REGISTERED SPEED POST

सत्यमेव जयते

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. 195/14/17-RA/6696 Date of issue: 24/11/2022

ORDER NO. 106 /2022-CX (WZ)/ASRA/MUMBAI DATED 22.11.2022 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 : M/s. Ankur Scientific Technologies Pvt. Limited

Respondent: Commissioner of Central Excise, Customs & Service Tax, Vadodara-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-001-APP-168/2017-18 dated 28.06.2017 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara.

ORDER

This Revision Application has been filed by M/s. Ankur Scientific Technologies Pvt. Limited, Survey No. 1748,1750,1751&1755, Vadodara-Savli Road, Village-Gothda, Taluka-Savli, Dist.-Vadodara (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. VAD-EXCUS-001-APP-168/2017-18 dated 28.06.2017 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara.

2. Brief facts of the case are that the applicant is engaged in manufacturing of excisable goods 'Biomass Gasifier' which is exempted from payment of Central Excise Duty under notification no. 12/2012-CE dated 17.03.2012. The applicant had filed claim for rebate of the duty paid on 'Cummins Engine Generator' exported along with 'Biomass Gasifier' under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The Rebate claim amounting to Rs.12,99,328/- was sanctioned by the adjudicating authority vide Order-in-Original (OIO) No. Rebate/1416/Ankur/Div.-I/16-17 dated 25.10.2016. Aggrieved, the Department filed an appeal against the said OIO, on the grounds that the applicant was not eligible to take Cenvat Credit of any input used exclusively for the manufacture of the exempted goods 'Biomass Gasifier'. Further, no activity of manufacturing had been carried out in respect of the said goods ('Cummins Engine Generator' on which cenvat credit has been availed) and on the contrary, the applicant was required to pay/reverse an amount equivalent to the Cenvat Credit taken on the said goods. The Appellate authority allowed the appeal vide the impugned Order-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) The review order had alleged that the applicant is engaged in manufacture of 'Biomass Gasifier' which is exempted from Central Excise Duty vide S. No. 332 of the table annexed to the notification

No. 12/2012-CE dated 17-3-2012 and used duty paid inputs but here the goods exported are parts of the Biomass Gasifier which is not exempted from Central Excise Duty under the Notification no. 12/2012-CE dated 17.03.2012, so the applicant has availed cenvat on the raw material and cleared the parts after testing & conditioning for export as a kit to the main machine. All the export procedures have been followed and incidentally there is also no value addition in this whole transaction as the input stage credit was Rs.14,00,000/- and the rebate of duty paid in this case is only Rs. 12,99,328/-. In the instant issue there is actually lower rebate claim availed by the respondent which is to the benefit of Revenue as if in this case the applicant would have opted for rebate of duty paid on raw material then the amount would have been on the higher side. The applicant has declared in their registration certificate also that they are engaged in manufacture of Bio-mass Gasifier as well as the parts thereof. Here also the respondent in the impugned OIA has bought the distorted version of the department as mentioned in the review order totally overruling the basic fact that applicant had claimed rebate of duty paid on goods viz, "Cummins Engine Generator and its related Accessories part of Ankur Biomass Gasifier'. Here it is worth mentioning that the export took place in piece meal and even though the Cummins Engine Generator was a bought out item still it was an integral part of the Biomass Generator which was initially exported to the same consignee. The respondent has travelled beyond the scope of such export procedure just to satisfy the revenue goals without any logic behind such a stand. The applicant is engaged in manufacture of a Biomass Gasifier which is a tailor made product and has many parts which are partially manufactured and partially brought out items but they are also a part and parcel of the whole Bio-mass Gasifier. Hence the stand taken by the respondent without going into the detail is totally un-acceptable to the applicant and the impugned order-in-appeal is a non speaking order to this extent.

(b) The review order has referred to Rule 16 of Central Excise Rules,2002 which has absolutely no relevance to the instant rebate claim as there is no such finished goods which are rejected by the buyer and have been returned to the applicant for any re-processing purpose. Further reference to Rule 6(1) of the Cenvat Credit Rules, 2004, is also not applicable to the exported goods as they attract Central Excise Duty and are not exempted from Central Excise Duty as is the pre-requisite of Rule 6(1) of the Cenvat Credit Rules, 2004. Here also the respondent has propounded a new theory to satisfy the revenue goals at any cost by holding that Rule 16 is a guiding rule so far as bought out item/goods into the factory as is the case in the instant issue(refer para 5 of the impugned OIA). The applicant does not find any such guiding rule in the Central Excise Rules, 2002, or the Cenvat Credit Rules, 2004, so such conclusions made by the respondent are totally un-acceptable.

(c) The exported goods in question fall under the Chapter subheading No. 8405.9000 for parts of the Bio-mass Gasifier. Which shows that these goods were excisable goods within the definition as provided under Section 2(d) of the Central Excise Act, 1944. Hence it is humbly pleaded that the impugned order in appeal needs to be set aside ab-initio as it is devoid of merits as well as on the grounds of limitation also it does not appear to be sustainable.

(d) The applicant has also performed the finishing activity on the various parts to make them marketable to the customers who have purchased their BIO-MASS GASIFIERS. So the Duty of Excise has been rightly paid by the applicant at the time of removal of these parts for export and the rebate of Duty has been rightly claimed by the respondent as per the prevailing provisions of Central Excise Rules.2002 read with the notification No. 19/2004-CE (NT) dated 06-09-2004 regarding procedure specified for rebate of duty paid on all excisable goods falling under the First Schedule to CETA,1985 (5 of 1986) which exported to any country other than Bhutan.

