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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. 198/53/17-RA/6658 Date of issue: 23/11/2022

ORDER NO. 1120 /2022-CX (WZ)/ASRA/MUMBAI DATED 21.11 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, Goa
Respondent	:	M/s. Crompton Greaves Consumer Electrical Ltd.
Subject	:	Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. GOA-EXCUS-000-APP-316-2016-17 dated 12.01.2017 passed by Commissioner (Appeals), Central Excise, Pune Appeals-II (Goa).

ORDER

This Revision Application is filed by the Commissioner of Central Excise, Goa (hereinafter referred to as the Applicant-Department) against Order-in-Appeal No. GOA-EXCUS-000-APP-316-2016-17 dated 12.01.2017 passed by Commissioner (Appeals), Central Excise, Pune Appeals-II (Goa).

2. Brief facts of the case are that M/s. Crompton Greaves Consumer Electrical Ltd., (hereinafter referred to as the Respondent), a manufacturer-exporter, had filed an application on 28.07.2015 claiming refund of Rs.8,89,282/- (Central Excise Duty Rs.6,46,704/- and Additional Duty of Customs (SAD) Rs.2,42,578/-) paid on inputs cleared as such for export, viz. 'Electric Motor' for Repair & Return, under ARE-1 No.EX003/14-15 dated 05.12.2014, in terms of Rule 18 of Central Excise Rules' 2002 read with Notification No. 19/2004-CE (NT). The rebate sanctioning authority while allowing the rebate of other duties amounting to Rs.6,46,704/- rejected the claim amount pertaining to special additional duty of Customs of 4% (hereinafter referred as 'SAD') vide Order-in-original No. R/87/16-17/CX.Div.III dated 12.08.2016. Aggrieved, the respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3.1 Hence, the Applicant-Department has filed the impugned Revision Application mainly on the grounds that:

a. The Commissioner (Appeals) has erred in allowing the appeals filed by M/s. Crompton Greaves Consumer Electrical Ltd and failed to note the fact that SAD (Special Additional Duty) is the duty levied on imported goods @ 4% in lieu of the sales tax, value added tax, local taxes and other charges leviable on similar goods on their sale/purchase/transportation in India and cannot be equated to customs duty/CVD. Moreover this SAD is not included within the ambit of types of duties specified for the purpose of granting rebate in

the Notfn. No. 19/2004-(N.T) dated 06.09.2004. The Commissioner (A) has therefore erred in holding that the rebate of SAD is admissible.

b. The Commissioner(A) in para 6 of the O-I-A observed that "Once Cenvat credit of any additional duty of customs is taken, it gets subsumed in the Cenvat credit account and there cannot be any segregation of it at the time of discharge of duty or reversal of credit. Obviously, the calculation is based on amount of taxes suffered by the goods, which may also be on proportionate basis if part of a consignment is removed from the factory in which CENVAT credit was availed. This cannot be construed that in such case, duty was paid from an artificially created account for SAD and hence, if SAD is not mentioned as 'duty' in the rebate notification [Notification No. 19/2004 C.E. (N.T.) issued in exercise of powers conferred by Rule 18 of the CER, 2002], the same is denied. When a duty is paid on goods at the time of removal, it has to be taken a duty of excise, which is covered by the expression 'duty'. This is a completely extraneous interpretation and application of legal provisions". The observation of Commr (A) is factually not correct. In this case the exporter has paid duty separately under different heads namely BED, Education Cess, SAD etc. Once duty is paid as SAD, it has to be treated as SAD payment only. Notification No. 19/2004-CE (N.T.) dated 06.09.2004 allows rebate of duty only in respect of those duties listed therein. SAD is not one among the duties cited in the Notification. When the exporter paid duties at the time of export and claimed rebate, the rebate can be allowed within the permissible limits of Notification 19/2004-CE(N.T.) dated 06.09.2004.

