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SPEED POST

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.195/272/17-RA / 2063

Date of issue: 30.11.2022

ORDER NO. 1153 /2022-CX (WZ)/ASRA/MUMBAI DATED 25.11.2022
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. Gujarat Agrochem Ltd.

Respondent : Commissioner of Central Excise, Customs & Service Tax,
Bharuch

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-VAD(APP-II)-VK-285-2016-17 dated 07.10.2016
passed by the Commissioner (Appeals-II), Central Excise,
Customs & Service Tax, Vadodara.

ORDER

This revision application has been filed by M/s. Gujarat Agrochem Ltd., Plot No. 2901 to 2906, GIDC Estate, Panoli, Ankleshwar, District-Bharuch (hereinafter referred to as "the applicant") against Order-in-Appeal No. CCESA-VAD(APP-II)-VK-285-2016-17 dated 07.10.2016 passed by the Commissioner (Appeals-II), Central Excise, Customs & Service Tax, Vadodara.

2.1 Brief facts of the case are that the applicant is engaged in the manufacture of agro products falling under chapter 38 of the CETA, 1985. They had filed various rebate claims during the period from January 2011 to June 2012 before the Maritime Commissioner, Raigad. The rebate claims were sanctioned under different orders-in-original whereby rebate was restricted to the FOB value instead of value at which the duty had been paid by the applicant on the exported goods. The excess amount paid on the export goods, viz. Rs.17,50,822/- was allowed as re-credit to Cenvat Account of the applicant by the jurisdictional authorities. Subsequently, they were issued a demand notice for recovery of erroneously sanctioned re-credit amount of Rs.17,50,822/- which was confirmed vide Order-in-Original No. 28/ADJ/D/ADC-MS/15-16 dated 24.08.2015.

2.2 Aggrieved, the applicant preferred appeal along with a petition for condonation of delay of 24 days in filing the appeal before the Commissioner (Appeals-II), Central Excise, Customs & Service Tax, Vadodara, who vide impugned Order-in-Appeal rejected the appeal as time barred without going into the merits of the case, observing that there was no valid reason for condonation of delay.

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

- a) they had submitted a letter dated 18-07-2013 to the Assistant Commissioner of Central Excise, Ankleshwar-III requesting to allow

them to take re-credit of amount totally Rs. 28,30,259/-. The Assistant Commissioner of Central Excise, Ankleshwar-III had allowed the applicant to take re-credit of Rs.17,50,822/- but disallowed the re-credit of Rs. 10,79,437/- vide OIO No. Ank-III/NN/02/13-14 dated 15-10-2013. The re-credit of Rs. 10,79,437/- has been disallowed on the ground that the rebate sanctioning authority has not given any instructions for re-credit.

- b) On appeal before the Commissioner of Central Excise (Appeals), Surat-II, under Section 35 of the central Excise Act, 1944, he rejected the appeal filed by the applicant, without considering the submissions and the ratios of various judgments relied by the applicant during the personal hearing, vide his OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13-01-2014. Surprisingly, he also set aside the OIO to the extent of disallowing re-credit of Rs. 17,50,822/- though the department did not prefer the appeal against the portion of the order which allowed re-credit to the applicant.
- c) It is to submit that since the OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13-01-2014 passed by the learned Commissioner of Central Excise (A), Surat-II is not sustainable, the OIO dated 24-08-2015 and the impugned OIA dated 07-10-2016 by which demand Rs.17,50,822/- has been confirmed, are also not sustainable
- d) It is submitted that the present demand is void ab initio in as much as the Assistant Commissioner has allowed cenvat credit vide her OIO dated 15-10-2013 and the same has been accepted by the department by not reviewing the same. In other words, the department has not preferred the appeal before the higher authority against the said OIO and hence the same has attained finality. In the circumstances, the question of recovery of cenvat credit Rs. 17,50,822/- does not arise at all. In such a case, the department does not have powers to issue SCN proposing to recover the amount which has already been allowed to be re-credited and particularly when such action of the Assistant Commissioner has been accepted by the department. Thus, the

present SCN is void ab-initio and not sustainable at all and in corollary to the same, the impugned OIA is also not sustainable.

- e) The entire demand is based on earlier proceedings under which the Commissioner (A) has issued the order. It is therefore submitted that since the said OIA is itself is not sustainable, the entire proceedings raised in the present case is not legal and correct and hence the question of any demand does not arise. Thus, the present OIA, under appeal is also not sustainable.
- f) In view of the facts and merits of the case discussed above, the learned Commissioner (A) ought to have condoned the delay but instead of the examining the merits of the case, he ignored the facts and the merits of the case and rejected the appeal on limitation ground and thus the impugned order is not sustainable.

