REGISTERED 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. 195/62/14-RA, /590 Date of Issue:- 17/01/2020

ORDER NO. 116 /2020-CX(WZ)/ASRA/MUMBAI DATED 15.1.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Chandra Agri. Implements Pvt. Ltd.

Respondent : Commissioner of Central Excise, Ahmedabad – III.

Subject : Revision Application filed, under section 35EE of the Central Excise Act,1944 against the Order in Appeal No.AHM-EXCUS-003-APP-335-13-14 dt. 17.01.2014, passed by Commissioner (Appeals-III), Ahmedabad.

ORDER

This Revision Application has been filed by Chandra Agri. Implements Pvt. Ltd., Himatnagar, Gujarat (hereinafter referred to as "the applicant") against the Order in Appeal No.AHM-EXCUS-003-APP-335-13-14 dt. 17.01.2014 passed by Commissioner (Appeals-III) Central Excise, Ahmedabad.

2. The brief facts of the case is that the applicant is engaged in the manufacture and export of various kinds of hand tools viz. spades, shovels, picks, hoes etc. used in the agriculture, falling under the heading 82013000 to the First Schedule to the Central Excise Tariff Act, 1985. The applicant for claiming rebate of duty oaid on inputs used in exported goods had opted for procedure laid down in Notification No.41/2001-CE(NT), which was later on superseded vide Notification No. 21/2004-CE (N.T.) issued thereunder. The applicant was granted permission under Rule 18 of Central Excise Rules, 2002 by the Assistant Commissioner, Central Excise, Gandhinagar Division for availing the said benefit.

3. The applicant had filed a rebate claim of Rs.45,965/- under Rule 18 of the Central Excise Rules 2002 read with notification no. 21/2004-CE (NT.) dated 06.09.2004 in the month of June 2013 in respect of Central Excise Duty paid on raw materials used in the manufacture of the exported goods. The aforesaid rebate claim was rejected by the Deputy Commissioner, Central Excise Gandhinagar, Division, Ahmedabad-III vide Order in Original No. 539/Reb/Cex/2013 dated 02.09.2013 on the ground that the applicant had failed to fulfill the condition No. 4 (c) laid down in the Notification No.21/2004-CE (N.T.) dated 06.09.2004 in as much as the waste/scrap had not been cleared on the payment of duty.

4. Aggrieved by the afore said Order in Original, the applicant filed appeal before Commissioner (Appeals-III), Ahmedabad. However, Commissioner (Appeals-III) Ahmedabad, vide Order in appeal No. OIA No.AHM-EXCUS-003-APP-335-13-14 dt. 17.01.2014, upheld the said Order in Original and rejected the appeal filed by the applicant.

5. Being aggrieved and not satisfied with the impugned order mentioned supra, the applicant has filed the present Revision Application on the following main grounds :-

5.1 The then Assistant Commissioner, Gandhinagar Division had letter dated F. No. IV/16-16/Tech/Misc/2005 dated 17.06.2005 informed that scrap generated durng the course of manufacture of exempted goods are also exempted unconditionally vide Notification No. 89/95-CE and hence manufacturer has no option to pay duty at his own volition in terms of Section 5A of the Central Excise Act,1944. Therefore, department canot reject the rebate on the ground that no duty has been paid on waste and scrap.

5.2 as per Notification No. 89/95-CE dated 18.05.1995 the scrap generated in the manufacture of exempted goods is fully exempted from payment of central excise duty. It is not disputed that the finished goods exported are also exempted from Central Excise Duty by Notification No.12.2012-CE dated 17.03.2012. The said Notifications are absolute and unconditional and are issued under Section 5A of the Central Excise Act,1944 and hence no duty is payable.

5.3 The only reason for rejecting the rebate claims is that they have not paid the duty on scrap. When there is NIL rate of duty, the scrap cleared at NIL rate of duty is also a duty paid scrap as contemplated by the department and therefore the condition of the Notification is fulfilled and the rejection of rebate claim for non compliance of the conditions of Notification is not sustainable under law.

5.4 The contention of the department that conditions of Notification No.21/2004- CE (N.T) prevail over Notification No.89/95-CE is fallacious. Notification No.21/2004-CE (N.T) is a Non-Tariff notification issued under rule 18 of Central Excise Rules, 2002 which sets some procedures for claiming rebate of duty paid on finished goods and raw materials; while Notification No.89/95-CE has been issued under Section 5A of Central Excise Act, 1944. The government has granted power to grant exemption of duty to the goods by Section 5A of the Central Excise Act, 1944. When the exemption has been granted without giving any conditions, nothing can prevent the manufacturer availing such exemption by citing the conditions of any other notification. Notification No.21/2004-CE (N.T) is a procedural notification for availing the rebate claim issued under rule 18 of Central Excise Rules, 2002. When there is no condition laid down under Notification No.89/95-CE, the contention of the department that duty has to be paid under Notification No21/2004-CE (N.T) is totally fallacious. It is a settled law that while there is a conflict in between section and rule, section prevails over rule. They rely on decision of Tribunal in the case of Kishorilal Sudesh Kumar Metals (P) Ltd 1999 (111) ELT 708(Tri) wherein it is held that whenever there is a conflict in between section and rule, section prevails over rule. The

ratio of the said case is applicable in the present case and hence the impugned order rejecting the rebate claims is not sustainable

