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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.195/887/13-RA

1410

Date of Issue: 01.02.2022

ORDER NO. 131/2022-CX (WZ)/ASRA/MUMBAI DATED 27.01.2022
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. Murli Agro Products Limited (now Murli Industries Ltd.)

Respondent: Commissioner, Customs & Central Excise, Nagpur.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. NGP/EXCUS/000/APPL/
657/13-14 dated 16.07.2013 passed by the Commissioner (Appeals),
Customs & Central Excise, Nagpur.

ORDER

This Revision Application is filed by the M/s. Murli Agro Products Limited (now Murli Industries Ltd.) having their office at Radha House, 239, East Wardhman Nagar, Nagpur – 440 008 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. NGP/EXCUS/000/APPL/657/13-14 dated 16.07.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Nagpur.

2. Brief facts of the case are that the Applicant had exported the product ‘newsprint’ and had filed two rebate claims under Rule 18 of the Central Excise Rules, 2002 read with notification 19/2004-CE(NT) dated 29.06.2004. The product ‘newsprint’ falling under chapter heading No. 4801 is chargeable to nil rate of duty as per the Central Excise Tariff Act, 1985. Therefore, two Show Cause Notices were issued to them. These Show Cause Notices were adjudicated by the Assistant Commissioner, Central Excise, Dn-II, Nagpur vide two separate orders rejecting the rebate claims:-

Order-in-Original No.	Amount rejected
2731/2006 dated 21.12.2006	Rs.16,69,496/-
3229/2006 dated 12.03.2007	Rs. 2,41,285/-

2.1 Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) upheld the order of rebate sanctioning authority, hence the applicant preferred to file a revision application with the Central Government under Section 35EE of the Central Excise Act,1944. The Joint Secretary, Government of India passed an Order No. 861-862/10 dated 19.05.2010 setting aside the impugned orders and remanded the case back for denovo adjudication to decide the issue whether the exported goods qualified to be classified under chapter heading 4801 or under chapter heading 4802.

2.2 During denovo proceedings, the rebate sanctioning authority observed that:

- a) the purchase order dated 4.10.2005, 23.9.2005 and 8.12.2005 was placed upon to M/s. Murli Agro products Ltd. (News Print Division) Nagpur. From this it was clear that the product ordered was intended for the printing of Newspaper;
- b) the applicant is engaged in the production and clearance of Paper products since long and they were supposed to be very well conversant with all rules relating to export and payment of duty on the product manufactured by them. As per rule 6 of the Central Excise Rules, a Central Excise assessee is himself (self-assessment) required to determine duty liability at the time of removal of excisable goods and discharge the same. In other words the applicant should apply correct classification and value on the quantities being removed by him and indicate the same in the related documents such as invoice/ARE1 etc. The applicant themselves had declared/classified the goods as "Newsprint under chapter heading No. 48010090 in their export documents viz. ARE-1, shipping bills and Bill of lading etc. which is attracting Nil rate of duty in terms of Notification No. 23/98-CE dated 1.3.98 but they had paid duty thereon just to encash the Cenvat Credit.
- c) The tariff rate of the goods exported in question i.e."Newsprint" attracts Nil rate of duty and Explanation (1A) to Section 5A of the Central Excise Act, 1944 as has been inserted with effect from 13.05.2005 by Section 75 of Finance Act, 2005 (18 of 2005) restricts the payment of duty on such excisable goods. Explanation (1A) to Section 5A of Act reads as under":
"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods. "

The rebate sanctioning authority therefore rejected the rebate claim vide Order-in-Original No. 2044/2012/Divn-II/Rebate(rejected) dated 26.11.12. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Customs & Central Excise, Nagpur. The Commissioner (Appeals) vide Order-in-Appeal No. NGP/EXCUS/000/APPLS/657/13-14 dated 16.07.2013 rejected the Applicant's appeal and upheld the Order-in-Original.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

- a) The Revisionary Authority vide Order No. 861-862/10 of 19-05-2010 had remanded back the case to determine correct classification of exported goods. Whether the said exported goods fulfill the definition of newsprint given under Notification No. 23/98-CE dated 1-8-1998. The Revisionary Authority had further observed that wrong mention of the chapter heading on relevant documents does not debar the applicant for claiming the rebate claims. The Revisionary Authority had further observed that Rule 28 allows the rebate of duty paid on the exported goods and not on duty payable. However the Commissioner (Appeals) as well as Adjudicating Authority have not followed the directives given by the Revisionary Authority while deciding the appeal.
- b) The Commissioner (Appeals) Nagpur has not appreciated that the newsprint exported was meant for use in foreign country. Actual user of exported goods was foreign based person. He used the said paper out of India. Supposing but not admitting that the said news print was used for printing of newspaper in foreign country. Even then it is beyond imagination that the said foreign based newspaper was registered with the Registrar of Newspapers for India under the provisions of the press and Registration of Books Act, 1867 (25 of 1867).
- c) GSM of Newsprint manufactured by the applicant varies from 45 to 50 GSM. During the relevant period the applicant received export order of paper of 45 to 48.8 GSM through merchant

