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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. 198/33/WZ/18-RA / 216 Date of issue: 17.01.2023

ORDER NO. 19/2023-CX (WZ)/ASRA/MUMBAI DATED 16.01.2023
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 : Pr. Commissioner of CGST, Ahmedabad South

Respondent : M/s. Ashish Chemicals

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against Order-in-Appeal No.
AHM-EXCUS-001-APP-104-17-18 dated 26.09.2017 passed
by Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

This Revision Application is filed by the Pr. Commissioner of CGST, Ahmedabad South (hereinafter referred to as the Applicant) against Order-in-Appeal No. AHM-EXCUS-001-APP-104-17-18 dated 26.09.2017 passed by Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. Brief facts of the case are that M/s. Ashish Chemicals (hereinafter referred to as the Respondent), is engaged in the manufacture of S.O. Dyes falling under Chapter 32 of Central Excise Tariff Act, 1985. They had filed rebate claim, for duty paid on export of goods, under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. The details of the claim are as :

Sr. No.	Are-1 No. & Date	Amount of rebate claimed	Duty paid by debiting cenvat account pertaining to SAD	Duty Paid by debiting cenvat account pertaining to Excise Duty
1	01/16.05.2016	864478	210158	654320

The rebate claim amounting to Rs. 2,10,158/- was rejected on the ground that the respondent had paid duty by debiting the Cenvat credit taken on account of 4% Special Additional Duty (SAD) by the rebate sanctioning authority vide Order-in-Original No. MP/4631/AC/2016-Reb dated 09.12.2016. Aggrieved, the respondent filed an appeal, which was allowed 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. 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;

- ii. 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)];
- iii. 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.
- iv. In view of the above, the applicant/Department has prayed for setting aside the impugned Order in Appeal with consequential relief.

4. Personal hearing in the case was fixed for 01.11.2022, Shri Piyush Shah, attended the hearing online and submitted that duty paid on export by them was excise duty utilizing cenvat credit. He further submitted that availment of cenvat credit of SAD should not affect their rebate claim. HE requested to maintain Commissioner(Appeals) order.

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 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).

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

8. 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 Application. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal dated 31.08.2017 of the Commissioner (Appeals)

which allowed the rebate claimed by the respondent and accordingly upholds the same.

9. The subject Revision Application is rejected.

Shrawan
16/11/23
(SHRAWAN KUMAR)

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

ORDER No. 19 /2023-CX(WZ)/ASRA/Mumbai dated 16.01.2023

To,

1. Pr. Commissioner of CGST, Ahmedabad South, 7th Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad – 380 015.
2. M/s. Ashish Chemicals, Plot No. C-I/45,46,49,50& 51, Phase-II, GIDC Eastate, Vatva, Ahmedabad – 382 445.

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