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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No.198/53/WZ/18-RA /6537 Date of Issue: 17 .11.2022

ORDER NO. 1091 /2022-CX (WZ) /ASRA/Mumbai DATED 15 .11.2022 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,
GST Bhawan, Ambawadi, Ahmedabad -380015.

Respondent : M/s Jupiter Comtex Pvt. Limited,
Plot No.510, Phase IV, GIDC,
Vatva, Ahmedabad -382445.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.AHM-EXCUS-001-APP-133-2017-18 dated 27.10.2017 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

ORDER

The subject Revision Application has been filed by the Principal Commissioner of CGST, Ahmedabad South ((here-in-after referred to as 'the applicant/Department') against the subject Order-in-Appeal dated 27.10.2017 which decided an appeal filed by M/s Jupiter Comtex Private Limited (here-in-after referred to as the 'respondent') against the Order-in-Original dated 27.01.2017 passed by the A.C., Central Excise, Div-III, Ahmedabad – I, which in turn, had rejected the rebate claims filed by the applicant.

2. Brief facts of the case are that the respondent are manufacturers of machinery parts and hold Central Excise registration. They filed a rebate claim for Rs.1,29,466/- in respect of goods exported by them under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004. The original authority rejected the said claim on the grounds that the respondent had paid duty by debiting the Cenvat credit taken on account of 4% SAD [under Section 3(5) of the Customs Tariff Act, 1975]. The original authority found that the specific list of duties eligible for rebate did not mention additional duty leviable under Section 3(5) of the Customs Tariff Act, 1975 and relied on the decisions of the JS Review in the case of Vinati Organics Limited [2014 (311) ELT 994 (GOI)] wherein it was held that SAD cannot be considered as duties of excise which would eligible for rebate and also that the Explanation (1) to notification no.21/2004-CE(NT) dated 06.09.2004 did not classify SAD under Section 3(5) of the Customs Tariff Act, 1975 as a duty eligible for claim of rebate. Aggrieved, the respondent filed appeal with the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 27.10.2017. The Commissioner (Appeals) found that the rebate claim was in respect of duties of excise paid by the respondent and not of the 4% SAD paid by them; and such duties of excise was eligible for rebate in terms of the Explanation (1) to the notification no.19/2004-CE(NT) dated 06.09.2004. The Commissioner (Appeals) set aside

the impugned Order-in-Original dated 27.01.2017 and allowed the appeal filed by the respondent.

3. Aggrieved, the Department has filed the subject Revision Application on the following grounds: -

(a) The Commissioner (Appeals) has erred in holding that the respondent is eligible for rebate under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004 as the Central Government had not incorporated SAD (i.e ACD levied under Section 3(5) of the Customs Tariff Act, 1975) under the Explanation provided under the said notification and therefore the SAD portion is not eligible for rebate under the said notification;

(b) The Commissioner (Appeals) had ignored the GOI Order in the case of Vinati Organics Limited [2014 (311) ET 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 and hence Central Excise duty paid through the credit balance of SAD did not appear to be eligible for rebate; they also placed reliance on the decision in the case of M/s Alpha Laboratories Limited [2014 (311) ELT 854 (GOI)];

(c) That the principle laid down in reading and interpreting notification no.19/2004-CE(NT) dated 06.09.2004 vide the above cited Order of the GOI holds grounds in also interpreting Notification no.21/2004-CE(NT) dated 06.09.2004 as both are in para materia.

In view of the above, the applicant/Department has prayed that the impugned Order-in-Appeal be set aside and the Order-in-Original dated 27.01.2017 be upheld.

4. The respondent in their reply dated 29.05.2018 and 29.09.2022 have requested that the impugned Order-in-Appeal be upheld for the following reasons: -

(a) The Commissioner (Appeals), after careful consideration of (i) Rule 3 of CENVAT Credit Rules, 2004, (ii) Rule-18 of Central Excise Rules, 2002, (iii) Notification 19/2004-CE (NT) dated 06.09.2004, (iv) 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) and (v) the case of M/s. Alpa Laboratories Ltd, had legally and properly concluded that "the reliance of the adjudicating authority on the aforementioned two case laws is not tenable since they were not relevant to the present dispute";

(b) That it has been precisely observed by the Commissioner (Appeals) that notification no 21/2004 grants rebate of whole of the duty paid on excisable goods used in the manufacturer / processing of export goods. The notification thereafter defined duty under explanation; that there was a clear distinction between both the notifications issued under Rule 18 of the Central Excise Rules, 2002; while notification no.19/2004-CE (NT) dated 06.09.2004 grants rebate on export of excisable goods, notification no.21/2004 ibid grants rebate on duty paid on excisable goods used in the manufacturing /processing of export goods; that under notification no.21/2004, no rebate can be claimed on material used, in respect of 4%-SAD, since the additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act, does not find mention in the list of duties under explanation to the notification; that to stretch this logic to notification 19/2004- CE (NT) dated 06.09.2004, when it clearly speaks of rebate of excise duty on exports of excisable goods on payment of duty under the Central Excise Act, 1944, was not a valid argument;

