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सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.198/088-090/WZ/17-RA/7102 Date of Issue: 30.11.2022

ORDER NO.1176-1178/2022-CE(WZ)/ASRA/MUMBAI DATED 29-11-2022 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 GST, Pune-I Commissionerate against OIA No. PUN-EXCUS-001-APP-040-042-17-18 dated 28-04-2017.

Respondent : M/s Kubota Agricultural Machinery India Pvt. Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Commissioner (Appeals-I), Central Excise, Pune's Orders in Appeal No. PUN-EXCUS-001-APP-040-042-17-18 dated 28-04-2017.

ORDER

These Revision Applications are filed by the department against the Orders-In-Appeal as detailed in Table below passed by Commissioner (Appeals-I), Central Excise, Pune in respect of M/s Kubota Agricultural Machinery India Pvt. Ltd. situated at Gat no. 338/1, TVS Infrastructure Ltd., Village-Mahalunge, off Chakan-Talegaon Road, Taluka-Khed, Pune-410501 (hereinafter referred to as the Respondent)

TABLE

Sl. No.	RA File No.	Order-In-Appeal No./ Date	Order-In-Original No./ Date	Amount
1	198/88-90/ WZ/17-RA	PUN-EXCUS-001-APP-040 to 042-17-18 dated 28-04-17	PII/CEx/DnIV/(CKN-II)/REB/PSP/313/ 16-17 dated 02-01-2017	Rs.52,36,599/-
2			PII/CEx/DnIV/(CKN-II)/REB/PSP/322/ 16-17 dated 06-01-2017	Rs.43,21,662/-
3			PII/CEx/DnIV/(CKN-II)/REB/PSP/323/ 16-17 dated 06-01-2017	Rs.41,36,632/-

2. The issue in brief is that the Respondent are engaged in export of agricultural equipment parts under claim of rebate under Rule 18 of the CER read with Notification 21/2004 CE(NT) dated 06/09/2004. They are registered as non-assessee under Excise and holding registration no. AADCK5472ECE002. The Respondent had filed 03 rebate claims before the Department for the exports made by them. The Respondent were issued Show Cause Notices asking as to why the rebate claims may not be rejected. The Adjudicating Authority rejected the rebate claims vide the above mentioned 03 OIOs whereby the 03 rebate claims were rejected, mainly on the following grounds.

(i) the Appellants have contravened the Condition (3), Condition (4) and Condition (5) of the Notification no 21/2004 CE(NT) dated 06/09/2004

(ii) They are not manufacturer and they are in trading business. They had exported goods after procuring the same from outside and without processing of inputs and without manufacturing the final exported products.

3. Aggrieved by the aforesaid OIOs the Respondent filed appeal with the Commissioner Appeals who vide the above mentioned 3 Order in Appeals set

aside the impugned Orders in Original and allowed their appeal with consequential relief.

4. Aggrieved by the aforesaid Commissioner Appeal's Order, the Applicant-department filed the current Revision Application before the Government of India on the following grounds:

i) that for claiming the benefit of notification no. 21/2004-C.E. (N.T) dated 06.09.2004, the importer cannot avail the 'Drawback' on export of the consignment covered under the said notification and has to declare that particulars are true and correctly stated. However, in the present case the importer has availed drawback which is a violation of the notification no. 21/2004-C.E. (N.T) dated 06.09.2004.

