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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. 195/462/16-RA / 7964

Date of Issue: 03.01.22

ORDER NO. 1257 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 30.12.2022 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. Agro Pack

Respondent : Commissioner of CGST & CX, Bharuch Commissionerate.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.- CCESA-
VAD(APP-II)/MM/1/2016-17 dated 18.04.2016 passed
by the Commissioner(Appeals-II), Central Excise, Vadodara.

ORDER

This Revision Application has been filed by M/s. Agro Pack(hereinafter referred to as "Applicant") against the Order-in-Appeal No.- CCESA-VAD(APP-II/MM/1/2016-17 dated 18.04.2016 passed by the Commissioner(Appeals-II),Central Excise ,Vadodara.

2. Brief facts of the case are :

- the Applicant had filed 19 rebate claims amounting to Rs. 95,42,215/- under section 11B of the Central Excise Act,1944 in respect of finished goods exported after duty payment.
- Adjudicating Authority vide OIO No. ANK-III/RSR/59/R/10-11 dated 11.05.2010 rejected their rebate claims.
- Applicant, then preferred Appeal before Commissioner(Appeals), who vide OIA No. BC/297/Surat-II/2011 dated 20.11.2011 rejected their appeal.
- Aggrieved, Applicant filed application before Revisionary Authority, who vide order No. 96/14 CX dated 25.03.2014, remanded the matter back to the Adjudicating Authority with certain observations:
 - i. whether the claimant has filed the disclaimer certificate procuring from M/s. Syngenta India Ltd.
 - ii. whether benefit of drawback claim of Central Excise portion and rebate claims have been availed simultaneously or not.
 - iii. to verify the procurement of inputs/raw materials under various invoices on payment of duty and reporting of cenvat of such duty payment in form of monthly return/, from original documents and official records and whether any Show Cause Notice has been issued for improper availment of cenvat credit and to determine correctness of duty from rightly availed cenvat credit.
- This case was re-adjudicated vide OIO No. ANK-III/DC/496/R/2014-15 dated 27.01.2015 as per Revision Order No. 96/14 CX dated

25.03.2014, wherein adjudicating authority rejected their claims on the grounds :

- i. that SCN F.No. V(Ch 29)3-18/Dem/2010 dated 17.03.2012 was issued to the applicant proposing to disallow the Cenvat Credit.
 - ii. The above said SCN was adjudicated vide OIO No. SUR-Excus-002-Com-047-13-14 dated 26.12.2013, wherein the demand was confirmed by holding the cenvat credit as ineligible to the Applicant.
 - iii. Though the export of goods was not in question and there was also not the case of claiming of drawback on central excise duty portion on inputs, yet the bonafide of cenvat credit was in question and so the duty payment.
- Being aggrieved by the aforesaid order-in-original the applicant filed an appeal before Commissioner(Appeals-II),Central Excise ,Vadodara, who vide Order-in-Appeal No.- CCESA-VAD(APP-II/MM/1/2016-17 dated 18.04.2016 rejected their appeal on the ground that the applicant had purportedly discharged the duty from illegal/ineligible cenvat credit.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. The Commissioner (Appeals) has conveniently overlooked the findings of Revisionary Authority and various judgments delivered by CESTAT, High court on this issue.
- ii. the adjudicating authority has observed in impugned order that the applicant had produced the No Objection Certificate/Disclaimer certificate from M/s Syngenta India Ltd., and also confirmed the fact that the claimant have not availed drawback claims on excise components and respect of the rebate claims availed by them. Out of the 3 issues raised by Revisionary Authority, the adjudicating authority has confirmed the two issues in favour of applicant.