exporter. Hence the applicant exported the newsprint. The newsprint exported by the applicant was not fulfilling the condition of newsprint falling under chapter heading 4801 because (i) intended use of newsprint was not known to the applicant and (ii) the foreign based exporter who placed order for paper for GSM 45 to 48.8 upon the applicant through merchant exporter, not registered with the Registrar of Newspaper for India under the provisions of Press and Registration of Books Act, 1867 (25 of 1867). Hence the applicant exported the news print on payment of duty under claim of Rebate.

- d) It is pertinent to mention here that Paper having GSM 45 to 50 can be used for printing of lottery, bill books, hand bills etc. The applicant has cleared the said paper in domestic market and has paid Central Excise duty at appropriate rate.
- e) It is pertinent to mention here that Paper having GSM 45 to 50 can be used for printing of lottery, bill books, hand bills etc. The applicant has cleared the said paper in domestic market and has paid Central Excise duty at appropriate rate.
- f) Paper sold to buyer outside India will rightly fall under Sub-heading No. 48-2 and accordingly the applicant exported the paper on payment of duty. Thus the duty was rightly paid as required under the law.
- g) The department has admitted that the paper has been exported on payment of Central Excise duty, sale proceeds has been realized, and thus it is not proper, legal and correct to reject the rebate claim only on flimsy ground that the paper exported was falls under chapter heading 4801 & attracting nil rate of duty, without analyzing the definition of newsprint given under Notification No. 23/1998-CE dated 1-8-1998.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal and direct the rebate sanctioning authority to sanction the rebate claims.

4. Several personal hearing opportunities were given to the applicant viz. 28.12.2017, 23.08.2019, 17.09.2019, 4.10.2019, 23.2.2021, 18.03.2021 and 02.07.2021. However, the applicant did not attend on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal. It is evident that JS(RA) vide its Order dated 19.05.2010 had remanded the matter for deciding whether exported goods are to be classified under Chapter heading 4801 or 4802.

6. Government observes that the relevant Chapter heading of goods exported viz. 'newsprint' as per the Central Excise Tariff Act, 1985 reads as under:

Tariff Item	Description of goods	Unit	Rate of duty
4801	- NEWSPRINT, IN ROLLS OR SHEETS		
4801 00	- <i>Newsprint, in rolls or sheets :</i>		
4801 00 10	--- Glazed	kg.	Nil
4801 00 90	--- Other	kg.	Nil

The Chapter Note 4 to Chapter 48 of Central Excise Tariff Act, 1985, defines 'newsprint' as –

'4. For the purposes of this Chapter, "newsprint" means newsprint as defined by the Central Government by notification published in the Official Gazette.'

In this regard, Notification No. 23/98-CE, dated 1.8.1998 as amended by Notification No. 53/2004-Central Excise dated 11.10.2004 has been issued which reads as under:

In exercise of the powers conferred by note 3 to chapter 48 of the Schedule of the Central Excise Tariff Act, 1985 (5 of 1986), the Central

Government, hereby defines "Newsprint" for the purpose of the said chapter 48, as a paper of a kind, -

(a) intended for the printing of newspapers; and

(b) manufactured by a manufacturer of newsprint specified under Schedule of the Newsprint Control Order, 2004, and supplied against a purchase order placed upon such manufacturer by a newspaper which is registered by the Registrar of Newspapers of India under the provisions of the Press and Registration of Books Act, 1867 (25 of 1867).

6.1 Government observes that clause 2(e) of Newsprint Control Order, 2004 defines 'newsprint' as -

(e)"newsprint" means paper of 'any of the descriptions specified in the Schedule, which is used for printing and shall include odd size newsprint whether produced indigenously by any mill as specified in item 4 of the Schedule or imported and certified to be as such by the authorised officer

Further, at S.no.4 (65) of the Schedule to Newsprint Control Order, 2004 name of applicant appears and it reads as follows:

4. *Indigenous newsprint manufactured by the following:*

S.No.	Name of the Mill and Location
(65)	Murli Agro Products Ltd. Distt. Nagpur, Maharashtra

6.2 The Applicant has contended that the chapter heading of goods exported by them should be considered as 4802. Government observes that this chapter heading reads as under:

4802 UNCOATED PAPER AND PAPERBOARD, OF A KIND USED FOR WRITING, PRINTING OR OTHER GRAPHIC PURPOSES, AND NON-PERFORATED PUNCH CARD AND PUNCH TAPE PAPER, IN ROLLS OR RECTANGULAR (INCLUDING SQUARE) SHEETS OF ANY SIZE, **OTHER THAN PAPER OF HEADING 4801** OR 4803; HAND-MADE PAPER AND PAPERBOARD

Thus, the description of chapter heading 4802 itself clarifies that it does not cover paper falling under chapter heading 4801 viz.. Newsprint.

