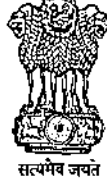


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 195/176/17-RA

8457

Date of Issue:

01.05.2023

ORDER NO.

243 /2023-CEX (WZ)/ASRA/MUMBAI

DATED 26.4.2023 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. Chemicals & dyestuff Industries.

Respondent : The Commissioner of CGST & CX, Vadodara-I

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. Vad-Excus-
003-App-551/2016-17 dated 13.02.2017 passed by the
Commissioner (Appeals-I), Central Excise Customs and
Service Tax, Vadodara.

ORDER

This Revision Application has been filed by M/s. Chemicals & dyestuff Industries (hereinafter referred to as "Applicant") against the Order-in-Appeal No. Vad-Excus-003-App-551/2016-17 dated 13.02.2017 passed by the Commissioner (Appeals-I), Central Excise Customs and Service Tax, Vadodara.

2. Brief facts of the case are that Applicant had exported goods under rule 18 of the Central Excise Rules, 2002. Applicant had filed 6 rebate claims. Out of which 02 claims were pertaining to rebate of the duty paid on the final product and remaining 04 claims were for the duty paid on the materials utilized in the export of finish goods. Adjudicating Authority vide OIO No. OIO/96-201/Reb/Excise/2016-17 dated 24.08.2016 sanctioned the rebate claims by treating all of them as duty paid on final product. Aggrieved by the OIO, the Department filed appeal with the Commissioner (Appeals-I), Central Excise Customs and Service Tax, Vadodara., who vide Order-in-Appeal No. Vad-Excus-003-App-551/2016-17 dated 13.02.2017 allowed their appeal and rejected the OIO limited to the amount contested by the Department. Appellate Authority observed in the impugned OIA that Adjudicating Authority erred in sanctioning the rebate claim without following the procedures and conditions laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. All the consignment covered under ARE-2 No. 01 to 04 were cleared under physical supervision of local central excise authority. From the copies of ARE-2 it can be seen that the details required to be given in the said documents are available. We have also mentioned the reference of the permission granted by the Assistant Commissioner.
- ii. though it was brought to the notice of the Appellate authority that proper procedures and conditions laid down in Notification No. 21/2004-(NT) dated 06.09.2004 was followed by the Applicant by

providing copy of the permission letter along with copy of duly approved input-output ratio, the said authority has not taken any cognizance on our cross objection dated 06.02.2017.

- iii. that rebate claim of Rs. 6,98,875/- was worked out on the basis of the input-output ratio approved by the competent authority and subsequently the same was verified by the central excise officers at the time of export of the goods. As the rebate claim was submitted after following the procedure and conditions laid down under Notification No.21/2004-(NT), dated 06.09.2004, Applicant is entitled for rebate claim.
- iv. The exported goods involving present rebate claim were cleared under physical Supervision of the departmental officers. Thus, there is no deviation in following the procedure prescribed under Notification No. 21/2004-(NT) dated 06-09-2004. There is no dispute in regard to factum of export. In the aforementioned ARE-2 No. 01 to 04 are relating to duty paid inputs consumed in the manufacture of export consigned covered thereunder. The Applicant availing benefit of value base exemption as laid down under notification No.08/2003 CE and clearing the home consumption 200 goods under exemption up to value base exemption limit of rupees 150 lakhs. Nowhere the benefit of Rebate on duty paid input consumed in export consignment is denied under any law.
- v. The input-out ratio in respect of exported consignment were approved and verified. In this matter kind attention is invited to copy of Cross-Examination. The amount of rebate has been worked out on the basis of Input-Out basis.
- vi. Kind attention is invited to the decision passed in the case of Tablets India Ltd. Vs. It. Sec. Ministry of Finance Dept. Of Revenue [2010 (259) E.LT. 191 (Mad.) wherein it has been held that:

“Nevertheless, having regard to the fact that the conditions to be complied with under notification Nos. 47/94 and 47/94 was in substratum identical and when the factum of export was not in

dispute, we are at a loss to understand as to why the Assistant Commissioner failed to exercise the discretionary power vested in him under proviso to understand while considering the appellant's claim for rebate applied under rule 12(1)(b) of Central Excise, Rules. Therefore, it is not the case of the authority that there was any other lapse or willful omission committed by the appellant in making the claim or that the factum of export was not proved. In these circumstances, when once the competent authority viz. the Assistant Commissioner was satisfied with the factum of export that the final products was made by the appellant, his failure to exercise the discretionary power vested in him in absence of any other valid reasons cannot be sustained. For very same reason, the orders of the Appellate Authority viz. the Second respondent as well as the Revisional Authority viz. the first Respondent who have failed examine the said position cannot be justified. Therefore, the orders impugned in the writ petition as well as the Order-Original No.14/2001 dated 04-09-2001 are liable to be set aside and according set aside."

vii. In the present case, there is no dispute in regard to factum of export. The applicant not availing the Input credit till the clearance value exceeds the value exemption limit of 150 lakhs. Nowhere it has been clearly pointed out that the inputs consumed in the involved exported goods involved in ARE-2 No.01 to 04 as mentioned above were non duty paid or duty paid Input were not used. Thus, there committed no error in sanctioning of rebate claim amounting to Rs.6,68,895/-.

viii. Applicant has placed reliance on various case laws.

ix. Applicant requested to set aside the Impugned OIA.