5.5 Even if the contention of the department is true, without admitting the same, that duty is to be paid on the scrap, the correct course of action would have been to demand duty on the scrap/waste and not to deny the legitimate right of rebate of duty paid on the materials used in the goods exported. While the department is alleging that scrap is duty payable, no demand has been raised for the same. Therefore the impugned order rejecting the rebate claims on the said ground is not sustainable.

5.6 Neither the Deputy Commissioner nor the Commissioner (Appeals) had answered the question at what rate the duty is to be paid on scrap when there is absolute and unconditional exemption on scrap generated during the manufacture of exempted goods.

5.7 Even if it is held that duty is payable on scrap, without admitting the same, they are eligible for exemption under Notification No.8/2003-CE for the clearances up to aggregate value of clearances up to Rs.150 lakhs. Since the value of clearances of goods exported are not to be included while calculating the aggregate value of clearances under this notification, no duty was payable during the said period. Therefore the impugned order is not sustainable on this ground also. However the learned Commissioner (Appeals) had, at paragraph 6.4 and 6.6 of the impugned order-in-appeal, held that the applicant had availed cenvat credit and hence the exemption is not available. In this regard it is submitted that the said finding of the Commissioner is totally erroneous as the they had never availed cenvat credit. Since the final product of is totally exempted from Central Excise duty, the cenvat credit is not eligible at all. The department has never stated that they have availed cenvat credit. It is not understood as to how the Commissioner had made such finding in his Order-in-appeal. Therefore the rejection of the SSI benefit on this ground is not sustainable.

6. A Personal hearing was held in this case on 17.10.2019 and Shri Suresh Prajapati, Accounts Manager, appeared on behalf of the applicant and reiterated the grounds of Revision Application and also filed written submissions vide letter dated 17.10.2019 .

7. In its written sunmissions filed on 17.10.2019, the applicant has contended as under:

- The scrap is fully exempted vide Notification No.89/95 dated 18.05.1995 and they had not stopped to clear the waste without payment of duty but it was department who directed them vide letter dated F. No. IV/16-

16/Tech/Misc/2005 dated 17.06.2005 that they had no option to pay the duty when the goods are unconditionally exempted and in context the aforesaid letter, they had no option to clear the waste on payment of duty hence in due obedience of department's directions they started to clear the waste, thereafter, under exemption Notification No. 89/95-CE. The department was right in holding that the waste cannot be cleared on payment of duty as it is exempted vide Notification No. 89/95-CE which is issued under Section 5A of the Central Excise Act,1944. The conditions mentioned in Notification No.21/2004-CE (NT) are procedural and the intention of the government was very clear that the procedure prescribed under said notifications are directive and it is to be fulfilled in consonance with the tariff notifications. If notification issued under section 5A exempts the goods than the said directive should also be treated as fulfilled as goods i.e. waste is exempted and it is cleared accordingly and it cannot be treated as without payment of duty. The officers of the department were fully aware that the waste & scrap is exempted and accordingly they had directed them to clear the waste without payment of duty as they knew that the conditions of notification no.21/2004 are fulfilled. They were filing monthly returns and showing completely in the monthly returns that the waste is cleared at NIL rate of duty vide Notification No.89/95. They had been filing the rebate claims since last 8 to 9 years and all the facts were mentioned in the claims as well as returns filed by them and after verification of the claims at Range level as well as Division levels, the officers very clearly mentioned in the order-in-original that the condition of notification no.21/2004 is fulfilled and after detailed verification, the claims were sanctioned. They also produce copy of Order in original No. 810/REB/CEX/2012 passed by Assistant Commissioner, Central Excise, Gandhinagar wherein it is clearly mentioned that conditions of Notification No.21/2004 are fulfilled.

- The officers were correct in granting the refund because they had no option to direct them to pay the duty on scrap when scrap is exempted from payment of duty and even the Deputy Commissioner, Central Excise as well as Commissioner (Appeal) has not given any comments or reasons on the letter of Assistant Commissioner, Central Excise, Gandhinagar issued on 17.06.2005 for not clearing goods without payment of duty in their OIA and OIO. Not only that but they have not given any direction in their OIO & OIA that if duty is required to be paid then at what rate, they should pay the duty. Thus, these facts shows that the adjudicating authority have grossly misinterpreted the notification No.21/2004 and has made an attempt to take away the benefit granted by the government to them. Further, they would like to bring to the notice that neither the department nor the adjudicating officers have made a single whisper for withdrawal of the aforesaid letter till this date hence all the refund claims filed by them automatically become legal and proper and the order passed by the Deputy Commissioner and Commissioner

(Appeals) are not fair and just and it may be set aside and the appellant also request to allow their both the appeals with consequential relief.

