

## **Gujarat HC allows Rebate of Excise Duty to Petitioner in Cash instead of Cenvat Credit in post GST regime**

### **Facts:**

Thermax Ltd. (“**Petitioner**”) is engaged in the manufacture of Boilers, Heaters, Heat Pumps and Pollution control equipment for industrial use and all these equipment’s are capital goods falling under Chapter 84 of the Central Excise Tariff Act, 1985 (“**CETA**”). The Petitioner has major manufacturing set up at Pune, Maharashtra and Baroda in Gujarat.

The Petitioner availed credit on the inputs, capital goods and input services used in the manufacturing of finished goods which are chargeable to excise duty. It is the case of the Petitioner that one of the customers M/s. Ansaldo Caldale SpA (“**Siemens Projects**”) had placed order on the Petitioner for supply of Boiler at Jeddah, Saudi Arabia. Therefore, with a view to carry out complete assemble, the Petitioner signed a lease agreement with Special Economic Zone on November 3<sup>rd</sup>, 2007 and the Petitioner therefore was temporarily given Survey No.169 at village: Dhrub for assembling the boilers. The Petitioner exported the boilers on payment of applicable excise duty.

The Petitioner filed a rebate claim under Rule 18 of the Central Excise Rules, 2002 (“**Central Excise Rules**”) on June 16<sup>th</sup>, 2008. Thereafter, after a period of three months i.e. on September 12<sup>th</sup>, 2008, show cause notice was issued proposing to deny rebate claimed by the Petitioner. On March 5<sup>th</sup>, 2009, the Petitioner filed reply to the show cause notice and thereafter, the Petitioner filed written submissions.

The Respondent rejected the rebate claim filed by the Petitioner on July 20<sup>th</sup>, 2011. Therefore, the Petitioner has challenged the same before the Commissioner of Central Excise (Appeals), Rajkot, who in turn rejected the appeal on November 22<sup>nd</sup>, 2011 by upholding the order in original dated July 20<sup>th</sup>, 2011. Being aggrieved with the said order, the Petitioner filed Revision Application before the Revisionary Authority on December 27<sup>th</sup>, 2017, which had rejected the Revision Application of the Petitioner.

### **Issue involved:**

Whether the Petitioner is entitled to receive refund of amount of duty paid in cash instead of credit to CENVAT account?

### **Held:**

The Hon’ble Gujarat High Court (“**Gujarat HC**”) passed the following ruling in the matter of **Special Civil Application No. 11846 of 2018 dated February 11<sup>th</sup>, 2019:**

- Learned Advocate for the Petitioner has drawn the attention of the Court to the order passed by this very Court on August 3<sup>rd</sup>, 2018 which reads as follows –

*“The petitioner has challenged a revision order dated December 27<sup>th</sup>, 2017, in which, the revisional authority has held that the petitioner had procured duty paid inputs and goods manufactured which were physically exported on payment of excise duty which was not required to be paid. The duty paid by the petitioner would be therefore without authority of law and cannot be said to be duty paid on the exported goods. On such basis, the revisional authority rejected the petitioner's case for rebate on the exported goods, however, on the ground that the Government cannot retain an amount which is not due to it. The Revisional Authority directed that the amount so collected, shall be recredited in the petitioner's CENVAT Credit Account.*

*Counsel for the petitioner submitted that the petitioner has no grievance about the logic adopted by the Revisional Authority, however, in view of the ushering effect of the GST regime with effect from July 1<sup>st</sup>, 2017, the question of CENVAT Credit which becomes available after July 1<sup>st</sup>, 2017 has to be dealt with differently. Our attention was drawn to subsection (3) of section 142 of the Central Goods and Services Tax Act, 2017 (“CGST Act”). On the basis of such provision, counsel contended that the CENVAT Credit should have been paid in cash since the revision order was passed after July 1<sup>st</sup>, 2017.”*