(ii) The para(3) of the notification no. 21/2004-C.E.(N.T) dated 06.09.2004 reads as under:-

> *"(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*
>
> *Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers."*

Form A.R.E. 2 reads as under:

> *"Combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods."*

Hence, it is evident that the benefit under the said notification is available to manufacturer exporter only. However, the assessee has not taken any registration under Central Excise for the purpose of manufacture.

iii) that the Circular relied viz No. 209/43/96-CX dated 09.05.1996, was in context of cotton made ups and not in the context of items/ goods exported by the assessee in the present case and also that the circular issued cannot override the provisions contained in the notification.

iv) that the Circular relied viz No. no. 238/72/96-CX dated 12.08.1996 was in context of man-made fabrics/sarees and not in the context of items /

goods exported by the assessee in the present case and also that the circular issued cannot override the provisions contained in the notification.

v) that the Commissioner (Appeals) has placed piecemeal reliance on the judgement in the case of "IN RE: A.V. INDUSTRIES" reported as 2011 (269) E.L.T. (G.O.I). In the present case the party has availed 'Drawback' and also applied for rebate under notification no. 21/2004-C.E. (N.T) dated 06.09.2004. However, in the case relied upon by the Commissioner (Appeal), the party had not availed Drawback which is evident from para 10 of the said judgment.

vi) The Commissioner (Appeals) has relied on Para 1.2 & 1.3 of Part V of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions and conveniently ignored the Para 1.5 of the said instructions.A plain reading of above shows that inter alia the benefit of input stage rebate cannot be claimed where the finished goods are exported under Claim for Duty Drawback. However, in the present case the assessee has claimed the benefit of Drawback and also applied for input stage rebate. The Circular No. 1047/35/2016-CX dated 16.09.2016 relied has been issued on 16.09.2016 and is primarily based on Notification No. 44/2016-C.E. (N.T.), dated 16-9-2016. The Notification No. 44/2016-C.E. (N.T.), dated 16-9-2016 will have a prospective effect and hence, the circular dated 16.09.2016 will also have prospective effect. In the present case the exports were made by ARE-2s dated from 01.09.2015 to 30.09.2015 which are of a date prior to the issuing of circular dated 16.09.2016.

vii) that the facts and circumstances of the Judgements relied by the Commissioner (Appeals) are different from the instant case.

vii) that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein. In this regard reliance is placed on catena of judgments of Hon'ble Courts/ Judicial forums where the benefit of the notification has been denied for non-fulfillment of the condition of notifications. Some of the judgments/ decisions are as under:-

(a).Judgement dated 02.09.2004 of Hon'ble Supreme Court in the case of Eagle Flask Industries Limited Vs Commissioner of C.Ex., Pune-2004 (171) E.L.T 296 (SC).

(b) Judgement dated 03.09.2015 of Hon'ble Supreme Court in the case of Commissioner of C.EX., Pondicherry Vs Honda Siel Power Products Ltd.,-2015 (323) E.L.T 644 (SC).

(c).Judgement dated 30.09.2015 of Hon'ble CESTAT in the case of R.R.Kobler Overseas P. Ltd. Vs C.C., ICD, Tughlakabad, New Delhi,-2016 (333) E.L.T 98 (Tri-Del).

(d).Judgement dated 12.03.2008 of Hon'ble CESTAT in the case of Bhuwalka Steel Industries Limited Vs Commr. of C.Ex., Bangalore-1,-2008 (229) E.L.T 593 (Tri- Chennai).

(e).Judgement dated 09.03.1999 of Hon'ble CESTAT in the case of Paam Pharmaceuticals (Delhi) Ltd. Vs Commr. of Cus., New Delhi -1999(111) E.L.T. 66(Tribunal).

(f) Judgement dated 02.06.2000 of Hon'ble CESTAT in the case of Ratnagiri Textiles Ltd. Vs Commissioner of Central Excise Jaipur-II, -2000(119) E.L.T 733(Tribunal).

(g). Order dated 17.05.2013 of Government of India in the case of IN RE: IND- SWIFT LABORATORIES LTD. 2014(312) E.L.T 865 (G.O.I).

(h). Order dated 04.07.2011 of Government of India in the case of IN RE: MANIK MACHINERY PVT. LTD. 2014(304) E.L.T 475 (G.O.I).

(i). Order dated 12.10.2010 of Government of India in the case of IN RE: RAMLAKS PVT. LTD. 2011 (272) E.L.T 637 (G.O.I).

