

**REGISTERED
SPEED POST**



**F.No. 195/655/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 28/11/13

ORDER NO. 1384/13-Cx DATED 25-11-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under section 35 EE of the
Central Excise, 1944 against the Order-in-Appeal No.
IND/C.Ex. 000/App./211/2011 dated 27.5.2011 passed by
the Commissioner of Central Excise, (Appeals), Indore.

APPLICANT : M/s. Alpa Laboratories Ltd., Indore.

RESPONDENT : Commissioner of Central Excise,
Indore.

ORDER

This revision application is filed by the M/s. Alpa Laboratories Ltd., Indore against the Order-in-Appeal No. IND/C.Ex. 000/App./211/2011 dated 27.5.2011 passed by the Commissioner of Central Excise, (Appeals), Indore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division-Indore.

2. Brief facts of the case are that the applicant manufacture one of the products as Praziquental Tablets 600mg, for which applicant has imported the basic raw material Praziquental USP. At the time of import of this raw material, the applicant have paid 4% Additional Customs Duty leviable under Section 3(5) of the Customs Tariff Act, 1975 along with other Customs Duties payable. The imported raw material was used in the manufacture of final product Praziquental Tables 600mg which is exempted from payment of Excise Duty. The applicant have exported the final product and filed rebate claim for input stage rebate under Notification No. 21/2004-CE(NT) dated 06.09.2004. This claim includes 4% Special Additional Customs Duty paid at the time of import of said raw material along with Excise Duty paid on indigenous raw material used in the manufacture of goods exported. The adjudicating authority vide the impugned order dated 13.12.2010 has rejected the aforesaid rebate claims of rs. 44,663/- filed by the applicant on the ground that 4% Additional Duty of Customs paid for import of raw material leviable under the provision of Section 3(5) of the Customs Tariff Act, 1975, is not specified in the Notification No. 21/2004-CE(NT) dated 06.09.2004.

3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before Commissioner(Appeals), who modified the Order-in-Original to the extent that he allowed rebate claim of Rs. 1756/- in respect of duty of excise paid on indigenously procured materials viz rigid PVC Film, Aluminium Foil and Five Ply corrugated boxes and uphold the rejection of balance rebate claim.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Commissioner(Appeals) as per Rule 3 Sub-rule (vii) of CENVAT Credit Rules 2004 should have allowed the Cenvat Credit. Rule 3 sub-rule (vii) is reproduced below:-

"Rule 3 :- CENVAT CREDIT:

(1) *A manufacturer or producer of final products or a producer of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT Credit of:-*

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) xx xx xx

(v) xx xx xx

(vi) xx xx xx

(vii) xx xx xx

(viii) *The additional Duty leviable under Sub-section (5) of Section 3 of the Customs Tariff Act."*

4.2 Commissioner(Appeals) in paragraph 5.2 of its order has held that a additional customs leviable under Section 3(5) of the Customs Tariff Act, 1975 is not included in the specified duties of Excise, under explanation to Para (6) of the Notification No. 21/2004-CE(NT) dated 06.09.2004. As per Sub-para (2) of the Explanation "Additional duty leviable under Section 3 of the Customs Tariff Act 1975 equivalent to the duty of excise specified under Clauses (a), (b), (c), (d), (e) and (g) is mentioned, it should not be misconstrued that it includes the additional duty is leviable under Section 3(5) of the Customs Tariff Act 1975, additional duty is levied to counter balance the Sales Tax, Value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India. It is not a duty which is equivalent to duties of excise as specified in clauses (a), (b) (c), (d), (e) and (g) of the explanation to Para (6) of the Notification No.

21/2004-CE(NT) dated 06.09.2004. This finding of the Commissioner(Appeals) is totally wrong. This is because 4% additional customs duty is covered under Sub-section (3) of Section 5 of the Customs Tariff Act as specified under the said notification.