(c) The appellant Department had created an amalgamation of notification no 19/2004-CE (NT) dated 06.09.2004 and notification 21/2004-CE (NT) dated 06.09.2004 to suit their action to reject the rebate claim which is eligible under notification no 19/2004-CE (NT) dated 06.09.2004 as provided in list of specified duties at Sr. (a) and as per the explanation "duty" for the purpose of this notification, which includes duties of excise collected under 'the

Central Excise Act, 1944; that such an attempt is beyond the scope of law and without merit; that in these circumstances, the decisions in the case of M/s. Vinati Organics Limited [2014 (311) ELT 994 (GOI)] and M/s. Alpha laboratories Ltd relied upon by the Department were clearly distinguishable;

(d) The appellant Department had failed to appreciate that neither Rule 18 of Central Excise Rules, 2002 nor Notification 19/2004-CE(NT) dated 06.09.2004 provides any restriction on utilization of CENVAT credit accumulated on account of SAD credit for payment of Central Excise duty for the goods exported by the respondent; and thus, the subject Revision application had been erroneously filed to pass an order denying rebate claimed by respondent on the ground that it was inadmissible as the Central Excise duty was paid by way of utilization of CENVAT credit accumulated on account of SAD credit and the same was not allowed to be refunded by way of rebate under Rule 18 of Central Excise Rules, 2002 read with Notification no. 19/2004-CE (NT) dated 06.09.2004;

(e) The respondent submits that for the purposes of utilization of CENVAT credit different and discriminatory treatment cannot be made in respect of the duty paid on clearance for home consumption and for clearance of exports under claim of rebate; that when 4% Special Additional Duty (SAD) under Section 3 (5) of the Customs Tariff Act, 1975 is paid by the manufacturer and when the said goods are used for manufacture of final products, the utilization of CENVAT credit availed on SAD was allowed for payment of excise duty either on clearance for home consumption or for payment of Central Excise duty for the goods exported under claim of rebate; that the denial of rebate to the respondent would be discriminatory inasmuch as no distinction can be drawn between clearance for home consumption and export, with respect to the utilization of CENVAT credit availed on SAD; that such a classification was not based on intelligible differentia; that clearance for home consumption as well as export clearances are similarly positioned in relation to utilization of CENVAT credit availed by the respondent; thus, the impugned Order-in-Appeal allowing rebate to the respondent in respect of the goods exported was legal and proper;

(f) They were eligible to the rebate claim under notification no 19/2004-CE (NT) dated 06.09.2004 as the relied case laws were related to notification

21/2004-CE (NT) dated 06.09.2004 and that the appellant Department had failed to differentiate between the duty paid on excisable goods (finished goods) falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country and the duty paid on excisable goods ('raw materials') used in the manufacture or processing of export goods;

(g) The appellant/Department had failed to recognize that the present rebate claim was for rebate of Central Excise duty as levied under Section 3 of Central Excise Act 1944 paid on final product and the respondent was not claiming 4% special additional duty under Section 3 (5) of the Customs Tariff Act, 1975 paid on raw materials; that the present rebate claim does not pertain to duty paid on raw materials used in the manufacturer as prescribed under notification No.21/2004-C.E. (N.T.) dated 06.09.2004 and the present claim of rebate of Central Excise duty paid on excisable goods exported as specified under notification No. 19/2004-CE (NT) dated 06.09.2004 was for rebate of duty paid on excisable goods falling under the First Schedule to Central Excise Tariff Act, 1985.

(h) That all the conditions as specified for rebate of duty paid on excisable goods under Notification No.19/2004-CE(NT) dated 06.09.2004 were followed and that there was in no breach or failure on their part.

5. Personal hearing in the matter was granted to the applicant on 11.10.2022 and 01.11.2022, however no one appeared for the same. Sufficient opportunity having been accorded to the applicant, the case is now taken up for decision on the basis of records available.

6. Government has carefully gone through the relevant case records available in the case files, the written submission and also perused the said Order-in-Original and the impugned Order-in-Appeal.