c. In this particular case, the exporter has cleared inputs as it is and reversed the proportionate credit availed along with SAD. At the time of export, the exporter was not required to pay the SAD as the 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. Moreover, the SAD is not mentioned as duty for the purpose of the Notification 19/2004 CE(N.T) dt.06.09.2004. This in itself proves that the assessee is not entitled to rebate of SAD component of the inputs removed as such. The nature of countervailing duty is to counter balance the excise duty, which is leviable on similar goods if manufactured in India, however the nature of SAD is to balance other taxes like VAT, sales tax, etc.

d. Reliance has been placed on similar issue on the decision reported in the case of ALPA LABORATORIES LTD- 2014 (31 1) E.L.T. 854 (GOI) wherein the Revisionary Authority, Department of Revenue, has held that Special Additional Duty (SAD) 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. SAD is not classified as a duty in list of duties provided in Explanation 1 of the Notification No.21/2004-C.E.(N.T.), hence, payment of SAD not eligible for rebate claim. In the present case also, the fact is same that the SAD is not mentioned under the expression of duty of excise collected under various enactments mentioned under Notification 19/2004- CE (N.T.) dated 06.09.2004. From the above, it is evident that the Commissioner (A) has totally erred in allowing the appeal for the purpose of sanction of rebate imported inputs.

The Applicant-Department therefore prayed that impugned Order-in-Appeal may be modified to disallow rebate of SAD component of duty paid at the time of export of the imported inputs as such and uphold the orders of the lower adjudicating authority where refund of SAD was rejected and that re-credit of the SAD paid at the time of export, to the CENVAT credit account of the respondent may be considered.

3.2 The respondent in their written submission have inter alia contended that:

a) Rebate claim filed by respondent is of excise duty and not SAD

- Respondent submits that CBEC vide its Circular No. 83/2000-cus. of 16-10-2000 has clarified that wherever duty appears, it is construed to having reference to Central Excise or the additional duty under Section 3 of the Customs Tariff Act, 1975.
- Reliance in this connection is placed on the Board Instruction No. 605/65/2006-DBK dated 22.01.2007 wherein it is clarified that payment of duty through cenvat credit is nothing but excise duty
- Respondent submits that the issue of granting rebate for duty paid under Section 3 of the Customs Act,1975 stands settled in their favour. Reliance in this connection is placed on the following judgments:
    - Om sons Cookware Pvt. Ltd. - 2011 (268) E.L.T. 111(G.O.I.).
    - CCE v. Micro Inks Ltd. 2011 (270) E.L.T. 360 (Bom.)
    - LSR Specialty Oil Pvt. Ltd. v. CCE, 2015-TIOL-1971CESTAT, MUM
    - CCE v. Simplex Pharma Pvt. Ltd., 2008 (229) E.L.T. 504 (P & H)
    - M/s. Banswara Syntex Ltd. v. Union of India (2007) 216 E.L.T. 16 (Raj.)
- Respondent submits that from the above stated provision and interpretation done by the court it is clear that reversal of credit is akin to payment of duty. The reversal includes reversal of credit of additional duty of customs levied under Section 3(5) of the Customs Tariff Act, 1975 (SAD) but this cannot tantamount of payment of SAD but only payment of Central Excise because there is no provision to pay SAD on excisable goods. Once this payment of an amount equal to credit availed is treated payment of central excise duty, it is covered by the first entry of the list of duties eligible for rebate mentioned in the notification no. 19/2004-CE (N.T.).

b) Without prejudice to the above Respondent submits that the purpose of rebate scheme is to relieve the duties paid on the exported goods to make these competitive in international market to earn foreign exchange. In case the substantive fact of export having been made is not in doubt, payment of duty is not in doubt a liberal interpretation is to be given in case of any technical breaches, if any.

