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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.198/35/WZ/18-RA
F. No.198/58/WZ/18-RA
F. No.198/94/WZ/18-RA
F. No.198/232-234/WZ/18-RA | 1445

Date of Issue: 15.03.2023

ORDER NO.115-120/2023-CX (WZ) /ASRA/Mumbai DATED 14.03.2023 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 : Commissioner of CGST, Ahmedabad South,
GST Bhawan, Ambawadi, Ahmedabad -380015.

Respondent : M/s Ashima Dyecot P. Ltd.,
Texcellence Complex, Near Anupam Cinema,
Khokhara, Ahmedabad – 380 021.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the following Orders-in-Appeal passed by Commissioner (Appeals), Central Tax, Ahmedabad.

Sl. No.	Order-in-Appeal No.	Date
1	AHD-EXCUS-001-APP-131-2017-18	27.10.2017
2	AHD-EXCUS-001-APP-079-2017-18	25.09.2017
3	AHD-EXCUS-001-APP-027-2017-18	21.07.2017
4	AHD-EXCUS-001-APP-269 to 271-2017-18	29.01.2018

ORDER

The subject Revision Applications have been filed by the Commissioner of CGST, Ahmedabad South ((here-in-after referred to as 'the applicant/Department') against the subject Orders-in-Appeal which in turn decided appeals filed by the Department against the Orders-in-Original passed by the Joint Commissioner / Deputy Commissioner, Central Excise, Div - I, Ahmedabad – I, which in turn, had sanctioned the rebate claims filed by M/s Ashima Dyecot Pvt. Limited, Ahmedabad (here-in-after referred to as the 'respondent'). Government finds that issue involved in all the cases is identical and hence takes up all the subject four Revision Applications for decision together.

2. Brief facts of the case are that the original authority vide four Orders-in-Original sanctioned rebate claims filed by the respondent. The applicant Department preferred appeal against the said Orders-in-Original 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] and 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 also that the Explanation (1) to notification no.21/2004-CE(NT) dated 06.09.2004 did not classify SAD as a duty eligible for claim of rebate. The applicant Department also 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. The Department thus felt that the quantum of rebate to the extent of Cenvat of SAD availed by the respondent deserved to be rejected by the original authority. 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) vide the impugned four Orders-in-Appeal rejected the appeals filed by the Department.

3. Aggrieved, the Department has filed the subject Revision Applications on the following grounds which are common in all the Applications: -

(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-I 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 Orders-in-Appeal be set aside.

4. The respondent in their reply dated 28.05.2018 and 25.10.2018 have requested that the impugned Orders-in-Appeal be upheld for the following reasons: -

(a) That as per explanation I to notification 19/2004-CE(NT) duty includes duties of excise collected under the Central Excise Act, 1944; that the goods manufactured by them were cleared for export on payment of duty as leviable under Section 3 of the Central Excise Act, 1944 and hence in terms of Rule 18 of the Central Excise Rules, 2002 which has been issued by the powers conferred by Section 37(2)(xiv) of the Central Excise Act, 1944, rebate should

be allowed, irrespective of whether the payment of duty has been through PLA or Cenvat;

(b) That as per Section 2(e) of the Central Excise Rules, 2002 duty means duty payable under Section 3 of the Central Excise Act, 1944; that as per Rule 3(1)(via) the additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act, is admissible as credit and per rule 3(4)(a) the Cenvat Credit may be utilized for payment of (a) any duty of excise on any final product; so once the Cenvat Credit availed was utilized the same became duty of excise on final products, i.e. BED leviable under Section 3 on manufacture of final products as also defined in Rule 2(e) of Central Excise Rules, 2002;

(c) That irrespective of the credit of different kind of duties availed on the inputs used to manufacture the product exported, when the balance of such credit is used for payment on clearance of final products from the factory premises the goods are assessed under Section 3 and duty under Section 2(e) is considered paid as Central Excise Duty; and sought to place reliance on decision of the Punjab & Haryana High Court in the case of M/s Simplex Pharma Pvt. Ltd. [2008 (229) ELT 504 (P&H)]; that the department had incorrectly placed reliance on the decisions cited as they pertained to rebate of duty on inputs;

(d) They finally submitted that department had accepted earlier Order-in-Appeal No.AHM-EXCUS-001-APP-27-2017-18 dated 21.0.2017 passed by the Commissioner (Appeals) in an identical matter and hence are precluded from taking a different stand now on the grounds of uniformity.

In view of the above, the respondent submitted that the subject Revision Applications deserve to be dismissed.

5. Personal hearing in all the subject applications was granted on 04.10.2022, 18.10.2022, 07.12.2022 and 21.12.2022, however no one appeared on behalf of the applicant. Shri Nirav Shah, Advocate appeared online on 21.12.2022 on behalf of the respondent and submitted that the issue is regarding the rebate of duty paid on export goods using Cenvat of SAD paid on imported goods. He requested to maintain order of

Commissioner (Appeals). He also submitted additional written submissions, which have been reproduced above.

6. Government has carefully gone through the relevant case records, the written submissions and also perused the said Orders-in-Original and the impugned Orders-in-Appeal.

7. Government finds that the issue for decision is whether the respondent 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 Orders-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 Orders-in-Appeal which upheld the Orders-in-Original allowing the rebate claimed by the respondent and accordingly upholds the same.

10. The subject Revision Applications are rejected.

14/3/23

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

ORDER No. 915-120/2023-CX (WZ) /ASRA/Mumbai dated 14.03.2022

To,

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

Copy to:

1. M/s Ashima Dyecot P. Ltd., Texcellence Complex, Near Anupam Cinema, Khokhara, Ahmedabad – 380 021.
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.