

REGISTERED
SPEED POST



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. 371/26/DBK/2018-RA / 4018
F.No. 371/97/DBK/2013-RA

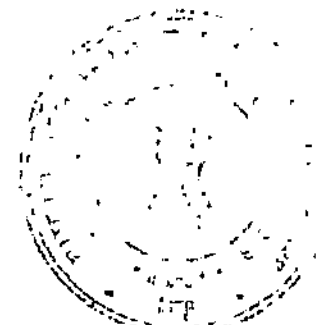
Date of Issue: 26.08.2020

ORDER NO. 21-22/2020-CX (WZ)/ASRA/MUMBAI DATED 05-03-2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Prakash Chemicals International (P) Ltd.

Respondents : 1. Commissioner of Customs, ICD Dashrath, Vadodara.
2. Commissioner of Customs, Jamnagar

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 255/2011/Cus/Commr(A)/AHD dated 28.06.2011 passed by the Commissioner of Customs(Appeals), Ahmedabad and 249/Commr(A)/JMN/2013 dated 16.07.2013 passed by the Commissioner of Customs(Appeals), Jamnagar.



ORDER

These two Revision Applications are filed by the M/s Prakash Chemicals International (P) Ltd., Induchacha House, Opp. Chhani Jakatnaka, Vadodara (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. 255/2011/Cus/Commr(A)/AHD dated 28.06.2011 passed by the Commissioner of Customs(Appeals), Ahmadabad and 249/Commr(A)/JMN/2013 dated 16.07.2013 passed by the Commissioner of Customs(Appeals), Jamnagar.

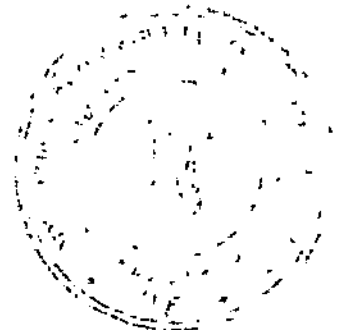
2. In brief, the Applicant, Exporter are procuring Caustic Soda flakes/ Solid falling under Tariff Item No.28151110 from Manufacturer M/s Gujarat Alkalies and Chemicals Ltd. having units at Bharuch and Vadodara/ herein after referred as 'GACL'), for export under claim of drawback through ICD Dashrath. GACL had availed Cenvat credit in respect of common inputs/packing materials gone into the manufacture and reversed credit at the time of clearance of the finished product. Drawback as per All Industry Rate is admissible as per Notification No. 103/2008-Cus(NT) dated 29.08.2008 at two rates, one at higher rate when Cenvat credit not availed and one at lower rate when Cenvat credit had been availed. The Applicant had claimed drawback at higher rate i.e. @ 4.5% of FOB value/Rs. 1.1 per kg on the ground that the manufacturer had not availed Cenvat credit. Whereas subsequently it was found that the manufacturer had availed Cenvat credit of Service Tax paid on the input services used in or in relation to manufacture and clearance of the exported goods, the Applicant was issued Show Cause Notices dated 03.05.2010 and dated 09.03.2012. On adjudicating, the Assistant Commissioner of Customs, ICD Dashrath, Vadodara vide Order-in-Original No. 2/AC/ICD-Dashrath/DBK/2010 dated 30.10.2010 ordered sanction of the drawback at lower rate in respect of the 17 Shippings Bills; and the Assistant Commissioner of Customs, Custom House, Pipavav vide Order-in-Original No. 07/AC/DBK/GPPL/Pipavav/2012-2013 dated 29.05.2012 rejected 14 drawback claims amounting to Rs. 7,54,423/- and imposed penalty of Rs. 1,50,000/- under Section 114AA of the Customs Act, 1962. Aggrieved, the Applicant then filed two



appeals with the Commissioner(Appeals). Commissioner of Customs(Appeals) Ahmedabad, vide Order-in-Appeal No. 255/2011/Cus/Commr(A)/AHD dated 28.06.2011 rejected their appeal and upheld the Order-in-Original dated 30.10.2010 and the Commissioner of Customs(Appeals), Jamnagar vide Order-in-Appeal No. 249/Commr(A)/JMN/2013 dated 16.07.2013 rejected their appeal and upheld the Order-in-Original dated 29.05.2012. Aggrieved, the Applicant preferred a statutory appeal before the Hon'ble CESTAT, Ahmedabad who vide its final Order No. A/13399/2017 dated 26.10.2017 dismissed the appeal before the Hon'ble Tribunal as non-maintainable, accordingly dismissed with liberty to the Applicant to file the same before the appropriate forum. The Applicant then filed Revision Application on 06.12.2017. Also aggrieved with the Order-in-Appeal No. 249/Commr(A)/JMN/2013 dated 16.07.2013, the Applicant filed Revision Application on 12.06.2014

