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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.198/76-78/WZ/17-RA
F. No.198/108/WZ/2018-RA 1718

Date of Issue: 27.03.2023

ORDER NO.164-167/2023-CX (WZ) /ASRA/Mumbai DATED 20.03.2023 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 CGST, Ahmedabad South,
2nd floor, GST Bhawan, Ambawadi, Ahmedabad -380015.

Respondent : M/s Fumo Chem P. Ltd.,
Plot No.A-1/476, Phase – II,
GIDC, Vatva, Ahmedabad – 382 445.

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the following Orders-in-Appeal passed by Commissioner (Appeals), Central Tax, Ahmedabad.

Sl. No.	Order-in-Appeal No.	Date
1	AHD-EXCUS-001-APP-079 to 81-2016-17	29.03.2017
2	AHD-EXCUS-001-APP-401-2017-18	20.03.2018

ORDER

The subject Revision Applications have been filed by the Commissioner of CGST, Ahmedabad South ((here-in-after referred to as 'the applicant/ Department') against the subject Orders-in-Appeal. The Order-in-Appeal dated 29.03.2017 had decided appeals filed by M/s Fumo Chem Pvt. Limited (here-in-after referred to as the 'respondent') against three Orders-in-Original dated 25.07.2016, 19.07.2016 and 25.07.2016 all passed by the Assistant Commissioner, Central Excise, Division – III Ahmedabad – I whereas the Order-in-Appeal dated 20.03.2018 decided an appeal filed by the applicant/Department against Order-in-Original dated 11.07.2017 passed by the Assistant Commissioner, Central Tax, Division – III, Ahmedabad South.

2. Brief facts of the case are that the respondent are manufacturers of S.O. Dyes and hold Central Excise registration. They filed rebate claims 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 claims 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)] 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 appeals with the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 29.03.2017 wherein 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 Orders-in-Original and allowed the appeal filed by the respondent. One of the subject Revision Applications filed by the applicant/Department is against the said Order-in-Appeal dated 29.03.2017. In the meanwhile, the respondent, on the strength

of the Order-in-Appeal dated 29.03.2017 once again applied for rebate which was initially denied to them. The original authority vide Order-in-Original dated 11.07.2017 allowed the rebate claimed by the respondent. Aggrieved, the Department preferred an appeal against the said Order-in-Original before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 20.03.2018. The Commissioner (Appeals) once again reiterated the findings in his earlier Order dated 29.03.2017 and rejected the appeal filed by the Department. The second Revision Application that is being dealt with here has been filed by the applicant/Department against the said Order-in-Appeal dated 20.03.2018.

3. The grounds of appeal in both the subject Revision Applications is identical and the same is as under: -

(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 Orders-in-Appeal dated 29.03.2017 and 20.03.2018 be set aside.

4. The respondent in their reply dated 05.09.2019 to the Revision Application against Order-in-Appeal dated 20.03.2018 made the following submissions: -

(a) There are no new grounds in the present Revision Application except for relying on the decision M/s Vinati Organics Limited and that the same would not be applicable to the instant case as it involved rebate of duty on inputs claimed under notification no.21/2004-CE(NT) dated 06.09.2004 whereas in the present case the rebate was claimed on the duty paid on the goods exported under notification no.19/2004-CE(NT) dated 06.09.2004; that they had taken Cenvat credit of SAD and utilized the same for payment Central Excise Duty on the finished goods cleared for export under claim of rebate; that the said notification clearly provided for rebate of Central Excise duty;

(b) That there is no exclusion in the Cenvat Credit Rules, 2004 for utilization of Cenvat credit for payment central excise duty; and that they had paid central excise duty through debit in their Cenvat account; that in Circular no.83/2000-Cus dated 16.10.2000 it had been clarified that wherever the word 'duty' appears the same should be construed as duty of Central Excise;

(c) That the Department had not challenged the admissibility of SAD as Cenvat credit nor has the payment of Central Excise duty through the Cenvat account been challenged and hence if the payment of duty has been accepted by the Department then they are eligible to the rebate claimed.

In view of the above they submitted that the Order-in-Appeal dated 20.03.2018 is just, proper and legal and deserved to be upheld.

5. Personal hearing in the matter was granted on 11.10.2022, 01.11.2022, 09.12.2022, 23.12.2022, 08.02.2023 and 15.02.2023, however the applicant did not appear for the same. Shri Lilesh Sawant, Advocate appeared on 08.02.2023 on behalf of the respondent and reiterated their written submissions. He requested to maintain order of the appellate authority and reject the Revision Application.

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

7. 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).

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

9. 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 Applications. In view of the above, Government does not find any infirmity in the impugned Orders-in-Appeal which allowed the rebate claimed by the respondent and accordingly upholds both of them.

10. The subject Revision Applications are rejected.

Shrawan 20/3/23
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.164-167/2023-CX (WZ) /ASRA/Mumbai dated 20.03.2023

To,

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

Copy to:

1. M/s Fumo Chem P. Ltd., Plot No.A-1/476, Phase – II, 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.