sholinghur Chennai against the orders-in-appeal No. 90/2010 dated 23.09.2010 & 115/2010 dated 20.12.2010 passed by Commissioner of Central Excise& Service Tax (Appeals), LTU, Chennai, with respect to Orders-in-Original No. LTUC/274/2009-Assistant Commissioner (RF) dt. 09-10-2009 passed by Deputy Commissioner of Central Excise, LTU Chennai and Orders-in-Original No. LTUC/363-364/2009- passed by the Additional Commissioner of Central Excise, LTU Chennai respectively.

2. Brief facts of the case are that the applicant are engaged in the manufacture of unmachined Castings falling under Tariff Heading 7325 99 10 of the First Schedule to the Central Excise Tariff Act, 1985. They had availed cenvat credit for both inputs and capital goods as allowed under Cenvat Credit Rules 2004 for use in the manufacture of dutiable final products. The applicants exported the capital goods as such on which cenvat credit was availed, after debiting equal amount of cenvat credit in terms of Rule 3(5) of Central Excise Rules 2004. Subsequently, they had filed rebate claim in r/o said exports alongwith proof of exports such as original and duplicate ARE-1s, relevant shipping bills, bill of lading and export invoices. After due procedure of law adjudicating authority rejected the said rebate claims vide impugned Orders-in-Original.

3. Being aggrieved by the said orders-in-original, applicant filed appeals before Commissioner (Appeals) who rejected the same and upheld the impugned orders-in-original finding no merit in the grounds of appeal.

4. On being aggrieved by the above Orders-in-Appeal, the applicant has filed these Revision Applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The show cause notice alleged that the capital goods had been procured solely for export purposes to deny rebate claim, the said allegation had been dropped in the order-in-original, after establishing the facts that capital goods had been exported only from the regular stocks and not exclusively procured for export purpose.

4.2 In para 11 of the order, the Assistant Commissioner, the following had not been disputed :

- a) The goods have been exported within 6 months from the date of clearance from the factory of manufacture.
- b) The rebate application had been made to the proper officer as envisaged under Section 11B of Central Excise act, 1944.
- c) The rebate claim had been filed within the prescribed time limit of one year from the relevant date.
- d) The claim of rebate is more than Rs.500.
- e) The application have undertaken to repay on demand any rebate sanctioned in excess or erroneously in accordance with the provisions of Section 11A of Central Excise Act, 1944.
- f) Original and duplicate of ARE-1s have been certified by the Customs authorities evidencing export of the goods.
- g) The claim in the nature of rebate of duty paid on export of goods and hence the question of unjust enrichment does not arise as per proviso (a) to sub-section 2 of section 11B of Central Excise Act, 1944.

It is clear from the above that there has been statutory compliance on the part of the applicants for claiming rebate claim.

4.3 That rebate of duty on the excisable goods is to be allowed in terms of Rule 18 of Central Excise Rules, 2002 read with Explanation A to Section 11B of Central Excise act, 1944. Hence Rule 3(5) of Cenvat Credit Rules 2004 has no applicability at all while granting rebate claim. Subject to the conditions prescribed under Notification No. 19/2004-CE(NT) dated 6.09.04, the rebate of

duty paid shall be granted to the exporters, and invoking Rule 3(5) of Cenvat Credit Rules, 2004 to deny rebate claim is erroneous and bad in law.

4.4 Further, para 3.4 of Chapter 5 of CBEC's Excise Manual permits the manufacturer to remove the inputs or capital goods as such for export under bond. When export is permitted under bond, there can be no bar on exporting the inputs / capital goods as well under claim for rebate. It is also clear from the Rule 18 of Central Excise Rules, 2002 that the rebate claim shall be allowed for the duty actually paid on the exported goods. Therefore, in cases where the goods have actually been exported, the duty paid on such goods exported is to be allowed as rebate.

4.5 That on same set of facts, the Commissioner of Central Excise (Appeals), Mumbai-II had allowed the appeal. The same is reported in 2007 (216) ELT 0493 (Comm. Appeals). The said order is dated 4.1.2006 and not been appealed against. Hence, the department had accepted the said order. The summary of the case is re-produced for reference :

"The refractory material imported by applicants and the credit reversed equivalent to the duty on export goods. The reversal of credit not a duty. The amount paid by the applicants at the time of export was clearly "duty" which was fully covered under Rule 18. The payment on exported goods is not in dispute. There was substantial compliance of the provisions of Rule 18 and the applicants were entitled for rebate. The impugned order rejecting rebate claims cannot be sustained and it has to be set aside. Appeal allowed."

The applicants submit that the present issue is also on the same ground and the ratio of the above decision is squarely applicable. The following case laws are relevant to decide the issue.