6.3 The Government further observes that the purpose of conditions mentioned in Notification No. 23/98-CE, dated 1.8.1998 is to ensure that the benefit of 'Nil' tariff rate under Chapter heading 4801 is extended only to newspaper industry in India. The conditions specified in this notification are definitely not for determination of classification of the product 'paper'.

7. Government observes that the Applicant had himself classified the goods exported by them as 'Newsprint' falling under chapter heading No. 4801. The Appellate authority has also extensively discussed this aspect before arriving at his conclusion. The relevant para is reproduced hereunder:

I find that in the entire submission made by the appellant, the appellant has not denied that he is a manufacturer of news print and that the paper in question, that was manufactured and exported by him, was usable as news print for publishing of newspapers by a newspaper publisher. The appellant has not revealed the actual use to which the paper was put to, saying that the purpose for which the paper was going to be used was not known to them. Their lack of knowledge cannot be an evidence to prove that the said paper was not used as news print for the purpose of publishing of newspapers by the ultimate buyer. Since the liability to produce all necessary information about the actual use of the goods manufactured by the appellant for the purpose of correct classification lies entirely on himself, the department cannot be made to believe that news print paper manufactured and exported by the appellant was used for a purpose other than publishing of newspapers, in the absence of any evidence to prove otherwise.

Thus, the goods exported by the Applicant are correctly classified under chapter heading No. 4801 of Central Excise Tariff Act, 1985.

8. The Original authority under para 15 and 16 of the Order dated 26.11.2012 has given proper reasoning for rejecting the rebate claims. These para are reproduced hereunder:

15 The tariff rate of the goods exported in question i.e. "Newsprint" attracts Nil rate of duty and Explanation (1A) to Section 5A of the Central Excise Act 1944 as has been inserted with effect from 13052005 by Section 75 of Finance Act, 2005 (18 of 2005) restricts the payment of duty on such excisable goods. Explanation (1A) to Section 5A of Act reads as under":

"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

16 As regards case laws cited by the party I find that Explanation 1A to Section 5A of Central Excise Act 1944 as mentioned above has provided that "for the removal of doubt it is hereby declared that where on exemption under sub-section(1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods", as such the Act passed by the Parliament will prevail over the case laws. Further I also find that the party was having option to clear the goods at Nil rate of duty under Notification No. 23/98-1.8.1998-CE for export instead to pay duty. But how they have chosen to pay duty is not understood when the facility of NIL rate of duty is very well available to them. In this regards it has also been observed that the party had intentionally paid the duty by debiting Cenvat Credit account on exported goods which is having Nil rate of duty just to encash the Cenvat Credit. As per Explanation 1A to Section 5A of Central Excise Act, 1944 any duty paid under such condition cannot be termed as duty. Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE dtd. 06.09.2004 deals with rebate duty paid on exported goods. But in the instant case it is not in terms of Explanation 1A to Section 5A of Central Excise Act, 1944, the question of granting rebate under rule 18 of Central Excise

rules read with Notification 19/2004-CE dated 0609.2004 does arise. Since the Newsprint falling under chapter 4801 is having Nil tariff rate, the duty paid thereon on removal for export cannot be considered duty.

The Commissioner(Appeals) has maintained the same stand.

9. In view of the findings recorded above, Government finds no reason to annul or modify the impugned the impugned Order-in-Appeal No. NGP/EXCUS/000/APPL/657/13-14 dated 16.07.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Nagpur and rejects the Revision Application filed by the applicant.

10. The Revision Application is disposed of on the above terms.

Shrawan
27/01/22

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

ORDER No. 131/2022-CX (WZ)/ASRA/Mumbai dated 27.01.2022

To,
M/s. Murli Agro Products Limited,
Radha House, 239, East Wardhman Nagar,
Nagpur - 440 008.

Copy to:

1. Pr. Commissioner of CGST & Central Excise,
Nagpur-I Commissionerate,
GST Bhavan, Civil Lines,
Telangkhedi Road, Nagpur - 440 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.