- iii. In terms of the third direction, it was required for the adjudicating authority to verify the procurement of inputs/raw materials under various invoices on payment of duty and reporting on cenvat of such duty payment in form of monthly returns from original documents and official records, to determine the correctness of payment of duty from rightly availed cenvat credit. Instead of following the direction of the Honorable Revisionary Authority and doing exercise of verification of payment of duty, the adjudicating authority has not followed the direction but relied upon the contents of previous OIO dated 07.04.2010 which is not at all legal and OIA dated 20.10.2011 which has been set aside by the Revisionary Authority.
- iv. The contentions as raised by the learned Commissioner (A) are not new contentions but the same are adopted from the earlier OIA and OIO. Further, all such contentions have been dealt with by the H'ble Revisionary Authority during the first round of litigation. The findings of the Revisionary Authority of Revisionary authority in the earlier order dated 25-03- 2014 have been mentioned above. During the first round, the Commissioner has dealt with the issue in detail and thereafter certain directions were imparted and unfortunately the same were not followed.
- v. The applicant further submit that it is pertinent to note that the order dated 25.3.2014 passed by the revisionary authority, New Delhi, has been accepted by the department by not challenging before the higher judiciary authority and hence the findings of the said order have attained finality and therefore the Central Excise department cannot raise any contention contrary to such findings but in the impugned order all the contentions are contrary to the findings as given in the order dated 25.3.2014.
- vi. It is further submitted that in Para 5.3 of the impugned OIO, the reference of separate SCN dated 17.03.2012, has been given. The copy of this SCN is enclosed. In this regard, it is submitted that by the said SCN, the demand of Central Excise duty totally Rs. 25,39,18,209/-

has been issued and the said demand of duty was adjudicated against the applicant vide OIO dated 26.12.2013 and the appeal against the said OIO, is pending before the H'ble CESTAT. In this case, the CESTAT had also granted unconditional stay.

- vii. The most pertinent point in this case is that before the Revisionary Authority during the first round of litigation, the applicant had produced the copy of the said SCN and after referring the same, the Revisionary Authority had observed in para 8.2 of the Order dated 25-03-2014 that no SCN has been issued to the applicant or M/s Syngenta India Ltd., for improper availment of cenvat credit. As such, availment of cenvat credit, in this case, has not been disputed. In this context, it is submitted that both the lower authorities i.e., adjudicating/ appellate authority, without referring the said observation, has referred the SCN. It is the case of the applicant, right from the beginning that since the cenvat credit availed on the inputs has not been questioned or the SCN, proposing to recover of cenvat credit has not been issued, the question of rejection of rebate claims of such a huge amount does not arise at all. If the department was of the views that the applicant had availed cenvat credit incorrectly, then the SCN could have been issued at the relevant time.
- viii. In view of the findings of the Revisionary authority under Order dated 25-03-2014, there was no reason with the appellate authority to arrive at findings/conclusions as mentioned in the impugned OIO. As a matter of judicial discipline, the adjudicating/appellate authority was required to follow the findings of the higher authority particularly when the order of the Revisionary Authority has not been challenged before the higher court. In view thereof, the applicant submit that it does not require elaborate reasoning to firmly state that the lower authorities have not dealt with the directions as imparted by the Revisionary authority properly and also has not applied his mind to deal with the directions of the higher judicial authority i.e. Revisionary Authority.

- ix. Applicant has placed reliance on various case laws.
 - x. In view of above, Applicant requested to set aside the impugned Order-in-Appeal allowing the present appeal, in full, with consequential relief.
4. Personal hearing in this case was fixed for 05.07.2022, Shri. Vinay Kansara, Advocate appeared before me and reiterated their earlier submissions. He submitted an additional written submission on the matter. He requested to allow the claim as its already delayed.
5. Applicant vide letter dated 05.07.2022 have submitted the following additional submission:
- i. Subsequently, the Commissioner (A) allowed the appeal wherein the question of rebate claim in relation to Exports carried out in the month of November 2010 was involved, though the duty was paid from the Cenvat Register maintained for the above referred companies. The applicant enclose the OIA No. CCEA-SRT-II/SSP-246/u/s35A(3) dated 29-01-2013 passed by the Commissioner (A). The said order has not been reviewed further and thereby the same has attained finality.
 - ii. Importantly, the demand raised in the Show Cause Notice dated 17-03-2012, the reference of which has been given in the OIO and OIA during the second round of litigation, has been set aside by the CESTAT vide its Order No. A/11463-11469 / 2019 dated 05-08-2019. The copy of the said CESTAT Order is enclosed herewith.
6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.
7. On perusal of the records, Government observes that in the instant case, the issue to be decided is that whether the applicant has rightly been denied the rebate on account of discharging the duty against the exported goods from cenvat credit which was disputed.

