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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.198/36/WZ/2018-RA/1589 Date of Issue: 17.03.2023

ORDER NO. 126 /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 : Pr. Commissioner of CGST, Ahmedabad South,
GST Bhawan, Ambawadi, Ahmedabad -380015.

Respondent : M/s Pooja Dye Chem Industries,
Plot No.2110, Phase – III, GIDC,
Vatva, Ahmedabad – 382 445.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.AHM-EXCUS-001-APP-025-2017-18 dated 21.07.2017 passed by Commissioner (Appeals), Central Tax, Ahmedabad.

ORDER

The subject Revision Application has been filed by the Principal Commissioner of CGST, Ahmedabad South ((here-in-after referred to as 'the applicant/Department') against the subject Order-in-Appeal dated 21.07.2017 which decided an appeal filed by M/s Pooja Dye Chem Industries, Ahmedabad (here-in-after referred to as the 'respondent') against the Order-in-Original dated 17.10.2016 passed by the A.C., Central Excise, Div-II, Central Tax, Ahmedabad – I, which in turn, had rejected the rebate claims filed by the respondent.

2. Brief facts of the case are that the respondent are manufacturers of S.O. Dyes and hold Central Excise registration. They filed a rebate claim for Rs.1,44,875/- in respect of goods exported by them under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004. The original authority rejected the said claim 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]. The original authority found 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 relied on the decisions of the JS Review in the case of Vinati Organics Limited [2014 (311) ELT 994 (GOI)] and M/s Alpa Laboratories Limited [2014 (311) ELT 854 (GOI)] wherein it was held that SAD cannot be considered as duties of excise which would eligible for rebate and also that the Explanation (1) to notification no.21/2004-CE(NT) dated 06.09.2004 did not classify SAD under Section 3(5) of the Customs Tariff Act, 1975 as a duty eligible for claim of rebate. Aggrieved, the respondent filed appeal with the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 21.07.2017. 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) set aside the impugned Order-in-Original and allowed the appeal filed by the respondent.

3.1 Aggrieved, the Department has filed the subject Revision Application on the following grounds: -

(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 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 Order-in-Appeal be set aside and the Order-in-Original dated 17.10.2016 be upheld.

3.2 The respondent vide their reply dated 22.06.2018 submitted the following:-

(a) That they had purchased imported raw material from a registered dealer and had also imported the raw materials and that SAD was paid at the time of imports in cash and the same was not debited in DEPB script; that they

had taken credit of such SAD and it is not in dispute that they are eligible to take credit of the same under the Cenvat Credit Rules, 2004;

(b) That it is not in dispute that such credit loses its character as SAD and can be utilized for payment of Excise duty on final goods leviable and collectable under the Central Excise Act, 1944;

(c) That they had paid the Central Excise duty as required under Section of the Central Excise Act, 1944 on the goods cleared for export under claim of rebate and that Rule 18 of the Central Excise Rules, 2002 provides for rebate of such duty paid;

(d) That SAD is also one of the specified duties for availing Cenvat credit under the Cenvat Credit Rules, 2004 and that the credit of such SAD can be utilized for payment of Central Excise duty; that in terms of notification no.19/2004-CE(NT) and Section 3 of the Central Excise Act, 1944 they were eligible to claim the rebate of duties paid in terms of Section 3 of the Central Excise Act, 1944 and that the Cenvat Credit Rules, 2004 allowed the use of such credit of payment Central Excise duty; that 'duty' meant duties of excise collected under the Central Excise Act, 1944 too;

(e) That there was no doubt that the goods were exported and the duty paid on the same; that the decisions cited were not relevant to the present case.

In view of the same, they submitted that the Revision Application filed by the Revenue be dismissed and the impugned Order-in-Appeal be upheld.

4. Personal hearing in the matter was granted to the applicant on 11.10.2022, 01.11.2022, 09.12.2022 and 23.12.2022 however no one appeared for the same. Shri Harshad Patel, Advocate appeared online on 29.12.2022 on behalf of the respondent. He submitted that once credit of SAD is taken the same becomes Cenvat Credit. He further submitted that Cenvat was used for payment of duty. He also stated that there is no dispute on Cenvat credit. He requested to maintain Commissioner (Appeals) order. He reiterated earlier their earlier submission which has been detailed above.

5. Government has carefully gone through the relevant case records available in the case files, the written and oral submission and also perused the said Order-in-Original and the impugned Order-in-Appeal.

6. 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).

7. Government finds that all the grounds raised by the Department have been lucidly addressed by the Commissioner (Appeals) in the impugned Order-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.

8. 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 Order-in-Appeal dated 21.07.2017 of the Commissioner (Appeals) which allowed the rebate claimed by the respondent and accordingly upholds the same.

9. The subject Revision Application is rejected.

Shrawan 14/3/23

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

ORDER No.126/2023-CX (WZ) /ASRA/Mumbai dated 14.03.2023

To,

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

Copy to:

1. M/s Pooja Dye Chem Industries, Plot No.2110, Phase – III, GIDC, Vatva, Ahmedabad – 382 445.
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.