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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. 198/38-39/17-RA / 6099

Date of issue: 28/11/2022

1118 - 1119

ORDER NO. /2022-CX (WZ)/ASRA/MUMBAI DATED 23.11.2022  
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 : Commissioner of Central Excise, Ahmedabad-I

Respondent : M/s. Bodal Chemicals Ltd., Unit-IV.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against Order-in-Appeal No.  
AHM-EXCUS-001-APP-04&05-2017-18 dated 26.05.2017  
passed by Commissioner (Appeals-I), Central Excise,  
Ahmedabad.

## ORDER

These Revision Applications are filed by the Commissioner of Central Excise, Ahmedabad-I (hereinafter referred to as the Applicant-Department) against Orders-in-Appeal No. AHM-EXCUS-001-APP-04&05-2017-18 dated 26.05.2017 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. Brief facts of the case are that M/s. Bodal Chemicals Ltd., (hereinafter referred to as the Respondent), is engaged in the manufacture of S.O.Dyes falling under Chapter 32 of Central Excise Tariff Act, 1985. They had filed rebate claims, 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 following Orders-in-Original:

OIO No. & date	Amount claimed (in Rs.)
MP/2121/AC/2016-17 dated 25.07.2016	9,22,377/-
MP/2293/AC/2016-17 dated 22.08.2016	3,45,842/-

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 Application mainly on the grounds that:

- a. The respondent had cleared their goods for export (under Rebate) vide ARE-1 Nos. 151/16.12.2015 & No. 181/4.2.2016 totaling Rs.12,68,219/- under Notification No. 19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002.
- b. The respondent was issued show cause notices for rejection of the rebate claims, which were adjudicated by the Assistant Commissioner

Central Excise, Division III, Ahmedabad-I Commissionerate, wherein he rejected the rebate 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).

- c. The Joint Secretary (Revisionary Authority), Government of India, Ministry of Finance, Department of Revenue, New Delhi in the matter of M/s. Vinati Organics Limited [2014(311) ELT 994 (GOI)] had stated that SAD is levied in imported goods to counter balance sales tax, VAT, local tax etc. which cannot be considered as duties of excise for being eligible for rebate benefit & that SAD collected under Section 3(5) of the Customs Tariff Act, 1975 is also not classified as duty in the list of duties provided in Explanation-I of the subject notification.

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

4. Personal hearing in the case was fixed for 07.10.2022. Shri N. K. Tiwari, Consultant attended the online hearing and submitted that the case of Vinati Organics is not applicable to the respondent. 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. 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.

6. 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?

7.1 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.

7.2 Government notes that the Rule 3(1)(viiia) 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);*
- (viii) 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.

7.3 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.

7.4 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 26<sup>th</sup> June 2001, [G.S.R.469(E), dated the 26<sup>th</sup> June, 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.

7.5 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.

7.6 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.

8. 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.

9. In view of the above discussions, Government finds no infirmity in the Order-in-Appeal No. AHM-EXCUS-001-APP-04&05-2017-18 dated 26.05.2017 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad and upholds the same.

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

  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 1118 - 1119 /2022-CX(WZ)/ASRA/Mumbai dated 23.11.2022

To,  
M/s. Bodal Chemicals Ltd.,  
Plot No. 252-253, C-1/254,  
Phase-II, GIDC, Vatva,  
Ahmedabad - 382 445.

Copy to:

1. Pr. Commissioner of CGST,  
Ahmedabad South,  
7<sup>th</sup> Floor, CGST Bhavan,  
Rajasva Marg, Ambawadi,  
Ahmedabad – 380 015.

~~2~~ Sr. P.S. to AS (RA), Mumbai

~~3~~ Guard file

4. Notice Board.