3. The Applicant filed the current two Revision Applications on the following grounds :

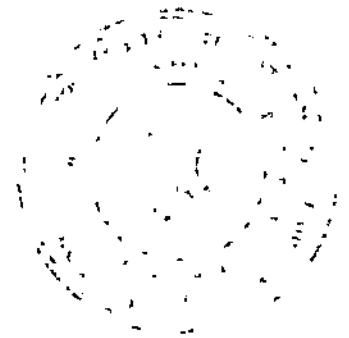
- The CBEC, vide Circular No. 16/2009-CUS dated 5.05.2009 had clarified that the merchant exporter is eligible to claim higher drawback (drawback available under the column where Cenvat credit facility is not availed). And the current issue is as such squarely the same especially since the export had taken the place after such clarification issued by the Board.
- In this they relied in the GOI Order in the case of M/s Malavikalmpex India [2014 (313) ELT 1008 (GOI)]- which was further appealed wherein the Hon'ble High Court of Delhi allowed the Writ Petition by the assessee[2014(310) ELT 868 (Del)].
- Further, M/s GACL had already reversed the proportionate common input service credit post removal to the Applicant. That in the case of Pee Vee Textiles [2015 (320) ELT 671 (GOI)], GOI had ready taken favorable view that even belated reversible credit under such circumstances is a good enough compliance of the requirements of AIR DBK Notification and once the



manufacturer has reversed such Cenvat credit higher rate of drawback Ipso-Facto becomes available to the exporter.

- The Board's Circular No. 13/2008-Cus dated 29.08.2008 is contrary to the proviso to Rule 3 of the Drawback Rules. The said proviso to Rule 3 clearly provided that drawback claim should be reduced to the extent of the credit availed and does not grant any authority to disallow the claim on Higher rate of drawback rate.
- In the present case the Service Tax credit of input services was reversed by M/s GACL even before the issuance of show cause notice. Therefore, the purpose of the drawback scheme was achieved inasmuch as the Service Tax credit was reversed thereby avoiding double benefit in respect of the exported good. Just because the manufacturer, due to oversight or inadvertently could not reverse Cenvat credit of duty, paid on inputs, should not mean that the Government should earn this amount of duty drawback by denying duty drawback to the Applicants.
- On one hand, the Customs Authorities, directed the Applicants to reverse the Cenvat credit of Service Tax paid on input services by the manufacturer, with payment of interest thereon and obtained certificate from the jurisdictional Superintendent and when the conditions were complied, the duty drawback was paid at lower rate. This means that the department has earned back Cenvat credit of Service Tax and also of Inputs as well as interest, whereas on the other hand, duty drawback at higher rate was denied. Hence they prayed that the Orders-in-Appeal be set aside.

4. A personal hearing in the case was held on 01.10.2019 which was attended by Shri Saurabh Dixit, Advocate on behalf of the Applicant. The Applicant submitted that the allegation of having claimed higher DBK is not correct as the manufacturer has also reversed the amount. Since it is not recovery matter penalty is not warranted and also placed reliance on Circular No. 16/2009-Cus dated 25.05.2009 and case laws in AKS Apparel Vs UOI [2013(298) ELT 649 (Del.)] and Commr of C.Ex. Jaipur-I Vs Sanjay Engg Industries[2016 (43) STR 354 (Raj)].



