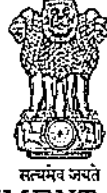


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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Mumbai- 400 005

F.No.198/177-183/15 -RA/5430

Date of Issue: 24.09.2021

309-315
ORDER NO. /2021-CX(SZ)/ASRA/MUMBAI DATED 13.09.2021
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 BASF Catalysts India Pvt. Ltd.
E-17 & 18, Industrial Complex,
Marimalai Nagar, Tamil Nadu- 603 209.

Respondent : M/s Superfine Syntex Ltd.,
311, Ratan Chambers, Salabatpura,
Surat- 395 002.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 95 to
101/2015(CXA-I) dated 13.04.2015 passed by the Commissioner
of Central Excise (Appeals-I), Chennai.

ORDER

This Revision Application has been filed by M/s BASF Catalysts India Pvt. Ltd., E-17 & 18, Industrial Complex, Marimalai Nagar, Tamil Nadu- 603 209 (hereinafter referred to as "the respondent") against the Order-in-Appeal No. 95 to 101/2015(CXA-I) dated 13.04.2015 passed by the Commissioner of Central Excise (Appeals-I), Chennai.

2. Brief facts of the case are that the applicants are engaged in manufacture of excisable goods i.e. 'Catalysts and Catalysts Convertors Polypropylene Yarn' falling under Chapter Sub Heading 38151290 and 84213999 of the Schedule to the Central Excise Tariff Act, 1985. The respondent had filed rebate claims for total amount of Rs. 11,81,20,752/- of duty paid on the goods exported. The Rebate Sanctioning Authority rejected part of the rebate claim filed by the applicant vide seven separate Orders in Original. The details are as under: -

Sr. No.	OIO No. /Date	Amount of rebate claimed (Rs.)	Amount of rebate allowed (Rs.)	Amount disallowed (Rs.)
1	383/2013(R) dated 18.10.2013	1,82,83,490/-	1,82,22,110/-	61,380/-
2.	382/2013(R) dated 07.10.2013	1,59,00,486/-	1,53,66,192/-	5,34,294/-
3.	379/2013(R) dated 07.10.2013	2,37,20,233/-	2,30,87,148/-	6,33,085/-
4.	381/2013(R) dated 07.10.2013	1,58,93,343/-	1,56,56,881/-	2,36,462/-
5.	745/2013(R) dated 23.12.2013	1,85,65,122/-	1,78,94,845/-	6,70,277/-
6.	731/2013(R) dated 18.12.2013	97,31,286/-	95,96,181/-	1,35,105/-
7.	730/2013(R) dated 18.12.2013	1,60,26,792/-	1,57,79,854/-	2,46,938/-
	TOTAL	11,81,20,752/-	11,56,03,211/-	25,17,541/-

The Rebate Sanctioning Authority disallowed the part of rebate on the grounds that the applicant had utilized the imported duty free inputs under jobbing Notification No. 32/1997-Cus dated 01.04.1997.

3. Aggrieved by the Orders in Original, the applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Central Excise, Chennai. The Appellate Authority vide Orders in Appeal No. 95 to 101/2015(CXA-I) dated 13.04.2015 rejected the appeals filed by the applicant. The appellate authority while passing the impugned order in appeal observed that :-

- a) The goods imported for jobbing is duty free and therefore, the export of resultant goods is covered by the Notification No. 43/2001-CE dated 26.06.2001 issued under Rule 19 of Central Excise Rules, 2002, which governs the procurement of excisable goods without payment of duty for use in manufacture of export of goods.
- b) Explanation II to the Notification No. 43/2001-CE made it clear that goods manufacture from raw materials procured duty free shall be exported under bond without payment of duty in terms of Rule 19(1) of Central Excise Rules, 2002. So there is no choice with the exporter to export such goods on payment of duty under rebate claim in terms of Rule 18 of Central Excise Rules, 2002.
- c) The issue has been clarified in Circular No. 792/25/2004-Cx dated 02.06.2004.
- d) When the applicant imported the materials duty free, they did not suffer any input duty and therefore they enjoyed the benefit of export at the input stage itself. There would be no credit in their Cenvat Credit account in lieu of the imports to utilise the same for payment of duty on export of the resultant products imported. Therefore, there was no mandate for utilization of credit and particularly, when there exist a explicit provision to export without payment of duty.
- e) The appellate authority also placed reliance on following case laws:-
 - a. Biyani Alloy Pvt. Ltd. [2012(286) ELT 445 (GOI)]
 - b. Duke Consumer Care Ltd. [2012(285) ELT 475(GOI)]

