CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE APPEAL No. 344 of 2009

[Arising out of Order-in-Appeal No. KKS/13 to 15/Th-I/09 dated 11.02.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I and remand directions in judgement of the Hon'ble High Court of Judicature at Bombay dated 29.11.2024.]

Commissioner of Central Excise – Thane-I **.... Appellant**
Navprabhat Chambers, 4th Floor
Ranade Road, Dadar (West)
Mumbai – 425 028.

VERSUS

Tiger Steel Engineering India Pvt. Ltd. **.... Respondent**
Plot No.K-9, Additional MIDC,
Kudavali Village, Murbad
District Thane, Maharashtra – 421 401.

WITH

EXCISE APPEAL No. 345 of 2009

[Arising out of Order-in-Appeal No. KKS/13 to 15/Th-I/09 dated 11.02.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I and remand directions in judgement of the Hon'ble High Court of Judicature at Bombay dated 29.11.2024.]

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VERSUS

Tiger Steel Engineering India Pvt. Ltd. **.... Respondent**
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AND

EXCISE APPEAL No. 346 of 2009

[Arising out of Order-in-Appeal No. KKS/13 to 15/Th-I/09 dated 11.02.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I and remand directions in judgement of the Hon'ble High Court of Judicature at Bombay dated 29.11.2024.]

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Navprabhat Chambers, 4th Floor
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VERSUS

Tiger Steel Engineering India Pvt. Ltd. **.... Respondent**
Plot No.K-9, Additional MIDC,
Kudavali Village, Murbad
District Thane, Maharashtra – 421 401.

APPEARANCE:

Shri Manish Mohan, Commissioner (AR), for the Appellant
Shri Akshay Hota, Company Representative for the Respondents

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86144-86146/2025

Date of Hearing: 26.03.2025
Date of Decision: 25.07.2025

Per: M.M. PARTHIBAN

These appeals have been filed by Commissioner of Central Excise, Thane-I (herein after, referred together as "the Revenue", for short) assailing the common Order-in-Appeal No. KKS/13 to 15/Th-I/09 dated 11.02.2009 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I in the case of M/s Tiger Steel Engineering India Private Limited (herein after, referred together as "the assessee", for short), District Thane.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2. The assessee-respondent was *inter alia* engaged, in the manufacture of excisable goods namely "Pre-fabricated Steel Buildings" falling under Chapter 94 of the First Schedule to the Central Excise Tariff Act. They were also availing the benefit of CENVAT Credit on inputs under the relevant provisions of the CENVAT Credit Rules, 2004. During the period of dispute, which comprises six quarters specified in the Table given below, the assessee-respondent supplied "Pre-fabricated Steel Buildings" to Nokia India Pvt Ltd., a unit in Nokia Telecom Special Economic Zone ('Nokia SEZ', for short), Chennai. These clearances were effected under Letter of Undertaking without payment of duty in terms of Rule 19 of the Central Excise Rules, 2002:

Period for which refund claim filed	Date of filing refund claim	Amount of refund (in Rs.)	Details of Order-in-Original
January 2007 to March 2007	10.06.2008	39,13,832/-	No. R/483/08-09 dated 29.08.2008 passed by Asst. Commissioner, Kalyan-II Division in rejection of all for refund claims
April 2007 to June 2007	02.06.2008	84,32,797/-	
July 2007 to September 2007	17.06.2008	60,52,189/-	
October 2007 to December 2007	23.06.2008	16,31,142/-	

Period for which refund claim filed	Date of filing refund claim	Amount of refund (in Rs.)	Details of Order-in-Original
January 2008 to March 2008	21.07.2008	2,95,34,954/-	No. R/992/08-09 dated 17.10.2008 passed by Asst. Commissioner, rejected the refund claim
April 2008 to June 2008	20.10.2008	1,48,99,006/-	No. R/1752/08-09 dated 08.12.2008 passed by Asst. Commissioner, rejected the refund claim
Total amount in all refund claims		6,44,63,920/-	

2.3 The assessee-respondent had filed all the above six refund claims under Rule 5 of the CENVAT Credit Rules, 2004 on the premise that their clearances of finished goods to the SEZ units were "exports" for the purpose of the said Rules. However, the department did not agree with the above claim of the respondent, and viewed that such goods have been supplied as capital goods in construction of SEZ and not as input to be used for the manufacture of final product that may be exported. Hence, it was interpreted by the department that the requirements of Rule 5 ibid have not been fulfilled. Accordingly, Show Cause Notices SCNs) were issued proposing to reject these refund claims on the ground that the claimant had not fulfilled the requirements of Rule 5 *ibid*. In these show-cause notices, it was alleged that the goods cleared by the respondent to the SEZ units were capital goods and not inputs and further that such clearances were not to be considered as physical exports. In adjudication of all the above refund claims, the original authority had passed three orders in rejecting the refund claims filed by the assessee-respondent. Feeling aggrieved with the aforesaid orders of the original authority, the assessee-respondent have filed three appeals before the Commissioner of Central Excise (Appeals), Mumbai Zone-I. In disposing of the said three appeals, by passing a common order No. KKS/13 to 15/Th-I/09 dated 11.02.2009 (which is impugned herein), learned Commissioner of Central Excise (Appeals) have held that supplies made from Domestic Tariff Area (DTA) to Special Economic Zone (SEZ) is nothing but export, and by setting aside the orders of the original authority, allowed all the three appeals filed by the assessee-respondent. Being aggrieved with the impugned order, Revenue have filed three appeals before the Tribunal.