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

9. Government observes that the applicant in the instant case had been claiming rebate of duty paid on inputs used in the manufacture of exported goods under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004- Central Excise (NT) dated 06.09.2004, hence applicant was required to mandatorily fulfill all the conditions as prescribed in the Notification No. 21/2004- Central Excise (NT) dated 06.09.2004. Government further observes that condition 4(c) of Notification No. 21/2004-Central Excise (N.T.) dated 06.09.2004 [erstwhile Notification No. 41/2001-C.E. (N.T.)] stipulates that any waste arising from processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor. Whereas in the instant cases, the applicant cleared the waste and scrap arising during the course of manufacture of exported goods without payment of central excise duty and thereby violated condition 4(c) of Notification No. 21/2004-Central Excise (N.T.) dated 06.09.2004.

10. The applicant has contended that they had not stopped to clear the waste without payment of duty but it was department who directed them vide letter dated F. No. IV/16-16/Tech/Misc/2005 dated 17.06.2005 that they had no option to pay the duty when the goods are unconditionally exempted. In the context the aforesaid letter, they had no option to clear the waste on payment of duty hence in due obedience of department's directions they started to clear the waste, thereafter, under exemption Notification No. 89/95-CE.

11. The applicant is mainly contesting that the waste and scrap generated during the manufacture of these exempted goods is exempt unconditionally vide notification No.89/95-CE dated 18.05.1995 and therefore, no duty is payable on clearance of such waste and scrap.

12. It is also a fact that the applicant had opted to work under the said Notification No.21/2004-C.E. (N.T.) dated 06.09.2004 under which rebate of whole of duty paid on excisable goods used in the manufacture or processing of export

goods is allowed subject to fulfillment of certain conditions of that notification. When the applicants themselves had opted to work under the said notification 21/2004-C E. (N.T.) dated 06.09.2004 they were required to strictly adhere to the conditions laid down in it.

13. Government observes that export of goods under claim for rebate on inputs used in manufacture of export goods is governed by Rule 18 of Central Excise Rules, 2002 and condition 4(C) of Notification No.21/2004-CE(NT) dated 06.09.2004 lays down that "*any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of manufacture or processor*".

14. Thus the requirement of clearance of waste/scrap manufactured in the factory manufacture or processor on payment of duty is a statutory condition for manufacturer exporter availing Notification No.21/2004-CE(NT) dated 06.09.2004 and claiming rebate of duty on the inputs contained in the finished goods exported. Government finds it pertinent to note that earlier, the applicant was paying duty on scrap in consonance with condition No. 4 (c) of Notification No.21/2004-CE(N.T.) dated 06.09.2004.

15. Hence once the applicant had opted to work under Notification No.21/2004-C.E. (N.T.) dated 06.09.2004, it was required to pay the duty on the clearance of scrap and waste manufactured or processed in the factory of manufacture or processor in terms of condition No. 4 (c) of the aforesaid Notification. Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification cannot be treated as procedural lapse for the purpose of availing the benefit of rebate on impugned goods.

16. As regards the contention of the applicant that Division Office vide letter F.No. IV/16-16/Tech/Misc/2005 dated 17.06.2005 informed them that scrap is exempted vide Notification No.89/95-C.E. dated 18.05.1995, hence manufacturer has no option to pay duty at his own volition in terms of Section 5A of the Central Excise Act, 1944 and hence they stopped paying duty on scrap and waste, Government observes that such a clarification was not binding on the department when on a proper examination of the issue it came to the conclusion that the applicants are not entitled for benefit of provisions of Notification No. 21/2004-N.T., dated 6-9-2004, as they had failed to comply with the condition appended to

the said notification. There cannot be an estoppel against the law as held by the Hon'ble Supreme Court in Elson Machines Pvt. Ltd. v. Collector of Central Excise - 1988 (38) E.L.T. 571 (SC) = 1988 (19) ECR 449 SC. Further, Government following the principle laid down by Hon'ble Supreme Court in cases (i) ITC Ltd. v. C.C.E. - 2004 (171) E.L.T. 433 (S.C.) and (ii) Paper Products Ltd. v. C.C. - 1999 (112) E.L.T. 765 (S.C.) that simple and plain wording of applicable statutory provisions as elaborated vide relevant Notification /Circular are to be strictly adhered to, holds that as the applicant has not followed the statutory provision of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 and therefore input rebate claims are rightly held not admissible to them.