5 Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. On perusal it is noticed that the Applicant had procured the goods from GACL and on export of the said goods, the Applicant claimed drawback at higher rate i.e. @ 4.5% of FOB value/Rs. 1.1 per kg on the ground that the manufacturer had not availed Cenvat credit. Subsequently it was found that GACL had availed Cenvat credit of Service Tax paid on the input services used in or in relation to manufacture and clearance of the exported goods, and have also reversed the proportionate common input Service credit after the goods were exported. Since the reversal has been made only after the export and not at the time of export, the drawback was sanctioned at lower rate in respect of 17 Shipping Bills and the entire drawback was rejected in respect of 14 claims by the respective Original authorities

7. The Service tax credit reversal details are as detailed below:

- (i) the jurisdictional Superintendent, Central Excise & Customs, Range-I, Division-IV, Vadodara-I vide letter F.No. AR-1/DBK-GACL/09-10 dated 28.01.2010 certified that GACL had reversed Rs. 5,45,111.29 made vide Service Tax Cenvat Credit Account E.No. 11 dated 30.11.2009 in relation to manufacture and clearance of the excisable goods for the months from April 2009 to October 2009;
- (ii) the jurisdictional Superintendent, Central Excise, Range-IV, Divn. Bharuch vide letter F.No. AR-IV/Misc/GACL/2009-10 dated 17.08.2010 informed that GACL had reversed the credit of Rs 1,94,660/- (Rs. 32,112/- vide E.No. SER/01 dated 01.01.2010+ Rs. 86,767/- vide E.No. 3 dated 01.05.2010 +Rs. 75,781/- vide E.No. 2 dated 01.05.2010. Further, also informed that GACL had correctly reversed Rs. 1,94,660/- of the Service Tax credit in respect of input



services used in export goods exported during the period from July 2009 to November 2009.

The reversal of Service credit has taken place before the issue of the Show Cause Notices dated 03.05.2010 and 09.03.2012 respectively.

8. In the instant case, the main contention of the Department is that the manufacturer have not reversed the Service tax credit paid in input services used in relation of manufacture of exported goods at the time of clearance of goods and the reversal took place subsequent to export. Hence, the Applicants are not eligible for higher rate of duty drawback and reversal does not fulfill the condition necessary for higher rate of drawback.

9. It is found that in an identical case involving claim at higher rate of drawback and reversal of Cenvat credit subsequent to export are dealt by the Revision Authority in the case IN RE : Indorama Synthetics (I) Pvt Ltd vide GOI Order No. 151/13-CX dated 06.06.2013 [2014 (314) ELT 1006 (GOI)]

Demand – Recovery of duty drawback erroneously received at higher rate – Non-fulfilment of condition under Notification No. 68/2007-Cus. – Non-consideration of reversal of Cenvat credit of service tax subsequent to export as compliance of condition under said Notification – HELD : Once department has accepted reversal of Cenvat credit on ‘inputs’ prior to export as non-availment of said credit, different yard cannot be adopted for reversal of credit of ‘input services’ subsequent to exports – Department had allowed drawback at higher rate of 16% initially on reversal of Cenvat credit on inputs prior to exports without raising any dispute regarding Cenvat credit of Service tax – mala fide attributable to exporter and reversal of non utilized Cenvat credit of ‘inputs services’ also to be treated as non-availment of said credit – Exporter entitled to drawback claim at higher rate @ 16% of FOB value and initial sanction of said claim legal and proper – Impugned order-in appeal set aside – Section 129DD of Customs Act, 1962.



10. Government finds that in the current case as soon as the discrepancy was noticed by the Applicant, the manufacturer GACL reversed the Service Tax Cenvat credit and the same have been verified by the jurisdictional Superintendents. This reversal of the Cenvat credit amounts to non-taking of credit of inputs and such reversal can be done subsequent to export of goods. Hence Applicant is entitled for drawback claims at higher rate @ 4.5% of FOB value of exports.

11. In view of the above, Government, sets aside the impugned Orders-in-Appeal Nos. 255/2011/Cus/Commr(A)/AHD dated 28.06.2011 and 249/Commr(A)/JMN/2013 dated 16.07.2013 and remands back the case to original authorities to decide the same afresh, after due verifications of documents. The original adjudicating authorities shall pass the order within eight weeks from the receipt of this order.

12. The Revision Application is disposed off in terms of above.

13. So ordered.



(SELMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 21-22/2020-CX (WZ)/ASRA/Mumbai DATED 05.03-2020.

To,
M/s Prakash Chemicals International (P) Ltd.,
Induchacha House,
Opp. Chhani Jakatnaka,
Vadodara - 390 002.

Copy to:

1. The Commissioner of Customs (Prev), Sarda House, Bedi Bunder Road, Opposite Panchwati, Jamnagar -361 001.
2. The Assistant Commissioner of Customs, ICD-Dashrath, Vadodara
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

