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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre – I, Cuffe Parade,
Mumbai-400 005

195/1643/12-RA / 281

Date of Issue 27.11.2017

ORDER NO. 05/2017-CX (WZ) / ASRA / MUMBAI/ DATED 24.11.2017 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. United Phosphorus Ltd.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/711/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

The instant Revision Application filed by M/s. United Phosphorous Ltd. (hereinafter referred to as "the Applicant") has emanated from the Order-in-Appeal No.US/711/RGD/2012 dated 29th October, 2012 in which the Commissioner (Appeals) has set aside the Order-in-Original No.1321/2011-12/DC (Rebate)/Raigad dated 30.11.2011 passed by the Deputy Commissioner, Central Excise, Rebate vide which a Rebate claim to the tune of Rs.1,15,180/- was wrongly sanctioned in ARE-1 in respect of 2 claims in which the value of goods shown in the ARE-1 was higher than the FOB value shown in the Shipping Bill. The Commissioner (Appeals) had accordingly allowed the appeal of the department. It has been the contention of the Revenue that the value in ARE-1 had been higher than the FOB value which included an amount towards freight and insurance charges and other amounts etc. as the part of transaction value under Section 4 of the Central Excise Act, 1944 and as such the duty was payable on the FOB value. The Rebate in terms of Rule 18 of Central Excise Rules, 2002 is the rebate of Central Excise duty paid on exported goods. The Rebate, hence can be sanctioned only of that part of duty that has been paid on the FOB value. The Commissioner (Appeals) has accepted the contention of the Revenue. The Commissioner (Appeals) also held that since the Applicant had not submitted any documentary evidence substantiating their contention of availment of credit on imported inputs or due to fluctuation of the exchange rate.

2. A Personal Hearing was held on the 20th of November, 2017 in which the Applicant interalia submitted the following. The Applicant have vehemently argued that they had imported the goods on which the duty was paid and while bringing into the factory they availed the Cenvat credit on that. The exported goods are nothing but the inputs imported by them which were no longer required and hence were exported at the prevailing market price. The Applicant further contended that the product Ethylene Diamine has been exported through the said ARE-1 No. 1 of 2011-12 dated 16.4.2011 at a lower cost because the prevailing market at the time of export had gone down. It is also their contention that they had debited the duty amount equivalent to the credit availed in terms of Rule 3(5) of Cenvat Credit Rules, 2004. The Applicant further clarified that the product Ethylene Diamine was no longer required for manufacture due to change in recipe and hence it was exported at the prevailing price which was less than the cost. In view of the same, the Applicant submitted they are entitled to the rebate claim on the quantum of duty paid in terms of assessable value and on FOB value.

3. The Government has carefully gone through the case records of Revision Application, contention of the department in the Order-in-Original, contentions made in the Order-in-Appeals under question and the submissions made by the Applicant in his Revision Application. The bare perusal of form ARE-1 UPL/SWAL/0000I/11-12 shows that the party

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had exported Ethylene Diamine (EDA) with a gross weight of 16,560 kgs. with the assessable value of Rs.40,88,020. The Applicant, at Sr. No.3 of form ARE-1 have certified that the said goods have been manufactured availing the Cenvat facilities under Cenvat Credit Rules 2002. This certification is in contradiction to their submissions in the Revision Application and during the course of Personal Hearing, that they have exported EDA that had been imported by them earlier and there has been no process of manufacturing carried out on this product. It is seen from the Shipping Bill No.3283072/18/04/2011 that the FOB value of the said goods is Rs.29,88,444.35. The said Shipping Bill mentions the Invoice bill 1408260251 dated 18th of November, 2011. The Government also notes that the Revision Applicant had enclosed another commercial Invoice No.1417581948 dated 16.4.2011 which shows assessable value of Rs.28,80,000/-. The excise duty payable @ 10% has been shown to be Rs.4,08,802/- along with ED cess of 2% and SE cess of 1% to the tune of Rs.8176/- and Rs.4088/- respectively.

4. The payment of excise duty can only be made on the assessable value that is defined under Section 4 of the Central Excise Act. The assessable value declared by the Applicant is Rs.28,80,000/- and hence the excise duty payable should have been 10% + 2% and 1% of the said excise duty as ED and SE cess. The assessee cannot pay excise duty on any other value other than the assessable value. The Government in terms of the provisions of the Central Excise Act and Rules made thereunder can only allow rebate to the tune of the appropriate excise duty payable on the exported goods. The Government also notes that the assessee has mis-certified at Column No.3 of ARE-1 that the exported goods have been manufactured when on the remarks of the invoice the applicant claims that the material has been cleared as such that has been imported through Bill of Entry No. 739688 dated 2.3.2011. This transaction in the documents particularly, regarding the descriptions of value, number and date of invoice, issue as to whether the goods exported were manufactured or cleared as it indicates the inappropriate manner of discharge of central excise duty and their subsequent claim of rebate.

5. Section 4 of the Central Excise Act, 1944 stipulates that assessable value is the transaction value at the time of place of removal. In the instant case, the applicant has claimed that the place of removal was the Port. In terms of Rule 5 of Valuation Rules read with Section 4 of the Central Excise Act, 1944 the price charged for delivery at the place different from the place of removal the cost of transport from the place of removal to the place of delivery has to be excluded. Explanation 2 of the Rule 5 stipulates that the cost of transportation from the factory to the place of removal shall not be excluded for determining the value. Moreover, the applicant themselves in the invoice no.1417581948 dated 16.4.2011 have declared the assessable value as Rs.28,80,000/- and 10% excise duty payable comes to Rs.2,88,000/- and ED cess @ 2% and SE cess @ 1% comes to Rs.5,760 and Rs.2,288/- respectively. The clearance of goods as such by debiting the equal amount of Cenvat cannot entitle the Revision Applicant to claim rebate of the equivalent amount that they paid on the

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original price when they imported and availed credit thereon, when they themselves declared the assessable value for export much lower than the same goods when imported.

6. Therefore, it is liable to be held that the Revision Applicants are entitled to the rebate on the appropriate assessable value as they have declared in the invoice value of Rs.28,80,000/- and not on the incorrect value of Rs.40,88,020/- on the form ARE-1. Therefore, the order passed by the Commissioner (Appeals) setting aside the sanction of rebate by the original adjudicating authority to the tune of Rs.1,15,180/- (Rupees One Lakh Fifteen Thousand One Hundred and Eighty) is liable to be upheld and the application filed by the Revision Applicant is liable to be dismissed.

7. Accordingly, the Government upholds the impugned order of the Commissioner (Appeals) and dismiss the Revision Application filed by the Revision Applicant.

Ashok Kumar Mehta

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 05/2017-CX (WZ) /ASRA/ DATED 24.11.2017

To,

M/s United Phosphorus Ltd.,
Readymoney Terrace, 167,
Dr. A.B. Road,
Worli Naka,
Mumbai-400 018.

True Copy Attested
Sandeep
27/11/17

(Sankaran Munda)
Asst. Commr. (RA)

Copy to:

1. The Commissioner, CGST & Central Excise Commissionerate, Raigad.
2. The Commissioner (Appeals-II), CGST & Central Excise, Mumbai.
3. The Deputy Commissioner (Rebate), CGST & Central Excise Commissionerate, Raigad.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.