In light of the above submissions, the applicant pleaded to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 20.10.2022. Shri Vinay Kañsara, Advocate attended the hearing on behalf of the Applicant and submitted that the issue is of re-credit of Cenvat in their account on which this office has already passed Order No. 58/2021-CX(WZ)/ASRA/MUMBAI dated 27.01.2021. Regarding delay he submitted that Commissioner (Appeals) did not condone the delay of 24 days, though within his competence, and inspite of sufficient cause shown

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

6. Government observes that the issue involved is whether the delay in the filing of appeal under Section 35 of the Central Excise Act,1944 could have been condoned by the Appellate authority.

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

- (i) The applicant had filed various rebate claims during the period from January-2011 to June-2012.
- (ii) The rebate claims were sanctioned under 47 orders-in-original whereby the sanctioning authority had restricted the rebate to the FOB value instead of value at which duty had been paid by the applicant on the exported goods.
- (iii) With regard to the extra amount paid on the exported goods, in 26 orders-in-original the rebate sanctioning authority had advised the applicant in these words - "*However, the manufacturer is at liberty to take up the issue with the jurisdictional Assistant/ Deputy Commissioner for taking re-credit of the said amount.*"
- (iv) In the other 21 orders-in-original, although the rebate sanctioning authority had restricted the rebate claims to the FOB value, no such remark had been recorded.
- (v) In view of the said 47 orders-in-original, the applicant had applied to the jurisdictional Assistant Commissioner of Central Excise to allow them to take re-credit of an amount totaling to Rs. 28,30,259/-.
- (vi) The Assistant Commissioner of Central Excise, Ankleshwar-III allowed the applicant to take re-credit of Rs.17,50,822/- but disallowed re-credit of Rs.10,79,437/- vide OIO No. Ank-III/NN/02/13-14 dated 15.10.2013. The re-credit of Rs.10,79,437/- had been disallowed on the ground that the rebate sanctioning authority had not given any instructions in this regard.

- (vii) Aggrieved, the applicant filed an appeal, however, the Commissioner(Appeals) vide OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13.01.2014 rejected the appeal and also set aside the order-in-original appealed against in so far as it related to allowing re-credit of Rs.17,50,822/- being erroneous and unsustainable in the eyes of law. The applicant filed a Revision Application against this OIA.
- (viii) On the basis of aforesaid OIA, the department issued a demand notice to the applicant for recovery of erroneously sanctioned re-credit amount of Rs.17,50,822/- which was confirmed vide Order-in-Original No. 28/ADJ/D/ADC-MS/15-16 dated 24.08.2015 by the adjudicating authority.
- (ix) The applicant preferred appeal along with a petition for condonation of delay of 24 days. However, vide impugned Order-in-Appeal, the Appellate authority rejected the appeal as time barred without going into the merits of the case, observing that there was no valid reason for condonation of delay.
- (x) Hence, the applicant has filed the instant Revision Application.

8. Government observes that the initial issue was regarding re-credit of the excess amount paid by the applicant on the export goods in their CENVAT account. As pointed out by the applicant during the personal hearing, the Revision Application filed in that matter (detailed at para 7(vii)) has already been decided and as the same has substantial effect in the instant matter, the relevant paras of said Order No. 58/2021-CX(WZ)/ASRA/MUMBAI dated 27.01.2021 are reproduced hereunder:

6.2 The issue involved is the re-credit of the excess duty paid by the applicant on the export goods in their CENVAT account. The grounds in the revision application do not contain any ground contesting the order of the Maritime Commissioner restricting the rebate claims to the extent of FOB value of the exported goods. In other words, the applicant has

not disputed the amount of rebate held to be admissible in respect of the rebate claims filed by them. The dispute raised in the revision application is exclusively in respect of the re-credit of CENVAT amount by certain amount held to be inadmissible as rebate and which the applicant desires to have restored as re-credit in their CENVAT account.

6.3 Government infers that the case involved in the present revision application and the impugned order issued under Section 35A of the CEA, 1944 does not relate to rebate of duty of excise on goods or excisable materials used in the manufacture of goods exported to any country and is therefore beyond the ambit of Section 35EE of the CEA, 1944 and the revisionary powers vested thereunder in the Central Government. The proper forum for the applicant to seek relief in this case would be the CESTAT.

Government observes that the instant issue having arisen due to a demand notice for recovery of re-credit amount is also beyond the ambit of Section 35EE *ibid*.

9. In the light of above findings, Government holds that the instant revision application is not maintainable.


25/11/22

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

ORDER No. 1153 /2022-CX(WZ)/ASRA/Mumbai dated 25.11.2022

To,
M/s. Gujarat Agrochem Ltd.,
(now known as Tagros Chemicals India Pvt. Ltd.)
Plot No. 2901 to 2906 and 2806,
GIDC Estate, Panoli, Ankleshwar,
District-Bharuch - 394 116.

Copy to:

1. Commissioner of CGST & CX,
Vadodara-II, GST Bhavan,
Subhanpura, Vadodara - 390 023.
2. Shri Vinay Kansara,
D/F-31 & 32, Sardar Patel Complex,
Near SBI Bank,
GIDC, Ankleshwar - 393 002.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.