

REGISTERED SPEED POST AD



**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. 195/415/2013-RA 1152

Date of Issue: 20.03.2022

ORDER NO. 314 /2022-CX(WZ)/ASRA/MUMBAI DATED 24.3.2022
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 Mahavir Synthesis Pvt. Ltd.
Block No. 304 & 305,
Sachin-Magdalla Road, GIDC,
Sachin, Surat – 394 230

Respondent : Commissioner of CGST & Central Excise, Raigad

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. US/879/RGD/2012 dated 12.12.2012 passed by the Commissioner of Central Excise(Appeals-II), Mumbai.

ORDER

This revision application has been filed by M/s Mahavir Synthesis Pvt. Ltd., Block No. 304 & 305, Sachin-Magdalla Road, GIDC, Sachin, Surat - 394 230 (hereinafter referred to as "the applicant") against Order-in-Appeal No. US/879/RGD/2012 dated 12.12.2012 passed by the Commissioner of Central Excise(Appeals-II), Mumbai.

2. The applicant had filed rebate claim under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate claims totalling to Rs. 2,45,568/- were sanctioned by the Deputy Commissioner(Rebate), Raigad vide Order-in-Original No. 725/11-12 dated 05.08.2011. The said OIO was reviewed by the Commissioner of Central Excise, Raigad and it was found that it was not legal and proper.

3. An appeal was filed before the Commissioner(Appeals) and an SCN vide F. No. V/15-309/Reb/Mahavir Synthesis/Appeal/Rgd/11-12 dated 09.02.2012 was issued to the applicant on the same grounds calling upon them to show cause as to why the rebate amount of Rs. 2,45,568/- erroneously refunded to them vide OIO No. 725/11-12 dated 05.08.2011 should not be recovered from them; interest under Section 11AB should not be recovered from them and penalty should not be imposed upon them under Rule 27 of the CER, 2002. The Commissioner(Appeals) allowed the appeal filed by the Department and set aside the OIO No. 725/11-12 dated 05.08.2011 vide his OIA No US/315/RGD/2012 dated 03.05.2012.

4. The SCN issued vide F. No. V/15-309/Reb/Mahavir Synthesis/Appeal/Rgd/11-12 dated 09.02.2012 was taken up for adjudication by the Additional Commissioner of Central Excise, Raigad. On taking up the case for adjudication, the applicant had informed the adjudicating authority that they had filed a revision application against OIA No US/315/RGD/2012 dated 03.05.2012 and that the SCN may be kept in abeyance till decision on the revision application. However, the Additional Commissioner of Central Excise, Raigad recorded that the applicant had not produced any documents to support this claim and also did not attend personal hearing granted to them on two occasions. The Additional Commissioner therefore took up the SCN for adjudication on the basis of available records and proceeded to confirm the demand for recovery of erroneously sanctioned refund of rebate amounting to Rs. 2,45,568/-, ordered recovery of

interest and imposed a penalty of Rs. 5000/- vide OIO No. Raigad/ADC/29/12-13 dated 13.06.2012.

5. The applicant being aggrieved by the OIO No. Raigad/ADC/29/12-13 dated 13.06.2012 passed by the Additional Commissioner filed appeal before the Commissioner(Appeals). Commissioner(Appeals) observed that the adjudicating authority had confirmed the demand on the basis of the OIA No US/315/RGD/2012 dated 03.05.2012. He further opined that the applicant may have filed revision application against the OIA but in the absence of any stay, the said OIA would continue to be in force. The Commissioner(Appeals) therefore upheld the demand confirmed and penalty imposed vide his OIA No. US/879/RGD/2012 dated 12.12.2012 and rejected the appeal filed by the applicant.

6. The applicant has now filed revision application against the OIA No. US/879/RGD/2012 dated 12.12.2012 on various grounds. The applicant was granted a personal hearing in the matter on 11.12.2019. Shri R. V. Shetty, Advocate appeared on their behalf and handed over written submissions and requested that R.A. No. 195/735/2012-RA involving the revision application filed by them against OIA No. US/315/RGD/2012 dated 03.05.2012 be linked with these proceedings. He also handed over written submissions. Upon change in the Revisionary Authority, the applicant was granted fresh personal hearing on 01.12.2020, 04.12.2020, 9.12.2020 and 16.03.2021. However, none appeared on behalf of the applicant.

7. Government observes that the present proceedings have arisen out of a rebate claim which had initially been sanctioned by the original authority. On appeal by the Department, the rebate had been held to be inadmissible by Commissioner(Appeals) vide OIA No. US/315/RGD/2012 dated 03.05.2012. In the interim, the Department had issued SCN for recovery of the refund of rebate sanctioned to the applicant by the original authority. The said demand was adjudicated by the Additional Commissioner and confirmed. The applicant had proceeded in appeal before Commissioner(Appeals) who had thereupon vide his OIA No. US/879/RGD/2012 dated 12.12.2012 upheld the order passed by the Additional Commissioner confirming the demand. The revision application filed by the applicant against this order of Commissioner(Appeals) is the order impugned in these proceedings.

8. Although, the grounds in the present revision application do not include any ground stating that revision application has been filed against OIA No. US/315/RGD/2012 dated 03.05.2012, Shri R. V. Shetty, Advocate for the applicant had submitted during the personal hearing before the then Revisionary Authority on 11.12.2019 that R.A. No. 195/735/2012-RA had been filed and that it should be linked up with these proceedings. Accordingly, the status of the R.A. No. 195/735/2012-RA was ascertained and it was found that the said revision application had been disposed off by Order No. 32/2016-CX dated 04.02.2016 by remanding it back to the original authority for fresh decision.

9. Government observes that since the matter concerning the admissibility of the rebate claim itself has been remanded back to the original authority, it would be apposite to remand back the proceedings arising out of the consequential demand for recovery of the rebate sanctioned by the original authority for fresh adjudication on the basis of the decision taken in remand proceedings in compliance of Order No. 32/2016-CX dated 04.02.2016.

10. Government therefore sets aside the impugned OIA No. US/879/RGD/2012 dated 12.12.2012 and remands the SCN issued vide F. No. V/15-309/Reb/Mahavir Synthesis/Appeal/Rgd/11-12 dated 09.02.2012 back to the original authority for fresh adjudication in alignment with the decision taken regarding the admissibility of the rebate claims in compliance of Order No. 32/2016-CX dated 04.02.2016.

11. The Revision Application is disposed off in the above terms.


(SHRAWAN KUMAR)

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

ORDER No. 314 /2022-CX(WZ) /ASRA/Mumbai DATED 24.3.2022

To,
M/s Mahavir Synthesis Pvt. Ltd.
Block No. 304 & 305,
Sachin-Magdalla Road, GIDC,
Sachin, Surat - 394 230

Copy to:

- 1) The Commissioner of CGST & Central Excise, Belapur
- 2) The Commissioner (Appeals), Raigad
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file