(e) Rebate of Duty on "excisable goods" is an export incentive available to the exporter manufacturer at final product stage as well as raw material Stage. Here the claim is on the parts which are accessories to the main product of the applicant and have been exported separately to their foreign customer. There is no drawback of excise portion is also not claimed in this case so the rebate of duty paid on the product is not deniable by any stretch of imagination. So the genuine claim of rebate of duty actually claimed on the very lower side cannot be denied to the exporter / applicant when all the procedures laid down by the Central Excise law have been followed scrupulously. The department and the respondent are trying to make smoke out of no fire in this case which is a totally REVENUE NEUTRAL issue after the GST regime as any re-credit of the Duty portion can only be awarded in cash to the applicant. So it is humbly pleaded to set aside the order-in-appeal considering the above submission in the interest of justice.

On the above grounds the applicant prayed to set aside the impugned Order-in-Appeal and grant consequential relief.

4. Personal hearing in the case was fixed for 07.10.2022. Shri Ajay Banerjee, Advocate attended the online hearing and submitted that rebate on parts of gasifier exported on payment of duty was rejected on the ground that gasifier is exempted. He submitted that if rebate was not allowed then the amount should be credited back in the manner it was paid.

5. Government has carefully gone through the relevant case records available in case files, oral and written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the applicant manufactures 'Biomass Gasifier' which is an exempted product by virtue of Notification No. 12/2012-CE dated 17.03.2012. They had exported the product 'Cummins Engine Generator and its related accessories Part of Ankur Biomass Gasifier

Model WBG-1500' vide ARE-1 No. 017/15-16 dated 16.12.2015 by debiting duty amount of Rs.12,99,328/- from their Cenvat credit account. They had filed a rebate claim under Notification No. 19/2004-CE (NT) dated 06.09.2004 which was allowed by original adjudicating authority but on appeal by the Department, the OIO was set aside by the Appellate authority on the grounds that the applicant was not eligible to take Cenvat Credit of any input used in the manufacture of the exempted goods 'Biomass Gasifier'. Hence, the applicant has filed the instant revision application.

7.1 Government notes that in the instant case the excisable goods were unconditionally exempted from whole of duty under Notification No. 12/2012-C.E. dated 17.03.2012. The relevant extract of said notification is reproduced hereunder:

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of.....the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid:

Table

Sl. No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
332	*Any Chapter*	*Non-conventional energy devices or systems specified in List 8*	*Nil*	-

LIST 8 (See S. No. 332)

(1) Flat plate solar Collector

(2) .....

(15) Bio-gas plant and bio-gas engine

Thus, the applicant had no option to pay duty as per sub-section (1A) of Section 5A of Central Excise Act, 1944 which is reproduced hereunder:

> *"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of excisable goods from whole of duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay duty of excise on such goods."*

7.2 As per Rule 6(1) of the Cenvat Credit Rules, 2004:

(1) The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).

Government observes that in their submission, the applicant has stated that *the export took place in piece meal and even though the Cummins Engine Generator was a bought-out item, still it was an integral part of the Biomass Generator which was initially exported to the same consignee.* Thus, as the manufactured excisable goods, viz. 'Bio-mass Gasifier' were exempted, the applicant was not allowed to take Cenvat credit of the impugned export goods, 'Cummins Engine Generator', as per Rule 6(1) ibid.

8. Government notes that, as the export of exempted goods was being done in piecemeal and the impugned product was an integral part of the export goods, the applicant was not required to pay duty at the time of export. Therefore, the amount debited by the applicant cannot be treated as duty paid in terms of provision of Section 3 of the Central Excise Act,1944. The rebate of duty paid on excisable exported goods is admissible when duty

leviable as per Section 3 of Central Excise Act is paid. Thus, the impugned amount paid cannot be termed as a duty and therefore rebate is not admissible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004.

9. Government notes that there are specific provisions for granting refund/rebate of duty of excise paid on the exported goods as well as the inputs used in the manufacture of export goods under the Central Excise Act, 1944, read with the relevant Notifications issued thereunder. Rule 18 of Central Excise Rules, 2002 provides for rebate of excise duty paid on the export goods as well as the duty paid on materials used in the manufacture of export goods subject to compliance of the procedure, limitation and conditions specified in the Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 and 21/2004-C.E. (N.T.), dated 06.09.2004, as applicable. The Notification No. 21/2004-C.E.(N.T.) dated 06.09.2004 has been issued for grant of rebate on the inputs/excisable material used in the manufacture of dutiable/exempted export goods.

10. In view of above discussion, Government finds no infirmity in the impugned Order-in-Appeal No. VAD-EXCUS-001-APP-168/2017-18 dated 28.06.2017 passed by the Commissioner (Appeals-I), Central Excise, Customs & Service Tax, Vadodara and upholds the same.

11. The revision application is rejected being devoid of merit.

Shrawan 22/11/22

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

ORDER No. 1106 /2022-CX (WZ)/ASRA/Mumbai dated 22.11.2022

To,
M/s. Ankur Scientific Technologies Private Limited,
Survey No. 1748,1750,1751 & 1755,
Vadodara-Savli Road, Village-Gothda,
Taluka-Savli, Dist.-Vadodara – 391 773.

Copy to:

1. Pr. Commissioner of CGST & CX,
   Raigad, Plot No.1, Sector-17,
   Khandeshwar, Navi Mumbai – 410 206.

2. Shri Ajay Banerjee,
   C-16, Meeraj Apartments,
   Opp. Reliance Mall,
   Natu Bhai Circle,
   Vadodara – 390 007.

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