2.4 The aforesaid appeals were heard by the Co-ordinate Bench of the Tribunal and these cases were decided vide Final Order No. S/207 to

209/WZB/2009/ EB/C-I dated 24.06.2009 by setting aside the order-in-appeal passed by the Commissioner (Appeal) and in allowing the appeals in favour of Revenue.

2.5 Feeling aggrieved with the aforesaid order of the Tribunal dated 24.06.2009, the assessee-respondent had filed Central Excise Appeal No.140 of 2010 before the Hon'ble High Court of Bombay along with Writ Petitions No.2469 of 2010; 9075 of 2010. This was finally disposed of by the Hon'ble High Court in pronouncement of its judgement on 29.11.2024, by quashing the order dated 24.06.2009 and restoring the appeal to the file of the Tribunal for deciding the case afresh. On the basis of the aforesaid judgement dated 29.11.2024 issued by the Hon'ble High Court of Bombay, we had taken up these cases for hearing and disposal of these appeals filed before this Tribunal.

3.1 The company representative of the respondent-assessee submitted that the issue of dispute concerning the matter of supply made to SEZ from DTA shall qualify as 'export' under Rule 5 of the Cenvat Credit Rules, 2004 (CCR of 2004, for short) and Rule 18 of the Central Excise Rules, 2002 has been settled in view of the clarification issued by the Central Board of Excise and Customs (CBEC) vide Circular No.1001/8/2015-CX.8 dated 28.04.2015. Therefore, he requested that their claim for refund of accumulated CENVAT credit allowed by the Commissioner (Appeals) in the impugned order be sustained.

3.2 He further relied upon the following case laws in support of the claim. *Essar Steel Limited Vs. Union of India* – 2010 (249) E.L.T. 3 (Guj.) and the judgement in the case of Bharat Heavy Electricals Ltd. Vs. Commissioner of Customs & Central Excise, Bhopal – 2015 (316) E.L.T. 413 (M.P.).

4. On the other hand, learned Commissioner appearing for Revenue as Authorized Representative reiterated the findings of the original authority and submitted that the issue in the present dispute has been examined by the Tribunal earlier, and in this regard the Hon'ble High Court of Bombay had given certain directions in their judgement dated 29.11.2024. In this regard, he submitted that all the issues as referred by the department may be addressed by the Tribunal and necessary orders may be passed.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form written paper books in this case by both sides were also perused carefully.

6. The issue for determination before the Tribunal is as follows:
(i) whether the respondent-assessee is eligible for refund of accumulated CENVAT credit taken in respect of the inputs used for the manufacture of finished excisable goods "pre-fabricated steel building structures" and cleared to Special Economic Zone (SEZ) or, otherwise?

(ii) whether the impugned order allowing the refund of accumulated CENVAT credit to the respondent-assessee, by setting aside the orders passed by the original authority is sustainable; or not?

7. At the time of delivering the Order dated 24.06.2009, the Tribunal did not have the benefit of circular dated 28.04.2015 issued by the CBEC in uniform assessment of the goods cleared by a manufacturer producing excisable goods and the judgements delivered by the Hon'ble High Court of Gujarat and Hon'ble Supreme Court.

8.1 On careful perusal of the records of the case, we find that the issue of 'refund of accumulated CENVAT credit when the goods are cleared from DTA to SEZ', have been clarified by the CBEC and in the judgements of the higher judicial forum. The relevant circular issued by the CBEC providing clarification in respect of goods cleared from DTA to SEZ are extracted and given below:

"Circular No. 1001/8/2015-CX.8

F. No. 267/18/2015-CX. 8
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs

New Delhi, the 28th April, 2015

Subject : Clarification on rebate of duty on goods cleared from DTA to SEZ - Regarding.