(j). Order dated 29.03.2016 of Government of India in the case of IN RE: CIPLA LTD. -2016(343) E.L.T 894 (G.O.1).

(k). Order dated 31.08.2015 of Government of India in the case of IN RE: LAXMI SOLVEX. 2016(344) E.L.T 726 (G.0.1).

(1). Order dated 15.12.2015 of Government of India in the case of IN RE: INDIAN OIL CORPORATION LTD. -2016(344) E.L.T. 683 (G.O.I).

ix) that a provision providing for an exemption has to be construed strictly. When the language of condition in the Exemption Notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction.

x) In view of the above submission the applicant department requested to set aside the Order-in-Appeal No. PUN-EXCUS-001-APP-040 to 042-17-18 dated 28.04.2017 and Uphold and restore the aforesaid Order in Original.

5. Personal hearings in the case was fixed on 16-06-2022 and 30-06-2022. On 30.06.2022 no one appeared on behalf of the Applicant and Shri T.S. Ravi, Director PWC and Shri Amol Bhise, Deputy Manager, appeared for the hearing on behalf of the Respondent. They reiterated their earlier submissions made vide their reply dated 04-12-2017. They submitted that their matter has been clarified vide Circular No. 1047/35/2016-CX dated

16-09-2016. They submitted an additional written submissions dated 30-06-2022. They requested to maintain Commissioner Appeals Order as it reflects correct position of law.

6. The Respondent submitted the following points in their additional submissions:

a) That there is no bar in claiming Customs drawback as per the Notification No. 21/2004-C.E. (N.T.) dated 06-09-2004. They submitted that they have claimed and received drawback for the Customs portion only under the All Industry rate as prescribed under the Drawback schedule. They relied on the Circulars and Case laws as given below:

i) Circular No. 35/2010-Cus dated 17-09-2010;
ii) Circular No.1047/35/2016-CX dated 16-09-2016;
iii) Mars International Vs G.O.I.-2012(286)E.L.T.146(G.O.I.);
iv) Aarti Industries Ltd. Vs G.O.I.-2012(285) E.L.T. 461(G.O.I.);
v) Gokul Auto Pvt. Ltd. Vs G.O.I.-2018(363)E.L.T. 817(G.O.I.).

b) that mere processing is sufficient for claiming rebate as per Notification No. 21/2004 CE (NT) dated 09-06-2004. The Respondent submitted that they carry out testing, repacking activities before exporting the goods received by them under the provisions of Customs act, 1962 read with Rule 18 of Central Excise Rules, 2002.

c) that all the goods procured by them from the manufacturers on payment of applicable central excise duty. They had complied with the procedure for export under ARE-02 and cleared consignment for export in accordance with Notification No. 21/2004 CE (NT) dated 09-06-2004 after obtaining the Input-Output ratio approved by the jurisdictional authority.

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

8. On perusal of the records, Government observes that, the basic issue to be decided in this case is whether the Respondent are eligible for availing the rebate benefit under Rule 18 of the Central Excise Rules, 1944 read with Notification No. 21/2004 CE (NT) dated 09-06-2004.

9. Government observes that the respondent procures parts of tractors from vendors located in India after payment of applicable duty. After procuring they perform the activity of testing for examining the gear angles, shape, roughness, hardness, etc. They then pack the parts in carton box/returnable crates and export the same under claim of rebate under Rule 18 read with Notification No. 21/2004 CE (NT) dated 09-06-2004. The original authority rejected the rebate claim mainly on the ground amongst others that no manufacturing activity was carried out by the applicant on goods procured to qualify for rebate benefit in terms of Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 and also that they had availed the benefit of drawback. Commissioner (Appeals) set aside the Order in Original and allowed the appeal filed by the respondent. Aggrieved by the sad Order the department filed the instant revision applications.

