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Transfer of goods from SEZ/FTWZ to DTA cannot be considered as ‘re-import’ for availing exemption - Customs AAR

15 June 2023

Summary

The Customs Authority for Advance Ruling (CAAR) has held that the transfer of goods from the Domestic Tariff Area (DTA) to Free Trade Warehousing Zone (FTWZ), or FTWZ to DTA, is neither covered under the term 'procure' nor 'import' under the SEZ laws. Therefore, such transfer/supply of goods cannot be treated as 're-import' for the application of procedures and conditions as applicable in case of the normal re-import of goods from outside India. Under the SEZ law, the words 'import' and 'procure' have been assigned different meanings. It is also important to note that the activity of bringing goods from a unit or developer in SEZ to DTA is not covered under the definition of the term 'import' under the SEZ law. So, the AAR ruled that the applicant will not be eligible to avail exemption under the relevant notification.

Facts of the case

- Baker Hughes Oilfield Services India Private Limited (the applicant) is engaged in providing mining services to oil and gas exploration and production companies across India.
- The applicant will be importing equipment for oil and gas exploration projects from outside India at a concessional rate of tax as mentioned under S.No. 404 of the Notification No. 50/2017, and upon completion of the contract will export the said equipment. However, if the equipment will be required for other projects, the applicant will export the equipment to a logistics service provider located in SEZ or FTWZ. Subsequently, whenever the applicant will require for new contract, it will re-import the equipment into DTA under the said notification upon payment of concessional duty.
- The applicant submitted that the re-import of equipment from FTWZ to DTA would be exempted under S.No. 5 of Notification No. 45/2017- Customs dated 30 June 2017, and Circular No.21/2019 dated 24 July 2019, issued by the Central Board of Indirect Tax and Customs (CBIC).
- The applicant sought an advance ruling on the issue of whether the applicant is eligible to claim exemption from the payment of custom duty, IGST and compensation cess on the re-import of equipment from SEZ/FTWZ into DTA in view of the aforementioned entry, considering the fact that the equipment is the same that was brought from the DTA earlier and entered into SEZ/FTWZ.
- The applicant submitted that it is not a 100% EOU or FTWZ unit. The applicant submitted that once the equipment have been brought in FTWZ without availing any drawback, or incentives are subsequently re-imported in the same form into the DTA, even under the SEZ laws the said transaction has to be treated as re-import. Accordingly, they are not liable for discharging any customs duties or IGST in view of the aforementioned entry.

Customs AAR observations and ruling [CAAR/Del/Baker Hughes/09/2023 dated 28 April 2023]:

- **Establish re-import and export to FTWZ:** The CAAR took note of the comments by the Commissioner that in order to avail an exemption under Notification No. 45/2017-Cus, the applicant will have to establish whether the equipment was re-imported and whether such reimported equipment have been exported by the FTWZ/SEZ unit.

- **Concept of 'export' in relation to imported equipment unwarranted:** The AAR observed that the applicant has introduced the concept of 'export' in relation to such imported equipment in order to link it with Notification No. 45/2017-Cus. which is not warranted but unnecessary, as the same appears to have been done to confuse the issue for claiming undue exemption from the payment of duties/taxes. Further, there is no doubt that for the availment of exemption vide Notification No. 45/2017-Cus., goods have to be first exported and such exemption is not applicable to goods that have been warehoused, as in the current case.

- **Transfer of goods from FTWZ to DTA or DTA to FTWZ is not import:** The use of the words 'imported', 'exported' and 'procured' - in Section 7 of the SEZ Act - lead to the inference that different meanings have been assigned to these words under the SEZ law, and these words are not to be used inter-changeably. In the present case, goods shall be first imported in a DTA, which after usage by the applicant, gets transferred/warehoused to/in FTWZ by the importer of the goods, i.e., the applicant. As such, this activity is covered under the term 'export', as defined in the SEZ laws. However, when these goods are transferred from FTWZ to DTA or DTA to FTWZ, such transfer of goods is not 'import' under the SEZ laws.

- **Exemption not available:** As per the dictionary meaning of the word, ‘procure’ is ‘to obtain something’. But when the goods are being warehoused in FTWZ, these are not procured by a unit or a developer. Therefore, when the transfer of goods from DTA to FTWZ or FTWZ to DTA is neither covered under the term ‘procure’ nor ‘import’, such transfer/supply of goods cannot be treated as ‘re-import’ for the application of procedures and conditions as applicable in case of the normal re-import of goods from outside India. Therefore, the activity of transfer of goods from FTWZ to DTA cannot be termed as ‘import/re-import’, and thus not covered under Section 7 of the SEZ Act. Hence, no exemption from duties/taxes is admissible.

Our comments

Rule 48 of the SEZ Rules, 2006, inter-alia states that where goods procured from DTA by a unit are supplied back to the DTA, as it is or without substantial processing, such goods shall be treated as re-imported goods and will be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.

Therefore, the AAR held that in the present case, since the goods were not procured, the activity of transferring goods from FTWZ to DTA is not ‘import’ under the SEZ laws.

On a similar issue earlier, the Tamil Nadu AAR, under the GST law in the case of the Bank of Nova Scotia, had held that the applicant is not liable to pay IGST at the time of removal of goods from the FTWZ to DTA, in addition to the duties payable under the Customs Tariff Act, 1975, on the removal of goods from the FTWZ unit.

Even though the advance rulings are applicable only to the applicant, an inference can be drawn in similar cases.

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