In view of the above grounds the respondent prayed that the Ld. Revenue's appeal may be dismissed and the Order-in-Appeal passed by the Ld. Commissioner (A) in the respondents' favour be declared to be legally correct and be upheld

4.1 Personal hearing in the case was fixed for 19.10.2022. Shri Rajiva Srivastava, Advocate attended the online hearing and submitted that once Cenvat credit of SAD is taken, it becomes Cenvat credit which is used for payment of central excise duty. He contended, therefore, rebate of the same has been correctly availed by them and has been rightly allowed by the Commissioner (Appeals). He state that an additional written submission is being made within two days.
The Applicant-Department did not attend the hearing nor have they sent any written communication.

4.2 The respondent filed additional submission vide email dated 01.11.2022, which were reiterations of their earlier submission.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Original, Order-in-Appeal, the Revision Application filed by the Applicant-Department and the oral/written submissions of the respondent.

6. Government observes that the issue involved is whether the rebate of special additional duty (SAD) of Customs is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004.?

7. Government observes that the matter in hand can be summarized as follows:

i. The respondent had imported goods and taken Cenvat of the customs relevant import duties paid thereon.

ii. Subsequently they exported the goods which they had imported viz. 'Electric Motor'. The goods were cleared under Rule 3(5) of the Cenvat Credit Rules, 2004 by reversing an amount equivalent to the Cenvat Credit taken on CVD and SAD paid at the time of import of said goods.

iii. The respondent filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 for the duty reversed while clearing the above mentioned export goods.

iv. The rebate sanctioning authority while allowing the rebate of other duties rejected the claim amount pertaining to special additional duty of Customs of 4% (SAD).

v. The Additional Customs duty leviable under Section 3(5) of the Customs Tariff Act, 1975 is also termed as SAD. The rebate sanctioning authority observed that SAD is not mentioned as duty in the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004. Therefore, the portion of rebate claims of the respondent as regards SAD was rejected by the original authority.

vi. The Appellate authority, after due deliberation, arrived at the conclusion that – *'since SAD is suffered on the goods when these were imported and continued to be fastened to these goods when these were exported 'as such' considering these were reversed from credit account when removed from factory for export under the provisions of rule 3(5) of the Cenvat Credit Rules, 2004 and hence, this amount must be rebated.'* and accordingly allowed the appeal filed by the respondent.

8.1 Government finds it proper to examine 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 -*
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> .
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> *(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 taken by the respondent of SAD 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 3(5) of the Cenvat Credit Rules,2004 reads as under:*

Rule 3. CENVAT credit. -

(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Thus, reversal of credit taken on duty paid (including SAD) on imported goods at the time of clearing them for export was proper and appropriate as per *Rule 3(5) ibid.*

8.4 *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.

8.5 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 26th 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.

9.1 Government observes that the rebate claims filed by the respondent were in respect of CVD and 4% AED (SAD) paid under cover of ARE-1 at the time of export. Government observes that the Applicant-Department has rightly pointed out that 4% SAD 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 No. 19/2004-Central Excise (N.T.) dated 06.09.2004 and thus cannot be termed as a duty of excise and therefore it is not required to be paid at the time of export.

9.2 However, Government observes that in a plethora of judgments, it has been held that any amount paid in excess of duty liability is to be treated as voluntary deposit with the Department which is to be returned in the same manner in which it was paid. Therefore, Government concurs with the

prayer of the Applicant-Department to re-credit the amount paid towards SAD at the time of export to the Cenvat credit account of the respondent.

10. In view of the above discussions, Government sets aside the Order-in-Appeal No. GOA-EXCUS-000-APP-316-2016-17 dated 12.01.2017 passed by the Commissioner (Appeals), Central Excise, Pune Appeals-II (Goa).

11. The impugned revision application is disposed of on the above terms.

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

ORDER No. 1120/2022-CX(WZ)/ASRA/Mumbai dated 21.11.2022

To,
M/s. Crompton Greaves Consumer Electrical Ltd.,
Plot No. 214/A, Kundaim Industrial Estate,
Kundaim, Goa – 403 115.

Copy to:

1. Commissioner of CGST, Goa,
   GST Bhavan, EDC Complex,
   Plot No. 6, Patto,
   Panaji, Goa – 403 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.