8. Government observes that the adjudicating authority while re-adjudicating the case as per Revision Order No. 96/14 CX dated 25.03.2014, rejected the rebate claims vide OIO No. ANK-III/DC/496/R/2014-15 dated 27.01.2015 on the basis of OIO No. SUR-Excus-002-Com-047-13-14 dated 26.12.2013 passed by the Commissioner, Central Excise, Surat-II which decided the SCN dated 17.03.2012 which had raised the demand for cenvat credit which was allegedly erroneously availed. The details of demand confirmed in OIO dated 26.12.2013 passed by Commissioner are as under:

Sr. No.	Amount of demand	Reasons for Demand
1	Rs. 25,39,18,209/-	Demand is confirmed as per Annexure-A to the show cause notice on finished goods cleared during the period February 2008 to October 2008, on the ground that duty has been paid by utilizing Cenvat Credit which do not belong to the Appellants.
2	Rs. 7,60,14,869/-	Credit is denied as per Annexure-B to the show cause notice on inputs received under Bills of Entry on the ground that same are in. the name of SIL/SCPPL and therefore not a valid document.
3	Rs. 1,18,55,284/-	Credit is denied as per Annexure-C to the show cause notice on inputs procured locally on the ground that goods are not owned by Appellants but belongs to SIL and SCPPL.
4	Rs. 36,20,302/-	Denial of credit as per Annexure-D to the show cause notice on inputs procured from 100% EOU on the ground that same is availed in excess.
5	Rs. 4,75,860/-	Cenvat Credit has been availed twice.

During the course of these proceedings, the applicant has submitted that the said OIO dated 26.12.2013 was challenged resulting in CESTAT order No. A/11463-11469 / 2019 dated 05-08-2019. Government notes that the Hon'ble Tribunal vide the said order, set aside the demand appeared on Sr. No. 1, 4 of the above table. In respect of Sr. No. 2, 3 the matter has been remanded back to the original authority for verification of some facts. Given the above, wherein a major portion of the demand has been set aside, Government finds that the applicant would be eligible for rebate claim subject to the cenvat credit in respect of such consignment being found in order as per the order of Hon'ble CESTAT. Government notes that the present case solely rests on fate of the above said SCN which sought to deny the cenvat credit of which the rebate has been claimed.

9. Therefore, Government holds that Applicant will be eligible to that quantum of rebate in respect of which the cenvat credit has been found admissible by the Hon'ble CESTAT as well as the portion of the amounts appear at Sr. No. 2,3 for which the applicant is found eligible after verification.

10. In view of above discussions, Government sets aside the impugned Order-in-Appeal No.- CCESA-VAD(APP-II)/MM/1/2016-17 dated 18.04.2016 and remands the matter to original authority for determination of exact amount admissible to the Applicant.


(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 1237/2022-CEX (WZ) /ASRA/Mumbai Dated 30.12.2022

To,

1. M/s. Agro pack, Plot No. B/155/GIDC Industrial Estate, Ankleshwar-393002.
2. Vinay Kansara (Advocate), D/F 31 & 32, Sardar Patel Complex, Nr. SBI, GIDC, Ankleshwar-393002.

Copy to:

1. The Commissioner(Appeals),Central Excise, Central Excise, Customs & Service Tax, Vadodara, Appeals-II, 4th floor, Central Excise Building, Opp. Gandhi Baugh, Chowk Bazar, Surat -395001.
2. Sr. P.S. to AS (RA), Mumbai.
3. ~~Guard file.~~