- Learned advocate for the Petitioner has also relied upon the decision dated March 26<sup>th</sup>, 2018 passed by Commissioner (Appeals) in the case of **Lanxess India (P.) Ltd.** in **Order-in-Appeal No.IND-EXCUS-000-APP-776 to 792-17-18**, wherein the refund is directed to be paid in cash. He, therefore, submitted that the present petition may be allowed and the Authority may be directed to pay the refund in cash instead of crediting the same in CENVAT Account, which has become redundant after advent of GST Regime.
- Learned advocate for the Respondent submitted that appropriate order may be passed in view of the provisions of Sub-Section(3) of Section 142 of the CGST Act.
- The Respondent has in Paras 15 & 16 of the **Order No.24/2017-CX(WZ)/ASRA/Mumbai dated December 27<sup>th</sup>, 2017** (“impugned order”) observed as under:

*“Government, however, also observes that the applicants had procured the duty paid inputs and the goods manufactured were physically exported on payment of excise duty which was not required to be paid by them. The duty paid without authority of*

*law cannot be treated as duty paid on the exported goods. As such rebate claim is not admissible in terms of Rule 18 of Central Excise Rules, 2002, read with Notification No.19/2004-C.E. (N.T.), dated 6.9.2004. However, as held in many Government of India Revision Orders, Government is of opinion that the duty paid in this instant case is to be treated as voluntary deposit made by the applicants at their own volition which is required to be returned to them in the manner it was initially paid, because the Government cannot retain the same without any authority of law.*

*The Government places its reliance on the following GOI Revisions Orders:*

*2012 (281) ELT 156 (GOI) Johari Digital Health Care Ltd., In re*

*2012 (284) ELT 737 (GOI) GTN Engineering (India) Ltd., In re*

*2012 (278) E.L.T. 559 (G.O.I.) - Indira Gandhi Mahila Sahakari Soot Girni Ltd., In re*

*2012 (278) E.L.T. 421 (G.O.I.) - Praj Industries Ltd., In re*

*2012 (278) E.L.T. 401 (G.O.I.) - Honeywell Automation (India) Ltd., In re*

*2012 (283) ELT 466 (GOI) - Flamingo Pharmaceuticals Ltd., In re*

*2014 (313) ELT 913 (GOI) - Ginni International Ltd., In re*

*2014 (313) ELT 876 (GOI) - Watson Pharmaceuticals (P.) Ltd., In re*

*2014 (312) ELT 929 (GOI) - Monomer Chemical Industries (P.) Ltd., In re*

*Since, Government cannot retain any amount which is not due to it, as has been held in aforesaid orders, the amount so collected is allowed to be re-credited in Cenvat Account. Government allows the applicant to take re-credit of said amount in their Cenvat Credit Account. The impugned order-in- appeal is modified to this extent."*

- It is thus eminently clear from the observations made in the impugned order that the duty, which was paid by the Petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the Petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the CGST Act every claim for the refund filed by any person before, on or after the appointed day i.e. July 1<sup>st</sup>, 2017 for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent ought to have directed the sanctioning Authority to refund the amount of the duty refundable to the Petitioner in cash instead of credit in CENVAT Account.

The Gujarat HC conclusively held that the Respondent ought to have directed the sanctioning Authority to refund the duty of the amount in cash instead of credit in the CENVAT account and for the foregoing reasons, the Petition was allowed to succeed. The impugned order passed by the Respondent in impugned order dated December 27<sup>th</sup>, 2017

was partly modified to the extent that instead of crediting the duty in the CENVAT account of the Petitioner, the sanctioning Authority is directed to refund the amount in cash to the Petitioner.

### **Important Provisions:**

#### **Section 142(3) of the CGST Act, 2017 : Miscellaneous Transitional Provisions**

Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944: (1 of 1944.)

*Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*

*Provided further that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

#### **Rule 18 of Central Excise Rules, 2002 : Rebate of Duty**

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

Explanation - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

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