17. Government also observes that GOI in its earlier orders viz. Order No. 85/2015-CX dated 21.09.2015 in Re : M/s Kriti Nutrients Ltd. Dewas and Order No. 11/2016-CX dated 20.01.2016 in Re : M/s Themis Medicare Limited, Haridwar, have also rejected the Revision Applications by upholding rejection of rebate claims of the applicants therein, for not following the other provisions of Notification No.21/2004-CE(NT). The GOI in its aforementioned orders observed as under :-

> *"Government, therefore, holds that non fulfilling the statutory conditions laid down under the impugned Notification and not following the basic procedure of export as discussed above, cannot be treated as just a minor or technical procedural lapse for the purpose of availing the benefit of rebate on the impugned goods. As such there is no force in the plea of the applicant that this lapse should be considered as a procedural lapse of technical nature which is condonable in terms of case laws cited by applicant.*
>
> *Government notes that nature of above requirement is both a statutory condition and mandatory in substance for removal of goods for exports under claim for rebate of duty either on the final goods exported or on the inputs contained therein.*
>
> *It is in this spirit and this background that Hon'ble Supreme Court in case of Sharif-ud-Din, Abdul Gani - (AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory.*
>
> *It is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3*

(S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in case of Collector of Central Excise Vs Parle Exports (P) Ltd – 1988(38)ELT 741(S.C.) and Orient Weaving Mills Pvt. Ltd. Vs Union of India 1978 (2) ELT J 311(S.C.) (Constitution Bench).

Government notes that the applicant relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No. 21/2004-NT dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under such Notification No.21/2004-NT dated 06.09.2004 the applicant should have ensured strict compliance of the conditions attached to the Notification No.21/2004-NT dated 06.09.2004. Government place reliance on the Judgment in the case of MIHIR TEXTILES LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY, 1997 (92) ELT 9 (S.C.) wherein it is held that:

> *"concession/ relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

Further, Government finds that there is no provisions under Rule 18 of Central Excise Rules 2002 for condonation of non-compliance with the conditions and procedure laid down in the Notification allowing rebate under said Rule. In view of the above discussions, Government finds that the applicant failed to fulfill the above mandatory condition of the said provisions and the condition being mandatory the same is required to be followed by the applicant particularly when the applicant is the beneficiary in the claim of rebate".

18. Government observes that the applicant has also contended that even if it is held that duty is payable on scrap, they are eligible for exemption under Notification No.8/2003-CE for the clearances up to aggregate value of clearances up to Rs.150 lakhs and since the value of clearances of goods exported are not to be included while calculating the aggregate value of clearances under this notification, no duty was payable during the said period. In this regard Government observes that the applicant has contended in its written submissions dated 17.10.2019 that it had not stopped to clear the waste without payment of duty but it was department who directed them vide letter dated F. No. IV/16-16/Tech/Misc/2005 dated 17.06.2005 that they had no option to pay the duty when the goods are unconditionally exempted. This clearly indicates that the applicant was aware of the requirement of clearance of waste / scrap manufactured

in the factory manufacture on payment of duty was a statutory condition for manufacturer exporter availing Notification No.21/2004-CE(NT) dated 06.09.2004 and claiming rebate of duty on the inputs contained in the finished goods exported. Hence, previously, the applicant in compliance with the statutory provision of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 was precisely clearing waste and scrap arising from the processing of materials on payment of duty without availing the benefit of Notification No.8/2003-CE, ibid. Once the applicant had opted to work under Notification No.21/2004-CE(NT) dated 06.09.2004 for seeking rebate, it was imperative that the waste and scrap arising from the processing of materials was cleared on payment of duty.

19. In view of the above discussion and findings, Government upholds Order in Appeal No. AHM-EXCUS-003-APP-335-13-14 dt. 17.01.2014, passed by Commissioner (Appeals-III) and rejects the Revision Application No. 195/62/14-RA, filed by M/s Chandra Agri. Implements Pvt. Ltd, Himmatnagar,

20. So ordered.

(SEEMA ARORA)
Principal Commissioner & ExOfficio
Additional Secretary to Government of India

ORDER No. 116 /2020-CX (WZ) /ASRA/Mumbai Dated 15.01.2020

To,

M/s Chandra Agri. Implements Pvt. Ltd.,
B/h GIDC, Motipura, Himmatnagar-383001.
Gujarat.

Copy to:

1. The Commissioner of CGST, Gandhinagar, 2nd Floor, Customs House, Near All India Radio, Navrangpura, Ahmedabad – 380009.
2. The Commissioner of CGST (Appeals), Ahmedabad, Central Excise Bhavan, Ambawadi, Ahmedabad – 380015.
3. The Deputy / Assistant Commissioner, CGST, Himatnagar Division, 2nd Floor, Central Excise Bldg., Sector 10/A Division, Gandhinagar- 382010
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.