10. The main grounds of appeal by the department is as under:

i) that the respondent has availed Drawback and is also claiming Rebate;

ii) that the benefit of this Notification is available only to manufacturer exporter;

iii) that the activity carried out by the respondent does not correspond to 'processing' and

iv) that the respondent has not fulfilled the conditions of Notification No. 21/2004-CE (N.T.) .

10.1 <u>The respondent has availed Drawback under category 'B' of the Drawback schedule though he has declared that he is not availing the same</u>:

a. Government finds that the Commissioner Appeal in his impugned order at Para11 has clearly clarified in detail this point:

> *"...The drawback schedule specifically provide separate drawback rate in case where Cenvat credit facility has not been availed i.e. "A" which refers to total drawback (Customs, Central Excise and*

Service Tax component put together) allowable and those appearing under the column "Drawback when Cenvat credit facility has been availed" i.e."B" refer to Drawback allowable under the Customs Component of Drawback; that the applicants have claimed and received drawback of customs portion only and the Assistant Commissioner has gravely erred in rejecting their rebate claims for Central Excise duty paid on the goods removed for export; that All Industry Rate Drawback of Customs component as claimed by the applicants is based on the concept of averages, wherein drawback rate itself as well as its customs and central excise portions are based on weighted averages of consumption of imported/indigenous inputs of a represented cross section of exporters and average incidence for duties suffered on such inputs that these rates have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments exported by any particular exporter under AIR/DBK claims. The drawback claimed and paid does not relate to Central Excise Duty for which the present rebate claims have been filed under Notification No. 21/2004-C.E (N.T.), dated 6-9-2004 read with Rule 18 of Central Excise Rules, 2002 read with Notification 19/2004-C.E. (N.T.). dated 6-9-2004 but to the customs duty portion and hence, availment of drawback of customs portion cannot be the basis for denial of rebate of Central Excise duty paid for export.

b. Government also finds that Circular No. 1047/35/2016-Cx dated 16-09-2016 has also clarified the same as under

"2.1. The issue has been examined. Board has already vide circular no. 35/2010-Cus dated 17.09.2010 clarified that as per notification no 84/2010-Customs (N.T.) dated 17.09.2010, Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. ***The***

circular no. 35/2010-Cus dated 17.09.2010 continues to be in operation and Customs portion of drawback so available are specified as per rates and caps under column (6) & (7) of the drawback schedule.

2.2. Further, s.no. (11) of notes and conditions of the drawback schedule notified vide notification no. 110/2015-Customs (N.T.) dated 16.11.2015 states that the rates and caps of drawback specified in columns (4) and (5) of the said schedule shall not be applicable to export of a commodity or products if rebate of duty on materials used in the manufacture or processing of such commodity or products is availed under rule 18 of Central Excise Rules, 2002 or if commodity or product is manufactured or exported in terms of sub-rule (2) of rule 19 ibid. However, drawback in such cases, as per rates and caps specified under columns (6) and (7) of AIR of the drawback schedule is admissible.....

5. Accordingly, it is ***clarified that****:-*

(i) | Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in column (6) and (7) of the drawback schedule shall be admissible;....."

c. The above Circular clearly shows that the custom component of Drawback was available even if Rebate of C.Ex duty paid on the raw material used in the manufacture of export goods has been taken in terms of rule 18 of the CER, 2002 in view of Notification No.84/2010-Customs (N.T.). The issue was clarified and confirmed again vide the said Circular. Hence Government agrees with the views of the Commissioner Appeal on this point. This issue has been covered in GOI's Order Order Nos. 163-166/2017-CX, dated 14-9-2017, 2018 (363) E.L.T. 817 (G.O.I.) in respect of M/s GOKUL AUTO PVT. LTD. wherein it has been held as follows:

"Export - Rebate of duty paid on inputs used in exported goods - Denial of - Availament of drawback on exported goods - It is not deniable if

assessee availed drawback of Customs duty only and not of Excise duty paid on inputs - Further, there is no prohibition under Rule 18 of Central Excise Rules, 2002 for availing rebate on availment of drawback of Customs duty - Rule 18 of Central Excise Rules, 2002."