Kind attention is invited to Notifications No. 6/2015-C.E. (N.T.) and 8/2015-C.E. (N.T.), both dated 1-3-2015, vide which the meaning of export has been elaborated in both Rule 5 of Cenvat Credit Rules, 2004 and Rule 18 of Central Excise Rules, 2002. Post these amendments, apprehensions have been expressed by the trade as to whether the following benefits would be available after these amendments :

i. Benefit of rebate of duty on goods cleared from DTA to SEZ.

ii. Refund of accumulated CENVAT credit when goods are cleared from DTA to SEZ.

2. It is seen that :

i. Section 2(m)(ii) of the SEZ Act, 2005 defines export to, inter alia, mean "supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer".

ii. Section 26(1)(d) of SEZ Act, 2005 mentions that subject to the provisions of the sub-section (2), every Developer and entrepreneur shall be entitled to drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorized operations by the Developer or entrepreneur.

iii. Section 51(1) of the SEZ Act mandates that "The Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".

iv. Section 53(1) of the SEZ Act mentions that "A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations".

v. Rule 30(1) of the SEZ Rules, 2006 reads as under -

"The Domestic Tariff Area supplier supplying goods to a Unit or Developer shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in Notification Number 42/2001-Central Excise (N.T.), dated the 26th June, 2001 in quintuplicate bearing running serial number beginning from the first day of the financial year".

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 19-3-2010 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 there circulars does not change after amendments made vide Notification No. 6/2015-C.E. (N.T.) and 8/2015-C.E. (N.T.) both dated 1-3-2015, 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..."***
> *(Emphasis supplied)*

8.2 On plain reading of the aforesaid circular dated 28.04.2015 issued by the Ministry of Finance, CBEC, it transpires that clearances of excisable goods made from DTA to SEZ shall be treated as 'export' and the resultant CENVAT Credit in the books of accounts of the assessee, when claimed as refund of accumulated CENVAT credit shall be allowed in terms of Rule 5 CANVAT Credit Rules, 2004.

8.3. In this regard we find that the issue has also been examined by the Hon'ble High Court of Gujarat in the case of Essar Steel Limited (supra) by holding that movement of goods from Domestic Tariff Area to Special Economic Zone units or developers shall be considered as export. The relevant paragraphs of the said judgement is extracted and given below:

> **"41.3.4** *Similarly, reliance on Section 53 of the SEZ Act 2005 to contend that a Special Economic Zone is a territory outside India, is misconceived. Section 53 provides that the Zone would be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations. The term "customs territory" cannot be equated to the territory of India and in fact, such term has been defined in the General Agreement of Tariffs & Trade, to which India is a signatory, to mean an area subject to common tariff and regulations of commerce and that there could be more than one customs territory in a country. Moreover such an interpretation would lead to a situation where a Special Economic Zone would not be subject to any laws whatsoever. The entire SEZ Act 2005 would be rendered redundant since it is stated to extend the whole of India. In any case, various provisions of the SEZ Act would be rendered redundant and unworkable if the Special Economic Zone was to be considered an area outside India. This is apart from the fact that such a declaration would be constitutionally impermissible.*
>
> ***42.*** *In view of the above discussion and findings arrived at as well as conclusion drawn, the levy of export duty on goods supplied from the Domestic Tariff Area to the Special Economic Zone is not justified. The petitioners are, therefore, not to be called upon to pay export duty on movement of goods from Domestic Tariff Area to Special Economic Zone units or developers."*

8.4 We further find that the Hon'ble High Court of Madhya Pradesh in the case of Bharat Heavy Electricals Limited (supra) have held that the instructions and circulars issued by CBEC is required to be followed by the departmental officers as the same is binding on them in terms of Section 37B of the Central Excise Act, 1944. The relevant paragraph of the said judgement dated 04.09.2014 is extracted and given below:

> ***"11.*** *As far as second question is concerned, we hold that when a departmental circular is issued by the Board, it would be in accordance to the power available to the Board under Section 37B and until and unless it is not shown that the circular is contrary to any law laid down by the Supreme Court or judgment of High Court, the same shall be binding on all the officers of the Excise Department and only on the ground that the circular is not issued under Rule 233 of the Rules, the officer cannot refuse to follow the circular by saying that it is only advisory in nature. All the circulars issued by the Board in its administrative and executive jurisdiction are binding on the officers of the Board until and unless it can be shown that they are contrary to any law laid down by Supreme Court or High Court with regard to the subject matter of the circular."*

9. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble High Courts of Gujarat and Madhya Pradesh, we are of the considered view that the impugned order dated 11.02.2009, in setting aside the orders of the original authority in rejection of refund claims filed by the respondent-assessee, is legally sustainable and does not require any interference. Therefore, the appeals filed by Revenue does not have any grounds for entertaining the same.

10. In the result, the impugned order dated 11.02.2009 passed by the learned Commissioner (Appeals) is upheld and the appeals filed by the Revenue are dismissed.

(Order pronounced in open court on 25.07.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha