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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
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Mumbai - 400 005

F. No. 198/84-91/18-RA | 1486 Date of issue: 15.03.2023

ORDER NO.105-112/2023-CX (WZ)/ASRA/MUMBAI DATED 13-03-2023 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Pr. Commissioner of CGST, Ahmedabad South

Respondent : M/s. Jayshree Enterprises.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. AHM-EXCUS-001-APP-322 to 329-2017-18 dated 21.02.2018 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

ORDER

These Revision Applications are filed by the Pr. Commissioner of CGST, Ahmedabad South (hereinafter referred to as the Applicant-Department) against Order-in-Appeal No. AHM-EXCUS-001-APP-322 to 329-2017-18 dated 21.02.2018 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

2. Brief facts of the case are that M/s. Jayshree Enterprises, (hereinafter referred to as the Respondent), had filed 8 rebate claims totally amounting to Rs.8,01,234/-, for duty paid on export of goods, under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule18 of the Central Excise Rules,2002. The rebate claims were rejected on the ground that the respondent had paid duty by debiting the Cenvat credit taken on account of 4% Special Additional Duty (SAD) by the rebate sanctioning authority vide Order-in-Original No. MM/3572 to 3579/AC/2017-Reb dated 28.11.2017. Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the Applicant-Department has filed the impugned Revision Applications mainly on the grounds that:

a. The Central Government has not incorporated SAD (i.e. ACD levied under Section 3(5) of Customs Tariff Act, 1975) under the Explanation-I & therefore, the SAD portion is not eligible for rebate under the said Notification.

b. The impugned Order-in-Appeal is passed by ignoring the Government of India Order No. 433-444/2013-CX dated 30.05.2013 in the case of M/s. Vinati Organics Ltd. reported in 2014 (311) ELT 994 (GOI), wherein, it was held that SAD paid on imported goods to counter balance sales tax, VAT etc. cannot be considered as duties of excise eligible for rebate benefit. Therefore, Central Excise duty paid through the credit balance of SAD doesn't appear to be eligible for rebate claim & therefore, if the claimant has filed rebate claim for the goods cleared

for export on payment of duty by utilizing the balance of 4% Special Additional Duty leviable under Section 3 of Customs Tariff Act, 1975 introduced vide clause 72 of Finance Act, 2005 read with declaration made under the Provisional Collection of Taxes Act, 1931 with Finance Bill, 2005, the said 4% SAD is not defined as one of the duty, in the explanation provided under Not. No. 19/2004 CE (NT) dated 06.09.2004 as amended. A similar view was also taken in the case of M/s Alpa Laboratories Ltd. reported at 2014(311)E.L.T.854(GOI). The principle laid down in reading and interpreting Notification No. 19/2004 CE (NT) dated 06-09-2004 vide said GOI Order holds grounds in also interpreting Notification No. 21/2004 CE (NT) dated 06-09-2004 as both are in para-materia.

The Applicant-Department therefore prayed for setting aside the impugned order with consequential relief.

4. Personal hearing in the case was fixed for 21.12.2022. Shri Harshad Patel, Advocate attended the online hearing and submitted that once credit of SAD paid on import is taken, the same becomes Cenvat Credit which was used for paying duty on export goods. He submitted additional written submission. He requested to maintain the Order of Commissioner (Appeals). However, the Applicant-Department did not attend the hearing nor have they sent any written communication.

5. The respondent also submitted written submission wherein they have inter alia contended that:

(a) They have directly imported the raw materials under various Bill of Entries and that the Special Additional duty (4% SAD) was paid at the time of import in cash and the same was not debited in DEPB scrip.

(b) They have taken credit of such 4% SAD in their Cenvat credit account as per Rule 3 of the Cenvat credit Rule 2004 and it is also not disputed that they are eligible to take such 4% SAD credit as Cenvat credit as provided under Cenvat credit Rules 2004

(c) That it is also not disputed that after taking Credit as Cenvat of such amount of 4% SAD has lost its character as 4% SAD and can be utilized for payment of Excise duty i.e. Cenvat duty on final goods leviable and collectable under the enactment Central Excise Act, 1944 (1 of 1944)

(d) They have cleared goods for Export under claim of Rebate after payment of duty i.e. Paid Cenvat duty as levied under Section 3 of C. Ex. Act, 1944 and the said duty paid claimed as rebate of duty.

(e) That in the instant case, inputs used were imported and procured under various bills of entries. Special Additional duty (4%SAD) paid in cash at the time of import can also be utilized as Cenvat Duly levied and collected as duty of Excise amount under the enactment Central Excise Act, 1944 (1 of 1944). Hence, such payment of Cenvat duty paid on excisable goods is eligible for rebate claim as duty paid under the enactment Central Excise Act, 1944 (1 of 1944).