- Bharath Chemicals vs. CCE, Thane – 2004 (170) ELT (Tri. Mum)
- CCE Delhi-I vs. MF Rings & Bearing Races Ltd. – 2000 (119) ELT (Tri.-Delhi)
- Siddhartha Tubes Ltd. vs. CCE Indore – 1999 (114) ELT 1000 Tri.

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- Siddhartha Tubes Ltd. vs. CCE Indore – 1999 (114) ELT 1000 Tri.
- Gayatri Laboratories Pvt. Ltd. vs. CCE Mumbai – 2006 (194) ELT 73 (Tri. Mum)
- Dujodwala Products Ltd. vs. CCE Raigad – 2008 (223) ELY 0499 (Tri – Mum).
- Grasim Industries Ltd. vs. CCE Indore – 2003 (155) ELT 0200 (Tri. Del)
- Finolex Cables Ltd. CCE Goa 2007 (210) ELT 0076 (Tri.-Mum)

5. The personal hearing was fixed in this case on 08.10.2012.. Shri R.K. Sharma, advocate appeared on behalf of the applicant and reiterated grounds of revision application. He also relied upon G.O.I. order No. 1626/11-Cx dated 21.12.2011.

6. Government has carefully gone through the records of the case including order of the lower authorities and submissions as made above.

7. On perusal of records, Government notes that applicant exported capital goods, as such on which cenvat credit was availed after reversing the cenvat credit in terms of rule 3(5) of Cenvat Credit Rules 2004. The rebate claim was denied on the ground that reversal of cenvat credit in terms of rule 3(5) of Cenvat Credit Rules 2004 is not defined as duty in terms of explanation to Not. No.19/04-CE(NT) dated 6.9.2004. Commissioner (Appeals) while upholding the impugned order-in-original also held that applicant was not entitled to avail Cenvat credit on the capital goods which are exclusively procured for export. It is observed that applicant is using such capital goods in their factory and therefore it cannot be said that these goods are procured exclusively for export. Moreover, adjudicating authority has also agreed with submission of applicant on this issue.

8. Government notes that this issue was decided by Hon'ble High Court of Bombay in the case of CCE Raigad Vs. Micro Inks Ltd in W.P. No.2195/2010 vide order dated 23.3.2011 reported as (3) 2011 (270) ELT 360 (Bom.). In the said writ petition Commissioner of Central Excise, Raigarh had challenged the GOI order No.873/10-Cx

dated 26.7.2010 passed in the case of M/s Micro Inks with respect to order-in-appeal No.SKS/244/RGD/2008 dated 30.4.2008 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II. Government had held in the said order dated 26.5.2010 that amount reversed under rule 3(4) / 3(5) of Cenvat Credit Rules 2004 is to be treated as payment of duty for the purpose of rule 18 of Central Excise Rules, 2002 read with Not. No.19/04-CE(NT) dated 6.9.2004. The view of the government is upheld by Hon'ble High Court of Bombay in the above said judgment. The observations of High Court's order contained in para 10 to 19 of said order are reproduced below:-

"10. Under the Central Excise law the manufacturer of a final product is entitled to take credit of specified duties paid on inputs or capital goods used in the final product (called Cenvat credit) and utilize the said credit to pay the excise duty payable on the final products by reversing the input credit. Mode and manner of availing /utilizing the credit of duty paid on inputs/capital goods were set out in Cenvat Credit Rules 2002 which are now replaced by Cenvat Credit Rules 2004.

Since the provisions relating to availment and utilization of credit of duty paid on inputs /capital goods under the Cenvat Credit Rules 2002 as well as Cenvat Credit Rules 2004 are identical, for the sake of convenience, we refer to the rules under the Cenvat Credit Rules 2002 (2002 Rules for short).

11. Rule 3(1) of 2002 Rules sets out the categories of duties paid on nay input or capital goods the credit of which canbe takne when received in the factory of manufacturer of final product.

12. Rule 3(4) and Rule 3(5) of the 2002 Rules to the extent relevant read thus:-

Rule 3(4) When inputs or capital goods on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in rule 7.

Rule 3(5) The amount paid under sub-ruel (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4).

13. Thus, under the 2002 Rules, a manufacturer who takes credit of duty paid on inputs or capital goods, subsequently removes the inputs/capital goods from the factory without utilizing the same in the manufacture of final product then, such manufacturer, is required to pay under rule 3(4) an amount equal to the duty of excise leviable on such inputs /capital goods and under rule 3(5) the amount paid under rule 3(4) is liable to be treated as duty paid on clearance of inputs / capital goods.

14. Even under the Modvat Scheme (now Cenvat Scheme) similar provisions were contained in Rule 57F(1)(ii) of the Central Excise Rules, 1944. Doubts had arisen under the Modvat Scheme as to whether

a manufacturer who has taken credit of duty paid on inputs /capital goods, when clears said input/capital (without utilizing the same in the manufacturer of final products) for export on payment of an amount equal to duty payable on such inputs/capital goods at the time of clearance for export is entitled to claim rebate of that amount.