4. Personal hearing in the matter was fixed on 04.10.2022, 18.10.2022, 07.12.2022 and 21.12.2022. Applicant vide letter dated 20.12.2022 made additional submissions, which have been incorporated in the para above and requested to decide this matter considering the merits of the case.

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

6. On perusal of the records, Government finds that issue to be decided in the present case is that whether rebate claimed on the inputs under Notification No. 21/2004-CE(NT) dated 06.09.2004 is admissible or not.

7. Government notes that Applicant had filed 6 rebate claims. Out of which 02 claims were pertaining to rebate of the duty paid on the final product and remaining 04 claims were for the duty paid on the materials utilized in the export of finish goods. Adjudicating Authority sanctioned the rebate claims by treating all of them as duty paid on final product. Department filed appeal before the Appellate Authority, who rejected the OIO to the extent of rebate claim sanctioned in respect of these 04 claims by holding that procedures and conditions laid down in Notification No. 21/2004-CE(NT) dated 06.09.2004 were not followed while sanctioning the claim.

8. Government notes that in the present case, it is an undisputed fact that the applicant, a unit registered with Central Excise, availed benefit of rebate under Rule 18 for inputs used in manufacture of goods for the purpose of export. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through Notification No. 21/2004-CE (NT) dated 06.09.2004, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages etc., by the departmental officer is prescribed. However, Department alleged that the applicant did not follow the prescribed procedure and failed to fulfill the conditions of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 in as much as they failed to file declaration with the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture with all the details as prescribed under para (1) of the said Notification and therefore prior

approval of the input-output ratio could not be obtained as prescribed under Para (2) of the said Notification. However, the Applicant claimed that

- i. rebate claim was submitted after following the procedure and conditions laid down under Notification No.21/2004-(NT), dated 06.09.2004.
- ii. Applicant claimed to have submitted the copy of the permission letter along with copy of duly approved input-output ratio vide their cross objection dated 06.02.2017 which were submitted before Appellate Authority.
- iii. All the consignments in question were cleared under physical supervision of local central excise authority. From the copies of ARE-2 it can be seen that the details required to be given in the said documents are available. We have also mentioned the reference of the permission granted by the Assistant Commissioner.

9. The relevant part of the Notification No. 21/2004.CE (NT) dated 06.9.2004 as amended is reproduced hereunder for ease of understanding:

*"In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002-----
----- subject to the conditions and the procedure specified hereinafter:-*

(1) Filing of declaration. The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.

(2) Verification of Input-output ratio. - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.

(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the

registered factory in which such goods are produced, accompanied by an invoice under rule II of the Central Excise Rules, 2002:

Provided that the manufacturer or processor may procure material from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers."

On going through the cross objections dated 06.02.2017 submitted by the Applicant, Government finds that they have filed the declaration prescribed under para 1 of the aforesaid notification and have submitted the input output ratios which were duly signed and approved by the concerned Authorities. Further, it is seen that they have cleared the goods under ARE-2 form. Therefore, to deny the rebate to the Applicant when conditions and procedures laid down under Notification No. 21/2004.CE (NT) dated 06.9.2004 have been followed, is not proper.

9. Further, the observation made at para 6.1 in impugned OIA by Appellate Authority is reproduced as :

" 6.1. I find that the respondent in their cross objection has contended that they are availing the benefit of Notification No. 08/2003-CE, dated 01.03.2003. It means that respondent had not started payment of duty, hence, they were not liable to avail Cenvat Credit and when there were no availment, how they paid the duty either in cash or through credit account."

Government notes that the above observation is not proper as Notification 08/2003 dated 01.03.2003 places no bar on rebate of inputs used in exports under Notification No. 21/2004.CE (NT) dated 06.9.2004.

10. In view of above discussions, the Government holds that since conditions and procedures laid down under Notification No. 21/2004.CE (NT) dated 06.9.2004 have been followed, the rebate claim in question cannot be denied to the Applicant. Government sets aside the impugned Order-in-Appeal No.-Vad-Excus-003-App-551/2016-17 dated 13.02.2017 passed by the Commissioner (Appeals-I), Central Excise Customs and Service Tax, Vadodara. Adjudicating Authority is directed to disburse the same within 8 weeks of the receipt of this order.

10. Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 243/2023-CEX (WZ) /ASRA/Mumbai Dated 26.4.23

To,

1. M/s. Chemicals & Dyestuff Industries, Jagdish Nagar, Nadiad-Mehmdabad Road, Kamla-387320.
2. The Commissioner CGST & CX, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara- 390007.

Copy to:

1. The Commissioner (Appeals-I), Central Excise Customs and Service Tax, Central Excise Building Ist Floor, Annexe, Race Course, Vadodara-390007.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.