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F.No.198/179-186/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue:15/01/2016

ORDER NO. 02-09/2016-CX DATED 11.01.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 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.86-93/CE/ Appl/CHD-II/2012 dated 07.03.2012 passed by Commissioner Central Excise (Appeals), Chandigarh – II.

Applicant: Commissioner of Central Excise & Customs, Chandigarh – II.

Respondent: M/s Ind-Swift Laboratories Limited.

ORDER

This revision application is filed by the Commissioner of Central Excise, Chandigarh-II (hereinafter referred to as Department applicant) against the Order-in-Appeal No. **86-93/CE/App/CHD-II/2011** dated 29.02.2012 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II with regard to Orders-In-Original No. R-1804-1811/DB/2010 dated 16.11.2010 passed by the Deputy Commissioner, Central Excise Division Derabassi against M/s Ind-Swift Laboratories Limited (hereinafter referred to as respondent).

2 The brief facts of the cases are as under:-

2.1. M/s Ind-Swift Laboratories Limited are engaged in the manufacture of excisable goods falling under Chapter heading no. 29, 30 and 33 of the first schedule to Central Excise Tariff Act, 1985 manufactured (using duty paid inputs/packing material) and cleared consignment of menthol (CETH 29061100 and exported vide Notification No. 4/2006 dated 01.03.2006 as amended vide Notification No. 4/2008 dated 01.03.2008) for export and after exportation of goods filed rebate claims of duty paid on inputs under Rule 18 of Central Excise Rules, 2002 as per provisions of Notification No. 21/2004-CE(NT) dated 06.09.2004 read with Part V of Chapter 8 of CBEC Supplementary Instructions Manual.

2.2. The respondent had earlier filed declaration on 01.06.2009 and sought permission to manufacture export goods in terms of said Notification, which was subsequently granted by the Division Office, Derabassi vide C.No. V(Misc)Rebate/Notn.21/2004/DB/2/2009/2747 dated 18.08.2009 fixing therein input-output norms as 1.250 kg DMO(Deterpenated Mentha Oil) :1000 kg Menthol on the basis of their declaration confirming thereunder mother liquor would not be processed/recycled for obtaining the menthol and would be cleared as de-mentholized oil terpenelss.

2.3. The respondent filed rebate claims therefore of duty paid on excisable materials used in the manufacture of export goods, before the Deputy Commissioner, Central Excise Division, Derabassi who sanctioned the rebate claims vide impugned Orders-In-Original R-1804-1811/DB/2010 dated 16.11.2010.

2.4 To verify whether recoverable waste is being processed to obtain Menthol or not by the respondent, a team of preventive officers, Central Excise Commissionerate, Chandigarh-II visited the factory premises of the respondent on 09.02.2011. The Deputy Manager and Deputy Manager Commercial in their statement admitted that as on date, they do not have any stock of mother liquor or any type of menthol waste lying in their factory as all the quantity of mother liquor generated during the course of manufacture of menthol since 2008 has been further reprocessed/recycled within their factory to obtain menthol.

2.5. The respondent had mis-declared that the waste obtained would not be reprocessed/recycled further to obtain menthol which led to wrong fixation of the input output norm 1.250 kg DMO : 1.000 kg menthol by the Division Office which effect was required to be fixed as 1:1 as the respondent was recycling/reprocessing the mother liquor and other wastes to obtain further menthol. Subsequently, the respondent had themselves voluntarily agreed to vide their letter dated 17.02.2011 that rebate be sanctioned as per the norms 1 kg de-terpinated mentha Oil to 1 kg menthol and accordingly the norms were re-fixed as 1.000kg of de-terpinated mentha oil to 1kg menthol and 1.000 kg of de-terpinated mentha oil to 1 kg of menthol crystals vide letter C.No. V(Misc) Rebate/Notif.21/04/DB/2/2009/1121 dated 04.03.2011.

3. Accordingly, department filed appeals against the Order-in-Original ibid with Commissioner (Appeals) to set aside the impugned Orders-In-Original as the respondent had mis-declared that the waste obtained would not be reprocessed/recycled further to obtain menthol which led to wrong fixation of the input output norm ration of 1.25 :1 instead of 1.00:1 by the Division office and had fraudulently taken more rebate in cash to the extent of 20%. Commissioner (Appeals) vide his common Order-in-Appeal No. 86-93/CE/Appl/CHD-II/2011 dated 29.02.2012 upheld the impugned Order-in-Original ibid and rejected the appeals filed by the revenue.