10.2 Benefit of the Notification is available to manufacturer exporter only:

a. The relevant provisions of the Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 is reproduced below:

"In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') ***used in the manufacture or processing of export goods shall****, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter :-*

.....

(3) ***Procurement of material. - The manufacturer or processor*** *shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers."

b. Government observes that the rebate under Notification No. 21/2004-C.E. (N.T.), dated 6-4-2004 is admissible on the duty paid on excisable goods used in manufacture or processing of export goods. In other words the benefit is available to the manufacturer as well as to the processor. The processing has been explained in Para 1.3 of Part V of chapter -8 (Export under claim for rebate of duty on excisable material used in the manufacture

of export goods) which is as under: *"1.3 it may be also noted that materials may be used for manufacture or processing. In other words, any processing not amounting to manufacture (such as **packing, blending etc.**) will also be eligible for the benefit under said notification."*

10.3 The activity carried out by the respondent cannot be treated as 'processing'.

a. Government finds that the Respondents procure materials from vendors on payment of duty. These materials are subjected to inspection and testing with the help of various testing machines installed in their premises before they are exported. During the course of testing and inspection, if the materials do not qualify the standard fixed for export, the same is rejected and send back to the vendor for replacement. The qualified materials would be stored and based on the Order received from the customers, the materials would be packed in the carton boxes. The department's contention that no process has been carried out of the inputs does not appear to be correct as the activity of inspection, testing and packing has been carried out. . The term processing is not defined under the Excise Act. However the meaning given in the Dictionary for processing is 'the act or process of treating or preparing something by a special method'. Accordingly the activity of Inspecting /Packing would be covered in "processing". Further the Notification No. 21/2004-CE (NT) does not commend that the process carried out by the manufacturer or Processor should amount to manufacture.

b. Government relies on the judgement in an identical case of M/s A.V. INDUSTRIES" reported as 2011 (269) E.L.T. (G.O.1) wherein it was held as under:

> *"Rebate on exports - Testing/re-packaging of export material - Stabilizer Links exported after testing and re-packaging - It amounted to processing of materials for export - On export of such Stabilizer Links, exporter was entitled to rebate of duty paid on them - Department plea that Stabilizer Links were exported as such, rejected - Notification No. 21/2004-C.E. (N.T.) - Rule 18 of Central Excise Rules, 2002. [paras 9, 10, 11]*

Rebate on exports - Excisable goods used in their manufacture or processing - For entitlement to rebate, it is not necessary that such goods may be inputs for export goods or their processing should amount to manufacture in terms of Section 2(f) of Central Excise Act, 1944 - Their processing was sufficient - In that view, testing and re-packaging held to amount to processing - Notification No. 21/2004-C.E. (N.T.) - Rule 18 of Central Excise Rules, 2002".

c. The department in their grounds of appeal has stated that in the aforesaid relied case the party has not availed Drawback and in the instant case the Respondent has availed Drawback. Government finds that in the impugned case, the Respondent has availed Drawback under category 'B' of the Drawback schedule i.e the Respondent has availed the Drawback of Customs portion only. This has already been dealt in the above para at Point 1. Government also relies on the following judgements wherein it is held that Customs component of All Industry Rate of drawback would be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002

1. GOI's Order Order Nos. 551-569/2012-CX, dated 11-5-2012 [2012 (285) E.L.T. 461 (G.O.I.)] in case of AARTI INDUSTRIES LTD.

Rebate vis-à-vis drawback - Customs component of All Industry Rate of drawback available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002 - Allowing rebate of duty when drawback of Customs portion is availed will not amount to double benefit even after availment of Cenvat credit of duties of Central Excise as paid for the inputs used in manufacture of such exported goods which were cleared on payment of duty of Central Excise - Notifications No. 19/2004-C.E. (N.T.) and No. 103/2008-Cus. (N.T.)