4. Being aggrieved with the above Order-in-Appeal, the applicants have filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-

4.1 Rebate cannot be denied on the ground that the goods were imported duty free under Notification No. 32/1997-Cus. The duty free procurement of inputs under said notification is not a bar to claim rebate of duty paid on final goods exported under Rule 18 of Central Excise Rules, 2002.

4.2 Para 2(h) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 state that the rebate is not admissible in case of export of goods which are manufactured by a manufacturer availing benefit of Notifications listed in this para. The Notification No. 32/97-Cus is not mentioned in this list and hence availing benefit of Notification 32/97-Cus on the inputs cannot be a ground to deny rebate of duty paid on final goods.

4.3 The appellate authority had incorrectly presumed that the goods imported by the applicant were covered by Notification No. 43/201-CE(NT) dated 26.06.2001 issued under Rule 19 of CER, 2002.

4.4 The Circular dated 02.06.2004 is referring only to imports made under Notification No. 43/2001-CE (NT) dated 26.06.2001. However, in the instant case the raw materials were imported under Notification No. 32/1997-Cus.

4.5 The Notification No. 32/1997-Cus does not lay down any conditions on the importer to export the final goods under bond. The conditions in one notification cannot be applied ipso facto to another.

4.6 The claim of rebate cannot be denied on the technical grounds.

4.7 The respondents have filed their written submission dated 12.08.2021. They placed reliance on following case laws :-

- a) TTP Technologies Pvt. Ltd. Vs. CCE, Bangalore -II 2009 (240) ELT 724 (Tri. Bang.)
- b) Mars International [2012(286) ELT 146 (GOI)]

c) Indorama Synthetics (I) Ltd Vs. CCE [2013 (296) ELT 422 (tr. Mum)]

6. A Personal hearing in this case was fixed on 12.08.2021. Shri Srinivasan, Consultant attended the same online and stated that a written submission had been filed that day through email. He contested that though they imported duty free inputs for manufacture and export of goods, they could choose to pay duty on export goods and claim rebate. He requested to allow the claim. No one appeared for the personal hearing on behalf of the department.

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

8. On perusal of records, Government observes that the rebate sanctioning authority has disallowed the rebate claims on the ground that the goods exported by the respondents were manufactured by procuring inputs without payment of excise duty under Notification No. 32/1997-Cus dated 01.04.1997 and in terms of provision of Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001 as amended, they were required to be exported under Bond or Letter of Undertaking in terms of sub-rule (1) of Rule 19 of the Central Excise Rules, 2002. It is alleged that the respondents have discharged the duty in contravention of said Rules and claimed the rebate of the same. The Govt. observes that the question to be decided in the instant case is whether rebate under Rule 18 of the Central Excise Rules, 2002 is admissible to the respondent if they have exported the goods under Advance Authorisation Scheme while procuring the inputs without payment of duty.

8.1 The Government finds that there is no dispute that the applicant have manufactured and exported finished goods manufactured from raw materials procured duty free under Notification No. 32/1997-Cus dated 01.04.1997. This is also admitted fact that the applicant had paid appropriate central excise duty on their final product at the time of export of goods. The

department's main contention is that the applicant had manufactured their exported goods from raw materials obtained duty free under Notification No. 32/97-Cus (NT), dated 01.04.1997 and the applicant had wrongly paid central excise duty to encash the accumulated Cenvat credit. On this issue Government observes that Notification 32/97-Cus (NT), dated 01.04.1997 permits to procure duty free inputs imported for execution of an export order for jobbing provided the importer follows the conditions laid down thereunder. It is observed that Notification 32/97-Cus (NT), dated 01.04.1997 does not lay restriction / condition that goods manufactured out of the inputs procured duty free in terms of Notification 32/97-Cus (NT), dated 01.04.1997 must be exported under Rule 19 of the Central Excise Rules, 2002 i.e., without payment of duty under bond only. Further, the Government finds that Notification 32/97-Cus (NT), dated 01.04.1997 is not an exemption Notification but it is a facility to the exporters to procure inputs for execution of export order for jobbing the final products provided they bind themselves to follow the stipulated conditions. It is noted that, at any time, the department had not alleged the non-compliance of any of the conditions laid down under the impugned notification.

