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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. 195/106/WZ/2018-RA /1846 Date of issue: 29.03.2023

ORDER NO. 194 /2023-CX (WZ)/ASRA/MUMBAI DATED 28.03.2023 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 : M/s. Urja Products Pvt. Ltd.

Respondent : Pr. Commissioner of CGST, Ahmedabad South

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. AHM-EXCUS-001-APP-388-17-18 dated 15.03.2018 passed by Commissioner (Appeals), Central Excise, Ahmedabad.

ORDER

This Revision Application is filed by M/s. Urja Products Pvt. Ltd. (hereinafter referred to as the 'Applicant') against Order-in-Appeal No. AHM-EXCUS-001-APP-388-17-18 dated 15.03.2018 passed by Commissioner (Appeals), Central Excise, Ahmedabad.

2. Brief facts of the case are that Applicant had imported goods and had availed Cenvat of Additional duty of Customs leviable u/s. 3(5) of Customs Tariff Act,1975. On re-exportation, applicant had paid "amount equal to the credit availed" as envisaged under rule 3(4)(b) of CCR,2004 and asked for rebate under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule18 of the Central Excise Rules,2002. Adjudicating Authority had rejected the rebate of Rs. 70,552/- on the ground that it is a case of re-export of imported goods and said notification is not applicable to the applicant. Aggrieved, the Applicant filed an appeal, which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

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

i. It is obvious that despite the fact that there is no rebate claim of SAD as it was SAD once but upon availment of its amount as cenvat credit the amount of SAD ceased to be SAD and came under the Excise Law and Rules domain and such credit was also utilised at any time under CCR, 2004 and later an amount equivalent to not SAD amount not as customs duty per se but the cenvat credit availed of the SAD amount was paid by debit entry to the PLA/Cenvat credit Register and rebate of such amount' i.e. duty paid under the Excise law (and not SAD) so paid under CCR, 2004 was under claim of rebate. Yet the First and Second Adjudicating Authorities as well as the Commissioner (Appeals) are still so mesmerised by the customs origin of the cenvat credit and the subsequent debit in Central Excise PLA/Cenvat credit register that they prefer or pretend to treat the debit entry made in the PLA/Cenvat credit register towards payment

of 'amount' in terms of CCR, 2004 Rule 3(5) as not duty under the Excise dispensation but still a customs duty notwithstanding that the debit entry was qua the cenvat credit that was availed and not qua the SAD that was paid to customs even if the amounts of SAD, Cenvat credit thereof and the subsequent debit entry made under the Excise law were identical. At import stage it is SAD paid on input, upon receipt input at factory it is cenvat credit of SAD amount that was paid and upon removal as such of that input it is a debit entry in PLA or Cenvat Credit register for amount equal to the cenvat credit that was availed which therefore by provisions in the Rules (CCR, 2004 read with CER, 2002) is a duty of excise unquestionably,

ii. Both the Adjudicating Authority and the Commissioner (Appeals) have failed to appreciate the CCR, 2004 Rule 3(6) and also the Explanation under sub-rule (4) under Rule 8 in the CER, 2002 read with Rule 2 (e) there under which clearly provide to treat an 'amount' paid under CCR, 2004 as 'duty' or 'duty of excise'. These provisions or explanations and the GOI Circular dated 31-12-1996 (deemed manufacture) are very loud and crystal clear and cannot escape the attention and comprehensibility of the Adjudicating and the Appellate Authorities and ought to have been taken into consideration to allow rebate or the Appeals instead of Ignoring and venturing to reject the rebate claim and the Appeal on specious grounds.

iii. It is ironical that rebate has in fact been sanctioned and also paid qua the 'amount' that was simultaneously paid equal to the credit that was availed and utilised against the amount of CVD paid on Import though CVD like SAD (or ACD) is not a duty specified in the Explanation in the Notification 19/2004-CE(NT). In other words to both the Adjudicating Authority and the Appellate Authority it does not matter if CVD is not specified as 'duty in the said Notification Explanation but SAD (or ACD) matters because it is not specified within the Explanation.

iv. The taking of credit, its utilization, subsequent debit towards duty ('amount') payable on removal is purely under the domain of the