4. Being aggrieved by the impugned Orders-In-Appeal, the department has filed this revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1. That the Commissioner (Appeals) has grossly erred in ignoring the fact that the party had themselves voluntarily agreed to vide their letter dated 17.02.2011 that rebate be sanctioned as per norms 1kg DMO to 1kg menthol, and deposited amount of Rs 22,68,916/- alongwith interest of Rs. 1,15,547/- and accordingly the norms were re-fixed as 1.000kg of DMO to 1 kg menthol, and 1.000 kg of DMO to 1 kg of menthol crystals vide C.No. V(Misc)Rebate/Notifi 21/04/DB/2/2009/1121 dated 04.03.2011.

4.2. That Commissioner (Appeals) in his order has not considered the fact and circumstances which led to re-fixation of input output norms subsequently as 1:1 and grossly erred in simply rejecting the appeals of the Department/Revenue. That Shri Ram Ashish Yadav, Deputy Manager (Production) and Shri Vinod Rana, Deputy Manager Commercial in their statement dated 09.02.2011 has admitted that they do not have any stock of mother liquor or any type of menthol waste lying in their factory as all the quantity of mother liquor generated during the course of manufacture of menthol since 2008 has been further reprocessed/recycled within their factory to obtain menthol.

4.3. That the party suppressed the fact of recycling/reprocessing of the mother liquor and other wastes to obtain further menthol from the Department and mis-declared which led to wrong fixation of the input output norm 1.250 kg DMO:1.000 kg menthol by the Division Office which subsequently correctly re-fixed as 1:1 vide letter *ibid*. That the order of Commissioner (Appeals) is not proper as he ignored both on the record established fact of, in the first place, adopting fraudulent practices by the respondent to get excess monetary benefit and secondly, re-fixation of input output norms.

5. Personal hearing scheduled in this case on 10.08.2015. The department applicant made a reply dated 12.09.2012 reiterating the grounds of revision appeal. Shri K. Gurumurthy, Advocate attended the hearing on behalf of the respondent, who stated that the fact of export and duty payment is not disputed. That the Commissioner (Appeals) order is detailed and reasonable and may be upheld. Also the submissions dated 27.06.2012 may be considered wherein following had been submitted:

5.1. That the Revision Application have been filed by the department under a mistake of facts because the department itself has granted permission under Notification No. 21/2004-CE(NT) dated 06.09.2004 and has fixed input output norms for the final product namely Menthol as well as Menthol Crystals.

5.2. That the present case was constructed on the issue that the permission order dated 19.08.2009 did not cover menthol crystals for the input stage rebate. That neither in the Show Cause Notice nor in the Order-in-Original nor in Order-in-Appeal there was any dispute with regard to input output ratio fixed vide permission order dated 9.08.2009 thus the present revision application is not maintainable.

5.3. That the Revenue has taken a ground in its revision application that the Commissioner (Appeals) has grossly erred in ignoring the fact the party had themselves voluntarily agree to vide their letter dated 17.02.2011 that rebate be sanctioned as per the norms 1kg DMO to 1 kg of Menthol and 1 kg of DMO to 1 kg Menthol Crystals vide letter C.No. V(Misc)Rebate/Notfn.21/04/DB/2/2009/1121 dated 04.03.2011. That the party filed appeal with Commissioner (Appeals) much after the re-fixation of input output ratio correctly as 1:1 vide letter dated 04.03.2011. That the Commissioner (Appeals) has passed an order which is unjust and legally improper to the extend it grants rebate of duty pain on inputs *ibid* on the basis of input output norms as 1.250:1 fixed and permitted by the Department under C.No. V (Misc)Rebate/Notfn.21/04/DB/2/2009/ dated 19.08.2009.

5.4. That the Revenue failed to understand the true nature and reason for the filing the same. That it was not the case that the party agreed to the ratio 1 kg menthol: 1 kg DMO. That the party in their letter dated 17.02.2011 has contended

that as the revenue has already issued a Show Cause Notice on a different issue with regard to eligibility of rebate claim in respect of ARE-2 Nos 3/2009-10 dated 27.10.2009, 005/2009-10 dated 10.11.2009, 007/2009-10 dated 05.12.2009 and 10/2009-10 dated 19.01.2010 and the party to facilitate the speedy disposal of pending rebate claims due to delay in refund was also causing prejudice to their commercial interest, hence it was requested that the rebate claims may be immediately allowed as per input output ratio of 1 kg DMO : 1 kg menthol on a condition that the Show Cause Notice may be dropped and the rebate claims that are pending for the sanction may be allowed immediately as they were in need of refund money.