15. *The Central Government considered the dispute and by its Circular No.286/1996 dated 31st December 1996 held that when duty paid inputs/capital goods credit of which is taken are cleared for export as inputs/capital goods on payment of the amount as specified under Rule 57F(1)(ii) as amended, then such manufacturer shall be deemed to be the manufacturer of the exported inputs/capital goods and consequently entitled to claim rebate of the amount paid under Rule 57F(1)(ii) of the Central Excise Rules 1944.*

16. *Since rule 3(4) of the 2002 Rules is pari materia with rule 57(1)(ii) of the Central Excise Rules 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India that the assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.*

17. *The contention of the revenue that the payment of duty by reversing the credit does not amount o payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does loose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No.283/1996 dated 31st December, 1996 has held that amount paid under Rule 57 F (1)(ii) of Central Excise Rules 1944 (which is analogous to the Cenvat Credit Rules 2002/ Cenvat Credit Rules 2004) on export of inputs/capital goods by debiting RG 23A part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.*

18. *The argument of the Revenue that identity of the exported inputs/capital goods could not be correlated with the inputs/capital goods brought into the factory is also without any merit because, in the present case the goods were exported under ARE 1 form and the same were duly certified by the Customs Authorities. The certificate under the ARE 1 form is issued with a view to facilitate grant of rebate by establishing identity of the duty paid inputs/capital goods with the inputs/capital goods which are exported.*

19. *For all the aforesaid reason, we see no infirmity in the order passed by the Joint Secretary to the Government of India. Accordingly rule is discharged with no order as to costs."*

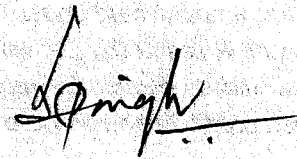
9. The ratio of the above said High Court order is squarely applicable to this case as the facts of these cases are exactly similar. Hon'ble High Court of Bombay has taken the same view in the case of CCE Raigarh Vs. M/s. Sterlite Industries (I) Ltd. & Others in its order dated 24-03-2011 in W.P. No. 2094/2010. In the said case, Writ Petition filed by

department against Government of India order No. 18/2009 dt. 20-01-2010 was dismissed. Further SLP No. 6120/12 filed by department in Supreme Court was also dismissed vide order dated 14-09-2012. Government therefore in view of above said judgment of Hon'ble High Court, holds that the reversal of Cenvat credit under rule 3(4)/ 3(5) of cenvat credit Rules 2004 is liable to be treated as payment of duty on the goods exported. Rule 3(6) of Cenvat Credit Rules 2004 clearly stipulates that the amount paid under rule 3(5) shall be eligible as Cenvat credit as if it was a duty paid by the person who removed such goods under rule 3(5) of Cenvat Credit Rules 2004. There is no other dispute regarding substantial compliance of the provisions of Notification NO. 19/04-CE issued under rule 18 of Central Excise Rules, 2002. Therefore, Government observes that rebate claim is admissible to the applicant under rule 18 of Central Excise Rules 2002 read with Not. No.19/2004-CENT) dated 6.9.2004.

10. Hence in the light of above discussion, Government sets aside the impugned order-in-appeal and direct the original adjudicating authority to sanction the rebate claim in accordance with law.

11. Revision application succeeds in terms of above.

12. So ordered.

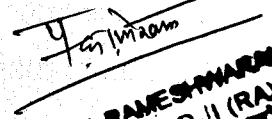


(D.P. SINGH)

JOINT SECRETARY(REVISION APPLICATION)

M/s. Brakes India Limited,
Foundry Division – Unit-II
Sholinghur, Chennai.

(Attested)

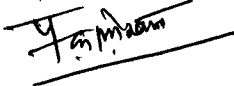


K. RAMESHWAR
जुनियर सचिव, (राजस्व विभाग)
विभाग सचिव, (राजस्व विभाग)
Ministry of Finance (Deptt. of Revs.)
नगर सचिव/ Govt. of India
नगर सचिव / New Delhi

1772-1732
GOI Order No. /2012-Cx dated 24.12.2012

Copy to:-

1. The Commissioner of Central Excise, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai – 600 101
2. The Commissioner of Central Excise (Appeals), Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai – 600 101
3. The Deputy Commissioner of Central Excise, LTG-II, LTU, Chennai
4. Shri R.K. Sharma & Associates, 157, 1st Floor, DDA Office Complex, C.M. Jhandewalan Extn., New Delhi.
5. PS to JS(RA)
6. Guard File
7. Spare Copy.


(P.K.Rameshwaram)
OSD-III (RA)

MEMORANDUM

TO : SAC, NEW YORK

FROM : SAC, NEW YORK

SUBJECT: [Illegible]

[Illegible text follows]

Very truly yours,
 [Illegible Signature]