(f) That this SAD is also one specified duties for availing Cenvat credit under Cenvat credit Rules 2004 and the credit of such SAD (special additional duty) can be utilized for payment of central excise duty. once the final product removed for Export on payment of duty then said payment is considered as payment of excise duty levied and collected as duty of Excise under the enactment Central Excise Act, 1944 (1 of 1944). It is pertinent to note here that rebate to be claim of Excise duty payment i.e. Cenvat duty and not rebate of 4% SAD as such.

(g) Further for the contention raised in the subject Revision Application in ground of appeal there are reliance on the case laws of Vinati Organics Ltd (2014 (311) ELT 994 (GOI) and Alpha Laboratories Ltd (2014 (311) ELT 654 (GOI). In both the cases the rebates were filed under Notification No. 21/2004- CE (NT) dated 6-9-2004. The Honorable Commissioner (Appeal) has rightly held that reliance of the adjudicating on the aforementioned two case laws is not tenable since they are not at all relevant to the present dispute.

6. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Order-in-Appeal and the Revision Application filed by the applicant-Department.

7. Government observes that the issue involved is whether the rebate claim filed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 can be rejected for the reason that duty had been paid by utilizing cenvat credit taken on special additional duty (SAD) of Customs?

8.1 Government finds it proper to examine the different statutory provisions in this regard. As per Section 3 (5) of the Customs Tariff Act,1975 Special Additional Duty (SAD) has been explained as follows:

> Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges -
> *(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four percent of the value of the imported article as specified in that notification.*
> *Explanation. - In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.*

Thus, Government observes that this levy is imposed at the time import of goods.

8.2 Government notes that the Rule 3(1)(viia) of the Cenvat Credit Rules, 2004 allows an assessee to take credit of SAD:

> ***Rule 3. CENVAT credit.*** -
> *(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -*
> .
> .
> .
> *(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*
> *(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act;*

Thus, the cenvat credit of SAD taken by the respondent was valid and proper. The Applicant-Department has also not raised any objection as regards availment of this cenvat credit by the respondent.

8.3 Rule 18 of the Central Excise Rules, 2002 reads as under:

> *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.*

Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at the time of clearance of excisable goods for export can be claimed.

8.4 The relevant extracts of Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 issued under Rule 18 ibid read as under:

> *In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R.469(E), dated the 26thJune, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First*

Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter
Explanation I - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:
(a) the Central Excise Act, 1944 (1 of 1944);
(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);
(e) special excise duty collected under a Finance Act;
(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004.

Government observes that the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 covers export of excisable goods on payment of duty and allows rebate of whole of duty paid at the time of export.

8.5 Government observes that there appears to be no dispute as far as compliance of conditions & limitations laid down in the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 by the respondent, except that duty was paid by debiting the Cenvat credit accumulated on account of 4% SAD and this additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act did not find a mention in the Explanation I of the said Notification. Government observes that the rebate claims filed by the respondent are in respect of duties of excise paid under the Central Excise Act, 1944 at the time of export of goods under rebate. This payment of duty of excise under Central Excise Act, 1944, clearly finds mention in Explanation I to Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004.

8.6 Government further observes that neither the impugned rebate notification nor the concerned central excise rule put any bar in so far as utilisation of Cenvat credit taken on account of 4% SAD is concerned. Rule 3 of the Cenvat Credit Rules, 2004 allows availment of credit in respect of SAD and there are no restrictions for utilisation of the said Cenvat credit towards payment of duty for clearance under the Central Excise Act,1944 and rules made thereunder.

9. The Applicant-Department has relied upon the decision of the Revisionary Authority in the case of M/s. Vinati Organics Limited wherein it was held that Special Additional Duty (SAD) is leviable on imported goods to counter balance the sales tax, value added tax, local tax etc. which cannot be considered as duty of excise for being eligible for rebate benefit. However, Government observes that the matter in the said case was in respect of rebate of duties paid on the raw materials used in the manufacture of the export goods under Notification No.21/2004-Central Excise (N.T.) dated 06.09.2004. There is clear distinction between the two notifications issued under Rule 18 of the Central Excise Rules, 2002 and both are for different purposes. Hence, Government finds no relevance in this reference.

10. In view of the above discussions, Government finds no infirmity in the Order-in-Appeal No. AHM-EXCUS-001-APP-322 to 329-2017-18 dated 21.02.2018 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

11. The impugned revision applications are disposed of on above terms.

Shrawan 13/3/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 105-112/2023-CX(WZ)/ASRA/Mumbai dated 13.3.2023

To,
M/s. Jayshree Enterprises,
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Copy to:

1. Pr. Commissioner of CGST,
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   7th Floor, CGST Bhavan,
   Rajasva Marg, Ambawadi,
   Ahmedabad – 380 015.

2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.