7. Government finds that the issue for decision is whether the applicant is eligible to the rebate of the Central Excise duty paid by them by using Cenvat credit of the Special Additional Duty under Section 3 (5) of the Customs Tariff Act, 1975 (SAD). Before delving any further, Government finds

that it needs to be recorded clearly that the issue here is the rebate of Central Excise duty paid on the final product that was exported and that the same has been claimed under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004 which prescribes the procedures and limitation for availing such rebate. Government finds that the Department has contended that the Commissioner (Appeals) erred in allowing the rebate for the following reasons: -

(i) The Central Government had not incorporated SAD under the Explanation – I to the notification no.19/2004-CE(NT) dated 06.09.2004 and hence SAD portion is not eligible for rebate under the said notification;

(ii) Reliance was placed on the decision of the GOI in the cases of M/s Vinati Organics Ltd and M/s Alpha Laboratories, referred above, to submit that SAD paid on imported goods was to counterbalance sales tax, VAT etc. and hence could not be considered as duties of excise eligible for rebate; thus Central Excise duty paid through the credit balance of SAD did not appear eligible for rebate;

(iii) Notification no.19/2004-CE(NT) dated 06.09.204 and notification no.21/2004-CE(NT) dated 06.09.2004 are pari materia and hence the interpretation of notification no.21/2004-CE(NT) by the GOI would also apply in the case of notification no.19/2004-CE(NT).

8. Government finds that all the grounds raised by the Department have been lucidly addressed by the Commissioner (Appeals) in the impugned Order-in-Appeal. As regards the issue of SAD not being incorporated in the explanation to the notification no.19/2004-CE(NT), Government finds that the Commissioner (Appeals), in the impugned Order-in-Appeal, has correctly found that in this case, the rebate claim is for the 'duties of excise' that has been paid by the respondent on the exported goods and there is no claim for 'SAD'. Government finds that the Commissioner (Appeals) examined notification no.19/2004-CE(NT) and did not find any restriction placed by it

on allowing the rebate of 'duty of excise duty' paid by the respondent. Government does not find fault with this finding of the Commissioner (Appeals). As regards the issues at sl. nos. (ii) & (iii) mentioned above, Government finds that the Commissioner (Appeals) in the impugned Order-in-Appeal has discussed them in detail and found that in both the cases before the GOI, the rebate claimed was on the *'duty paid on the excisable goods used in the manufacture/processing of export goods'* as against the claim in this case, which is in respect of the *'duty of excise paid on the product exported'*. Government finds that the Commissioner (Appeals) has correctly observed that the procedure and limitation for rebate in case of 'duty paid on the goods used in the manufacture of final product' is laid down by notification no.21/2004-CE(NT), whereas, the rebate of the 'duty of excise paid on the exported goods', which is true in the present case, the procedure and limitation is prescribed by notification no.19/2004-CE(NT). Government agrees with the Commissioner (Appeals) finding that a limitation or condition imposed by notification no.21/2004-CE(NT) cannot be made applicable to a rebate claim filed under notification no.19/2004-CE(NT). Government finds that the issue involved in both the cases relied upon by the Department, the issue involved was rebate claimed on the 'inputs used in the manufacture of the exported product' and was decided in terms of notification no.21/2004-CE(NT) and hence agrees with the finding of the Commissioner (Appeals) that these decisions stood distinguished and would not have any bearing on the present case.

9. Government notes that the Commissioner (Appeals) has found that there was no bar on the availment of Cenvat credit of SAD under Rule 3 of the Cenvat Credit Rules, 2004 and also that there was no bar on payment of Central Excise duty on the exported final product by using such Cenvat credit. Government does not find any fault with this finding of the Commissioner (Appeals) and does not find any merit in the argument put forth by the Department that SAD was not a duty of excise as it was imposed in lieu of Sales Tax, VAT etc. and hence duty paid through Cenvat credit of such SAD

was not eligible for rebate. Government does not find any such limitation or condition in Rule 18 of the Central Excise Rules, 2002 or notification no.19/2004-CE(NT), which govern the grant of rebate in the present case. Thus, Government does not find any merit in the arguments put forth by the Department in the subject Revision Application. In view of the above, Government does not find any infirmity in the impugned Commissioner (Appeals) which allowed the rebate claimed by the respondent and accordingly upholds the same.

10. The subject Revision Application is rejected.

15/11/22

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

ORDER No.109//2022-CX (WZ) /ASRA/Mumbai dated 15 .11.2022

To,

Pr. Commissioner of CGST, Ahmedabad South,
GST Bhawan, Ambawadi,
Ahmedabad -380015.

Copy to:

1. M/s Jupiter Comtex Pvt. Limited, Plot No.510, Phase IV, GIDC, Vatva, Ahmedabad -382445.
2. Commissioner (Appeals), Central Tax, 7th floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad – 380015.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.