2. Bombay High Court's Order Writ Petition No. 7210 of 2017 dated on 27-4-2018 [2019 (365) E.L.T. 703 (Bom.)] in respect of M/s SARLA PERFORMANCE FIBERS LTD.

Drawback - Claim of - On brand rate - After Drawback claim at All Industry Rate notified under Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 - No dispute about entitlement to Drawback - HELD : Assessee could not be denied Drawback - It was immaterial whether input credit was availed or Drawback refund was granted on All Industry Rate or brand rate - Benefit in Column 'B' of All Industry Rate could not be denied on basis of D.G.F.T. Policy Circular No. 9 (RE-2013)/2009-14, dated 30-10-2013 and para 8.5 of Foreign Trade Policy, 2009-2014 - Assessee could rely on para 8.3.3 of HBP. –

10.4 The respondent has not fulfilled the conditions of Notification No. 21/2004-CE (N.T.) .

a. The relevant conditions to be followed in the impugned Notification are as follows:

*".....(1) **Filing of declaration.** - The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

*(2) **Verification of Input-output ratio.** - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.*

(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods

intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers.

(4) Removal of materials or partially processed material for processing. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -

(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or process; or

(b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;

(c) 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 the manufacturer or processor.

(5) Procedure for export. - The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to this notification and the procedures specified in Ministry of Finance (Department of Revenue) notification No.19/2004-Central Excise (N.T.), dated the 6th September, 2004 or in notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 shall be followed.

b. Government finds that as per the Notification No. 21/2004-C.E. (N.T.) a manufacturer or processor intending to claim input rebate should file a declaration with the jurisdictional Deputy/Assistant Commissioner of Central Excise for verification and approval of input-output ratio prior to export of the goods and obtain the permission of the Deputy/Assistant Commissioner of Central Excise for manufacture or processing and export of finished goods. The materials should be procured from a registered factory or

a dealer registered for the purposes of the CENVAT Credit Rules, 2002 alongwith the copy of legit invoices. The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture of process. If, after such verification, the Assistant commissioner of central Excise or the Deputy Commissioner of central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods. Therefore as per the said notification, manufacturing or processing and export of the goods can only be effected by the party if permission is granted by the Assistant Commissioner or Deputy Commissioner after verification of correctness of the ratio of input and output mentioned in their declaration.

c. In the instant case Government finds that the

i) the respondent had filed his declarations of such input-output ratios and the jurisdictional AC approved the input output ratio for the purpose of availing rebate of duty paid on the inputs used for export which clearly shows that the AC/DC has verified the process/activity carried out by the respondent.

ii) The goods were procured on payment of duty accompanied by legit invoices

iii) The goods were exported under ARE-2

iv) The Order issued by the adjudicating authority, states that the Range Supdt in his verification report has recommended the Rebate claim for sanction as the respondent have cleared their export consignment as per the Notification No. 21/2004-C.E. (N.T.).

v) The judgements quoted by the department in respect of this point is not applicable in the instant case.

d. In view of the above, Government notes that the Respondent has fulfilled all the conditions stipulated under Notification No. 21/2004-CE (N.T).

11. In view of the above discussions, Government finds no infirmity in the impugned orders-in-appeal and upholds the same.

12. The Revision Application filed by the department is dismissed in above terms.

29/11/22

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

ORDER No 1176-1178/2022-CX (WZ) /ASRA/Mumbai DATED 29.11.2022

To,
The Joint Commissioner, Central GST,
Pune-I Commissionerate, 2nd Floor, I.C.E. House,
41/A, Sassoon Road, Opp-Wadia College,
Pune-411001

Copy to:

1. Kubota Agriculture Machinery India Pvt. Ltd., Gat No. – 338/1, Mahalunge, Chakan MIDC, Taluka – Khed, District Pune – 410501, Maharashtra.
2. D.C./A.C., C.Ex, Chakan –II Division, Pune-II Commissionerate, Excise Bhawan, Akurdi, Pune-411044.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Spare Copy