5.5. The party has relied on the following case laws:-

- M/s Ispat Industries Ltd Vs CCE 2012(280)ELT 236 (Tri)
- CCE Vs Carrier Aircon Ltd 2005 (184) ELT 113 (SC)

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

7. On perusal of records Government observes that input stage rebate under Rule 18 had been granted to the respondent based on input output declaration which was subsequently found to be incorrect. The rebate claims thus sanctioned by the original authority were appealed against by the department before the Commissioner (Appeals) who rejected the department's appeal. Now the department has filed this Revision Application on grounds mentioned in para 4 above

8. Government further observes that the Commissioner (Appeals) has held that the ground taken by Revenue that mother liquor was used in the factory to obtain menthol as per statements of Shri Ram Ashish Yadav, Deputy Manager (Production) and Shri Vinod Rana, Deputy Manager (Commercial) is not corroborated by the evidences available on record and even the copies of the statement of the concerned persons have not been furnished by the Revenue. On the other hand it has been projected by the respondents with the help of documentary evidences that mother liquor is used for making dementholised oil and sold under different names. Moreover, Revenue has not filed any appeal against fixation of norms dated 19.08.2009. Based on these observations appeals filed by Revenue were rejected by Commissioner (Appeals).

9. The Government observes that Shri Ram Ashish Yadav, Deputy Manager (Production) and Shri Vinod Rana, Deputy Manager (Commercial) in their voluntary statement dated 09.02.2011 under Section 14 of the Central Excise Act, 1944 have categorically admitted that as on date they do not have any stock of mother liquor

or any type of menthol waste lying in their factory as all the quantity of mother liquor generated during the course of manufacture of menthol since 2008 has been further reprocessed/recycled within their factory to obtain menthol and cleared. These copies of statements were also submitted by the applicant at the time of filing the Revision application. Government finds that the Commissioner (Appeals) has basically relied only on the scientific literature on the matter without taking into consideration the statements of the officials in charge of production and commercial matters of the respondent and ignoring that statement recorded under Section 14 before a Central Excise Officer has evidentiary value and is binding. Moreover, the statements have not been retracted at any stage. In this regard Government places reliance on the judgement of the Apex Court in the case of Naresh Kumar Sukhwani Vs Union of India 1996(83) ELT 285(SC) that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials and can be used as substantive evidence. The provision of Section 108 of the Customs Act, 1962 is para materia with Section 14 of the Central Excise Act, 1944.

10. Government further finds that in the case Collector of Customs, Madras and Ors. Vs D. Bhoormull-1983(13) ELT 1546 (S.C.) the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.

11. The Government also notes that the Commissioner (Appeals) has erred in holding that revenue has also not appealed against the fixation of norms dated 19.08.2009. He has overlooked the fact that the respondent suppressed the fact of recycling/reprocessing of the mother liquor and other wastes to obtain further menthol from the department since 2008 and mis-declared which led to wrong fixation of the input output norm which were subsequently correctly re-fixed as 1:1 to which the respondent had agreed vide letter dated 17.02.2011. Thereafter, the rebate sanctioned on the basis of the earlier fixation of norms has been appealed against. Thus the order of appellate authority is not proper as it did not take into consideration the mis-representation of facts by the respondent to avail excess monetary benefit and subsequent re-fixing of input output norms.

12. Government therefore, finds that Commissioner (Appeals) has passed the impugned Order-in-Appeal without taking into consideration the admission statement of Shri Ram Ashish Yadav, Deputy Manager (Production) who was in charge of production of the unit and Shri Vinod Rana, Deputy Manager (Commercial) under whose supervision record of production and clearance was maintained, dated 09.02.2011 recorded under Section 14 of the Central Excise Act, 1944 as these were

not placed before him. He has also ignored the fact that the respondent vide letter dated 17.02.2011 had voluntarily agreed to re-fixing of norms.

13. In view of above, Government sets aside the impugned Order-in-Appeal and remands back the case to Commissioner (Appeals) for fresh consideration after taking into account the documents in para 12 above and pass a reasoned order in accordance with law. A reasonable opportunity of hearing will be afforded to both the applicant and the respondent.

14. The revision application is disposed off in above terms.

15. So, ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Government of India

The Commissioner of Central Excise,
Central Excise, Chandigarh-II,
C.R. Building, Plot No. 19, Sector -17-C,
Chandigarh-160017.



Attested

ORDER NO. 02-09/2016-CX DATED 11.01.2016

Copy to:-

1. The Commissioner of Central Excise, Chandigarh-II.
2. The Commissioner of Central Excise (Appeals), Chandigarh-II C.R. Building, Plot 19, Sector 17 C, Chandigarh.
3. The Deputy Commissioner of Central Excise, Division, Derabassi, Sadashiv Complex, Chandigarh, Ambala Road, District SAS Nagar, Mohalli.
4. M/s Ind-Swift Laboratories Ltd, Village Bhagwanpur, Derabassi.
5. Shri K. Gurumurthy, Advocate, BSM Legal, C-5/8, Safdarjung Development Area, Opp: IIT Gate, New Delhi – 110016.
6. PA to JS (R.A.)
- ✓ 7. Guard File.
8. Spare Copy.

(Attested)


(Shaukat Ali)

Under Secretary (RA)