Central Excise Act, 1944 and the 'amount' paid is a duty collected under the Central Excise Act, 1944 when the CCR, 2004 Rule 3 sub-rules (4)(b), (5) and (6) plus the CER, 2002 Rule 2(e) and Explanation under sub-rule (4) under Rule 8 thereof and the GOI Circular dated 31-12-1996 are harmoniously read. It is precisely for the above Explanation 1 (a) that rebate was and paid against the 'amount' that was paid against cenvat credit taken of the CVD amount (which was once a customs duty). However the lower and the Appellate Authority have applied a different yardstick and treated, so far, the 'amount' also paid equal to the cenvat credit availed on the same input of SAD (or ACD) amount as not duty collected under the Central Excise Act, 1944 though the applicable CCR, 2004 and CER, 2002 Rules and sub-rules plus Explanations in respect of cenvat credit taken of CVD + SAD and amounts' paid are just the same.

v. On a harmonious reading of the CCR, 2004 Rule 3(1)(vii/(viia), Rule 3(4)(b), Rule 3(5), Rule 3(6); with CER, 2002 Rule 2(e) and Explanation under sub-rule (4) in Rule 8 and the GOI Circular dated 31-12-1996 the 'amount' paid equal to cenvat credit taken of excise or customs duties, upon removal of inputs or capital goods as such, is nothing but a duty of excise under Section 3 of the CEX Act, 1944 and has to be treated as duty of excise and not a duty of customs (which it was once upon a time, but no longer).

vi. Applicant had placed reliance on various case laws.

vii. In view of the above, the applicant has prayed for setting aside the impugned Order in Appeal with consequential relief.

4. Personal hearing in the case was fixed for 15.11.2022, Shri Dharmendra Kr. Singh, Advocate attended the hearing online and submitted that since imported goods were cleared for export as such SAD and Cenvat were paid. He requested to allow rebate of SAD.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Order-in-Appeal and the Revision Application filed by the applicant-Department.

6. Government finds that the issue to be decided in the present case is that whether the Applicant is eligible to the rebate under Notification No.19/2004-CE(NT) dated 06.09.2004 in case of re-exporation of inputs as such when amount/duty is paid by using Cenvat Credit of the Special Additional Duty under Section 3 (5) of the Customs Tariff Act, 1975 (SAD).

7. Before delving any further, Government finds that it needs to be recorded clearly that the issue here is the rebate of SAD paid on the inputs as such 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 Applicant has been denied the rebate on the ground that Notification 19/2004-CE(NT) is not applicable in the present case.

8. Government notes that 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 sub-section (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 explantation-1 of the Notification No. 19/2004-CE(NT). Hence, such payment of SAD is not eligible for rebate claim in terms of the provisions of Notification 19/2004-CE(NT) dated 06.09.2004.

9. The clause (1) of said explanation lists duties for the purpose of rebate under Notification 19/2004 and it nowhere covers the Additional duty of Customs. The relevant abstract of the same is reproduced as :

*"Explanation I – "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:*

*(a) the Central Excise Act, 1944 (1 of 1944);*

*(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*

*(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*

*(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);*

*(e) special excise duty collected under a Finance Act;*

*(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);*

*(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004."*

Applicant further argued that SAD ceases to exist as SAD after availment of cenvat credit and becomes part of the Cenral Excise Act only. Government notes that case in hand pertains to the re-export of inputs as such, where no excess duty has been paid by the Applicant while clearing goods for export. Therefore, it is not correct to say that such credit of SAD should be considered as duty of excise when it comes to claiming the rebate under the aforesaid Notification. Besides, Government finds that Applicant has relied on various case laws. However, none of the case laws pertains to the re-export of inputs as such and thus distinguishes the case in hand. As such the Commissioner (Appeals) while dealing this issue in detail, has rightly upheld the rejection of rebate claim.

10. Government finds no infirmity with the impugned OIA and upholds the same.

11. The subject Revision Application is rejected.

Shrawan 28/3/23

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

ORDER No. 194 /2023-CX(WZ)/ASRA/Mumbai dated 28.03.2023

To,

1. M/s. Urja Products Pvt. Ltd., 423, GIDC, Telephone Exchange Lane, Odhav, Ahmedabad-382415.
2. Pr. Commissioner of CGST,Ahmedabad South,7th Floor, CGST Bhavan,Rajasva Marg, Ambawadi, Ahmedabad – 380 015.

Copy to:

1. The Commissioner of Central Tax (Appeals), 7th Floor, Gst Building, Near Polytechnic, Amabavadi, Ahmedabad- 380015.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file