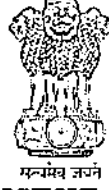


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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.198/74-75/WZ/2017-RA

1642

Date of Issue: 30.03.2023

ORDER NO. 160-161/2023-CX (WZ) /ASRA/Mumbai DATED 16.03.2023
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** : Commissioner of Central Excise, Pune – II Commissionerate,
ICE House, 41/A, Sassoon Road, Opp. – Wadia College,
Pune – 411 001.
- Respondent** : M/s Schindler India Pvt. Limited,
Plot No.D-234, Phase – II, MIDC, Chakan, Near Village Warala,
Khed District, Pune – 410 501.
- Subject** : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. PUNE-
EXCUS-001-APP-523 to 524-16-17 dated 27.03.2017 passed
by Commissioner (Appeals - I), Central Excise, Pune.

ORDER

The subject Revision Application has been filed by the Commissioner of Central Excise, Pune – II (here-in-after referred to as 'the applicant/ Department') against the subject Order-in-Appeal dated 27.03.2017 which decided an appeal filed by M/s Schindler India Private Limited (here-in-after referred to as the 'respondent') against the Orders-in-Original dated 19.11.2015 and 28.03.2016 passed by the A.C., Central Excise, Div-IV (Chakan-II), Pune II, which in turn, had rejected part of the rebate claims filed by the respondent.

2. Brief facts of the case are that the respondent are manufacturers of 'Lift and parts of elevators' and hold Central Excise registration. They had imported 'Stainless Steel Cold Rolled Sheet' which is an input for them. A portion of these imports was rejected and the applicant exported the same on payment of duty as required under Rule 3(5) of the Cenvat Credit Rules, 2004 by reversing the quantum of Cenvat credit availed by them on the said inputs in the first place. They applied for rebate of Rs.4,73,773/- and Rs.28,09,811/- by them on these consignments through their Cenvat account. The original authority found that the duty so paid included the component of SAD amounting to Rs.1,29,094/- and Rs.7,65,618/- and held that in terms of notification no.21/2004-CE(NT) dated 06.09.2014 rebate of SAD was not permissible and proceeded to sanction the rebate/refund after deducting the SAD component. Aggrieved, the respondent preferred appeals before the Commissioner (Appeals) who vide the impugned Order-in-Appeal allowed the applicant re-credit of the amount, paid by them towards the component of SAD, in their Cenvat account. The Commissioner (Appeals), while holding so had relied upon the decisions of the Revisionary Authority in the case of M/s Maral Overseas Limited [2012 (227) ELT 412 (GOI)] and M/s Honeywell Automation (India) Limited [2012 (278) ELT 401 (GOI)].

3. Aggrieved, by the impugned Order-in-Appeal the applicant Department has preferred the subject Revision Application on the following grounds: -

(a) The Commissioner (Appeals) erred in allowing the rebate of SAD as the same was levied under Section 3(5) of the Customs Tariff Act, 1975 and

cannot be considered as duties of excise in terms of the Explanation-I to the notification no.21/204-CE(NT) dated 06.09.2004 SAD and hence rebate of the same was not permissible;

(b) That the Commissioner (Appeals) had erred in allowing rebate of SAD in disregard of the settled legal position that payment of SAD is not eligible for rebate claim and relied on the case of Vinati Organics Limited [2014 (311) ET 994 (GOI)] in support of their argument;

(c) That the Commissioner (Appeals) had erred in relying on the decisions in the case of M/s Honeywell Automation and M/s Maral Overseas Limited inasmuch as the issue involved therein were different and that the decision in the case of M/s Vinati Organics Limited was a later decision;

In view of the above, the applicant/Department has prayed that the impugned Order-in-Appeal be set aside and the impugned Orders-in-Original be restored.

4. Personal hearing in the matter was granted on 06.10.2022, 19.10.2022, 08.12.2022 and 22.12.2022, however, no one appeared on behalf of the applicant/Department. Shri S. Narayanan, Advocate and Shri Santosh Adhav, appeared online on 29.12.2022 on behalf of the respondent. They submitted that goods were exported by debiting duty CVD & SAD. They further submitted that Commissioner (Appeals) had correctly allowed re-credit of SAD. They contended that their case is distinguishable from Vinati Organics relied upon by the applicant Department.

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

6. Government notes that in the present case the goods exported were 'inputs' for the respondent which were imported by them earlier, on which they had paid CVD and SAD at the time of import and had subsequently availed Cenvat credit of the same. Government notes that the respondent, due to certain exigencies, exported the said inputs and while doing so, reversed the quantum of credit, which included SAD, availed by them on such

inputs; the present issue pertains to the rebate/refund claim of such duties paid by the applicant.

7. Government finds that the respondent had paid duty on the goods cleared for export in terms of Rule 3(5) of the Cenvat Credit Rules, 2004, which lays down that when inputs on which credit has been availed are removed from the factory, the manufacturer shall pay an amount equal to the Cenvat credit taken on such inputs. Government notes that the applicant Department has sought to invoke the provisions of notification no.21/2004-CE(NT) for denying the rebate of an amount equivalent to the quantum of SAD paid by the respondent. Government finds this contention of the applicant Department to be incorrect as notification no.21/2004-CE(NT) provides for rebate of '*duty paid on the excisable goods used in the manufacture/processing of export goods*' whereas in the present case the rebate sought is that of the duty paid on the goods exported. Government notes that it is not the case here that the respondent has claimed rebate of the duty involved on the inputs used by them for manufacturing the goods which were exported and hence finds that the limitation prescribed by notification no.21/2004-CE(NT) will not be applicable here.

8. Government finds that it is not in dispute that the goods cleared have been exported and that the duty, of which rebate has been claimed, has been paid. As found above, the limitation prescribed by notification no.21/2004-CE(NT), the sole ground on the basis of which part of the rebate is sought to be denied, will not be applicable to the present case. Given these facts, Government finds that there is no reason why the rebate claimed by the respondent, including that of SAD, should be denied to them and hence holds that the respondent will be eligible to the rebate of the total amount paid by them on the goods exported. Government does not find any flaw in the decision of the Commissioner (Appeals) to allow the respondent to take credit of the entire amount paid by them in the Cenvat credit account. Further, Government finds that in the case 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 would not have any bearing on the present case.

9. In view of the above, Government does not find any infirmity in the Order-in-Appeal dated 27.03.2017 and upholds the same. The subject Revision Application is rejected.

Shrawan
16/3/23
(SHRAWAN KUMAR)

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

ORDER No. *60-*
61/2023-CX (WZ) /ASRA/Mumbai dated *16*.03.2023

To,

Commissioner of Central Excise, Pune - II Commissionerate,
ICE House, 41/A, Sassoon Road, Opp. - Wadia College,
Pune - 411 001.

Copy to:

1. M/s Schindler India Pvt. Limited, Plot No.D-234, Phase - II, MIDC, Chakan, Near Village Warala, Khed District, Pune - 410 501.
2. Commissioner (Appeals-I), Central Excise, Pune, F Wing, 3rd floor, ICE House, Sassoon Road, Pune - 411 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.