8.2 The Government further notes that the Notification No. 19/2004-CE(NT) dated 06.09.2004 prescribed the conditions, limitations and procedure subject to which rebate of central excise duty paid on exported goods, shall be granted under Rule 18 of the Central Excise Rules, 2002. The Government notes that the Notification No. 19/2004-CE (NT) dated 06.09.2004 has been amended vide Notification No. 37/2007-CE (NT) dated 17.09.2007 by inserting condition 2(h) in the said Notification. It is observed that the condition 2(h) stipulates that the rebate shall not be admissible under this notification i.e. 19/2004-CE(NT) dated 06.09.204 in case of export of goods which are manufactured by a manufacturer availing the notifications listed therein. The Government finds that the Notification No. 32/1997-Cus dated 01.04.1997 has not been mentioned in the said list.

8.3 It is observed that the appellate authority has placed reliance on following judgements while upholding the Orders in Original passed by the adjudicating authority.

- a. Biyani Alloy Pvt. Ltd. [2012(286) ELT 445 (GOI)]
- b. Duke Consumer Care Ltd. [2012(285) ELT 475(GOI)]

However, on perusal of the case above laws, Government observes that the rebate sanctioning authority, in these cases, had disallowed the rebate claims on the ground that the goods exported by the applicants were manufactured by procuring input without payment of excise duty under provision of Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001 as amended which were required to be exported under Bond or Letter of Undertaking in terms of sub-rule (1) of Rule 19 of the Central Excise Rules, 2002. Thus the applicants have discharged the duty in contravention of said Rules and claimed the rebate of the same. Whereas, in the instant case, the applicant had not procured the duty free goods under Notification No. 43/2001-CE (NT) dated 26.06.2001. Therefore, the applicants do not fall under purview of Notification No. 43/2001-CE (NT) dated 26.06.2001.

In the instant case the applicant had procured duty free raw material under Notification No. 32/1997-Cus dated 01.04.1997 which does not restrict the export of resultant goods under claim of rebate under Rule 18 of the Central Excise Rules, 2002. Hence, it would be illogical to drag the applicant's case under Notification No. 43/-CE (NT) dated 26.06.2001 with non-existent restrictions on them by applying the said notification. The Government opines that the conditions in one Notification cannot be applied ipso facto to another notification without specific reference therein.

In view of above, Government holds that reliance placed by the appellate authority on the above mentioned case laws for upholding the Orders in Original is not sustainable and thus the Order in Appeal is not just and proper.

9. In view of the above discussions, Government holds that rebate of duty paid on finished products is admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 along with consequential relief arising thereof. Therefore, the Government sets aside the impugned Orders-In-Appeal No. No. 95 to 101/2015 (CXA-I) dated 13.04.2015 passed by the Commissioner of Central Excise (Appeals-I), Chennai.

10. The revision applications are allowed on above terms.

Shrawan
13/9/21
(SHRAWAN KUMAR)

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

309-315

ORDER N. /2021-CX(SZ) /ASRA/Mumbai DATED 13.09.2021

To,
M/s BASF Catalysts India Pvt. Ltd.
E-17 & 18, Industrial Complex,
Marimalai Nagar, Tamil Nadu- 603 209.

Copy to:

1. The Commissioner of CGST, Chennai Outer Commissionerate, Newry Towers, No.2054, I Block, II Avenue, 12th Main Road, Ann Nagar, Chennai 600 040.
2. The Commissioner of GST & CX, (Appeals-II), Newry Towers, No.2054, I Block, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040.
3. The Deputy Commissioner, CGST, Marimalai Nagar Division, Chennai Outer Commissionerate, No. 40, Ranga Colony, Rajakilpakkam, Chennai - 600073.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file.
6. Spare Copy.