4.3 The Commissioner(Appeals) in paragraph 5.3 of its order has held that, as the final product of the applicant is exempted from payment of excise duty, therefore, neither Cenvat Credit of SAD paid on import of basic raw material is admissible to them nor they are entitled for re-credit of this amount to their CENVAT account. This finding of the Commissioner(Appeals) is also wrong. This is because as per Rule 3 sub-rule (vii) as has been quoted above, a manufacturer, is allowed to take credit of the additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act.

4.4 The applicant relies upon a judgment of this Authority given in the case of M/s Om Sons Cookware Pvt. Ltd. Reported in 2011(268) ELT-11 (G.O.I.). The facts of the applicant's and of M/s Om Sons Cookware Pvt. Ltd are identical and similar.

5. Personal hearing was scheduled in this case on 07-12-2012, 20.02.2013 and 15.10.2013. Nobody attended hearing from either sides. Hence Government proceeds to decide the case on merits on the basis of available record.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant imported raw material viz. Praziquental USP on payment of 4% SAD leviable Under Section 3(5) of the Customs Tariff Act, 1975 along with other duties of Customs. The applicant used this raw material in manufacture of final product which was subsequently exported and the applicant filed input state rebate claim of 4% SAD paid at the time of importation of said raw material. The rebate claim was rejected by the original authority on the ground that 4% SAD is not specified as duty which is eligible for rebate claim under Notification No. 21/2004-CE(NT) dated 06.09.2004. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before

Commissioner(Appeals), who modified the Order-in-Original to the extent of allowing rebate claim of Rs. 1756/- pertaining to duty of excise paid on indigenously procured materials viz rigid PVC Film, Aluminium Foil and Five Ply corrugated boxes. Now, applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government also notes that the applicant is claiming rebate of SAD levied Under Section 3(5) of the Customs Tariff Act 1975. The said provision of section 3 (5) read as under:-

"(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under subsection (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent. of the value of the imported article as specified in that notification."

From perusal of above position, it is clear that SAD is levied on imported goods to counter balance the sales tax, value added tax, local tax etc., which cannot be considered as duty of excise for being eligible for rebate benefit. Further, SAD collected under such 3(5) is not classified as a duty in list of duties provided in explanation-1 of the Notification No. 21/2004-CE(NT). Hence, such payment of SAD is not eligible for rebate claim in terms of the provisions of Notification 21/04-CE(NT) dated 06.09.04.

9. The clause (i) of said explanation covers the Additional duty of Customs levied under section 3 of CTA. This entry can not be construed to include Special Additional duty especially when it is levied to counter balance sales tax, VAT local tax etc. The final export product is an exempted product and applicant has paid no excess duty while clearing goods for export and therefore there is no question of allowing re-credit in cenvat credit account of any voluntary paid amount.

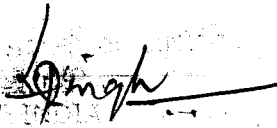
As such the Commissioner (Appeals) has rightly upheld the rejection of rebate claim.

10. In view of above circumstances, Government does not find any infirmity in the impugned order of the Commissioner (Appeals) and therefore upholds the same.


11. The revision applicant is rejected being devoid of merits.

13. So, ordered.

M/s. Alpa Laboratories Ltd.,
33/2, A.B. Road, Pigdamber 453446,
District Indore (M.P.)


(D.P. Singh)
Joint Secretary to the Govt. of India

ATTESTED


(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1384 /13-Cx dated 25-11-2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manik bagh Palace, Indore (MP).
2. The Commissioner (Appeals), Customs & Central Excise, 4, Indralok Colony, Keshar Bagh Road, Indore 452009.
3. The Asstt. Commissioner of Central Excise & Customs, C.G.O. Complex, Division- Indore (MP)
4. PS to JS (RA)
5. Guard File.
6. Spare Copy



T. R. ARYA

(
Suprietendat (REVISION APPLICATION)