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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. 196/15(I to III)/15-RA / 1236 Date of Issue: 20.03.2022

ORDER NO. 317-319/2022-CX (SZ)/ASRA/MUMBAI DATED 24.03.2022
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. Maxwell Formulations

Respondent : Commissioner of Central Excise, Chennai-IV.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal No.
85 to 87/2014(M-IV) dated 07.10.2014 passed by
Commissioner (Appeals), Central Excise, Chennai.

ORDER

This Revision Application along with an application for condonation of delay is filed by M/s. Maxwell Formulations, No.10, G K Industrial Estate, Arcot Road, Porur, Chennai - 600 116 (hereinafter referred to as "the Applicant") against Order-in-Appeal No. 85 to 87/2014(M-IV) dated 07.10.2014 passed by Commissioner (Appeals), Central Excise, Chennai. The reason for delay being that the impugned Order-in-Appeal was received by them on 10.10.2014. They had dispatched the Revision Application by registered post on 07.01.2015 which was delivered on 15.01.2015. Thus as it was in transit their application was delayed by 7 days. Therefore, Government is condoning this delay and is taking up the matter for deciding on merits.

2. Brief facts of the case are that the applicant is engaged in the manufacture of P or P medicaments falling under Chapter Heading 3004 of Central Excise Tariff Act, 1985 availing exemption under Notification No. 8/2003-Central Excise dated 01-03-2003 as amended. The applicant had exported its finished goods and filed claims for rebate of duty paid on the raw materials used in the manufacture of the same under Notification No.21/2004-Central Excise (N.T.) dated 06-09-2004 as amended. The rebate sanctioning authority sanctioned the rebate claims partially and rejected the amount pertaining to Special Additional Duty (SAD), on the grounds that it is not covered in the explanation of "duty" given under the said Notification No. 21/2004, vide following Orders-in-Original:

OIO No. & date	Period	Amount claimed (in Rs.)	Amount rejected (in Rs.)
606/2012-RF dt. 7/12/12	April'11	64,199/-	4667 /-
227/2013-RF dt. 12/8/2013	Jul'12	23,182/-	5,950/-
355/2014 dt. 19/3/2014	Apr'13	45,696/-	1,565/-

Aggrieved, the applicant filed appeals against the above mentioned 3 Orders-in-Original which were rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal.

3. Hence, the Applicant filed the impugned Revision Application mainly on the grounds that:

a. in the following circumstances, the SAD (in lieu of sales tax) paid on the imported goods are refunded:

i) If the imported goods are sold on payment of VAT, same is refunded because there cannot be double levy on single transaction.

ii) If the goods are used in manufacture of the end products, on payment of central excise duty, then the SAD is adjusted as Cenvat credit.

iii) If the manufacturer pays SAD on imported raw materials, used in the manufacture of end products suffering central excise duty, they are permitted to avail Cenvat credit and such credits are refunded under Rule 5 of the Cenvat Credit Rules.

b. the Circular Number 34/2010-Cus dated 15.9.2010 is not applicable in the present circumstances because the issue involved therein is allowing refund of SAD on the goods used in the manufacture of end products by Small Scale Industries. In the case of Small Scale Industries who are manufacturing goods and are availing exemption, the end products are sold after the said SAD is included in the price of goods and the grant of refund will amount to unjust enrichment and therefore the Government is right in rejecting the same for such Manufacturers. On the other hand, the applicant herein have exported the goods and if the element of SAD is included, the pricing will cease to be competitive in the global market, adversely affecting not only the business interest of the applicant but the valuable foreign exchange earning for the country as a whole. In these circumstances,

customs circular cited above is not applicable to the applicant's case and hence the rebate ought to be allowed.

The applicant therefore prayed for setting aside the impugned order with consequential relief.

4. Personal hearing in the case was fixed for 21.12.2021. Shri M.N. Bharathi, Advocate appeared online and submitted that the only issue is rebate of SAD paid on re-export of imported goods. He requested to allow the rebate.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Order-in-Appeal and the Revision Application filed by the applicant.

6. Government notes that the issue to be decided in this case is regarding admissibility of the rebate of Special Additional Duty (SAD) under Notification No.21/2004-Central Excise (N.T.) dated 06-09-2004.

7.1 Government finds it proper to examine different statutory provisions in this regard. As per Section 3 (5) of the Customs Tariff Act,1975 Special Additional Duty (SAD) has been explained as follows:

Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. -

(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four percent of the value of the imported article as specified in that notification.

Explanation. - In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.

7.2 The relevant extract of Notification No.21/2004-Central Excise (N.T.) reads as under:

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No.41/2001-Central Excise (N.T.), dated the 26th June, 2001[G.S.R.470 (E) dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: -

Explanation: - "duty" means for the purposes of this notification, duties of excise collected under the following enactment, namely: -

- (a) the Central Excise Act, 1944 (1 of 1944);*
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*

(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) and further amended by Section 3 of the Finance Act, 2004 (13 of 2004);

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004.

(h) the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, the clause which has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law.]

(i) the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duty of excise specified under clauses (a),(b),(c),(d),(e) and (g) above.

(j) Secondary and Higher Education Cess on excisable goods leviable under clause (126) read with clause(128) of the Finance Bill, 2007, which has, by virtue of declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law.

(k) Infrastructure Cess, leviable under, which clause has, by sub-clause (1) of clause 159 of the Finance Bill, 2016 virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law.

7.3 Government observes that the purpose of levying SAD on an imported article is to counterbalance the local taxes that a like domestic article has to suffer. However, SAD is not covered under the list of duties under different enactments that are eligible for rebate provided in the Explanation in the Notification 21/2004-Central Excise (N.T.) dated 06-09-2004. The clause (i) of said Explanation covers the additional duty leviable under section 3 of the Customs Tariff Act, 1975 equivalent to the duty of excise specified under clauses (a),(b),(c),(d),(e) and (g). This entry cannot be construed to include SAD which is levied to counterbalance sales tax, VAT, local taxes etc. Therefore, the original authority had rightly deducted the SAD amount from the total amount of rebate claimed.

8. In view of the above discussions, Government upholds the Order-in-Appeal No. 85 to 87/2014(M-IV) dated 07.10.2014 passed by Commissioner (Appeals), Central Excise, Chennai and rejects the impugned revision application filed by the applicant.

9. The Revision Application is disposed of on the above terms.

Shrawan
24/3/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 317 - 319 /2022-CX (SZ)/ASRA/Mumbai dated 24-03-2022

To,
M/s. Maxwell Formulations,
No.10, GK Industrial Estate,
Arcot Road, Porur, Chennai - 600 116.

Copy to:

1. Commissioner of CGST, Chennai South,
5th Floor, 692, MHU Complex,
Anna Salai, Nandanam,
Chennai - 600 035.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.