SPEED POST
REGISTERED 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.198/14-16/19-RA | 4935 Date of issue: 03.08.23

ORDER NO.337-339/2023-CX (WZ)/ASRA/MUMBAI DATED 31.07.2023 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 : Pr. Commissioner of CGST & Central Excise, Daman.

Respondent : M/s. Chemsynth Innovations.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-003-APP-37 to 39/17-18 dated 15.06.2017, passed by the Commissioner, Appeals-III, Central Excise, Customs & Service Tax, Vadodara.

ORDER

These 3 Revision Applications along with application for condonation of delay have been filed by the Pr. Commissioner of CGST & Central Excise, Daman (here-in-after referred to as 'the Applicant Department') against the Order-in-Appeal No. VAD-EXCUS-003-APP-37 to 39/17-18 dated 15.06.2017 passed by the Commissioner (Appeals – III), Central Excise, Customs & Service Tax, Vadodara.

2. In the application for condonation of delay, the Applicant-Department has submitted that delay in filing the Revision Applications happened as initially the appeal was filed before Hon'ble CESTAT, Ahmedabad on the presumption that the activities carried out by the respondent does not amount to manufacture, being a question of law. But Hon'ble CESTAT vide Final Order No. A/12693/2018 dated 14.11.2018, dismissed the departmental appeal by holding that the issue involved in the present case is rebate in respect of export of goods under Rule 18 and as per Section 35B(1) of CEA, 1944, the Revenue's appeal is not maintainable. Therefore, the Revision Application was delayed by 35 days. The Government is condoning this delay and is taking up the matter for deciding on merits.

3. Brief facts of the case are that M/s. Chemsynth Innovations (hereinafter referred to as 'the respondent') had filed several rebate claims under Rule 18 of the Central Excise Rules, 2002. The adjudicating authority vide 3 orders-in-original (OIOs) sanctioned the rebate claims in respect of Polyester Popcorn/Condux/Granules (ch. 39269099) but rejected the rebate claims in respect of Polyester Waste (lumps) Ch.39159041, Polyester Waste (55051090) and Polyester waste Carded/Sliver (55051090) holding that several processes undertaken by the respondent on the raw materials do not amount to 'manufacture' under Section 2 (f) of the Central Excise Act, 1944. These products were, therefore, non-excisable. Hence, the payment of duty on export of the aforesaid goods by utilizing cenvat credit of duty paid on inputs was not proper and legal. Consequently, the respondent was not

eligible for rebate under Rule 18 of the Central Excise Rules, 2002. The details of OIOs are as under:

(Amount in Rs.)

| OIO No./date | Amount sanctioned/re-credit allowed | Amount rejected |
|---|---|---|
| AC/02/ADJ/2016-17 dated 24.05.2016 | 6,39,861/- | 19,44,585/- |
| AC/03/ADJ/2016-17 dated 06.06.2016 | - | 11,63,551/- |
| 159/AC/SLV-I/Reb/2016-17 dated 09.12.16 | - | 38,33,196/- |

Aggrieved, the respondent filed appeals, which were allowed vide the impugned OIA by the Appellate authority.

4.1 Hence, the Applicant-Department has filed the present Revision Applications mainly on the following grounds:

a) The Commissioner (Appeals) has erred in considering the process of carding amounting to manufacture and holding the goods i.e. polyester waste carded/ sliver as excisable product. The Commissioner (Appeals) erred in holding in para 10.4 of the OIA that the carded product is significantly different from the waste material in that it gets a different name, different character & different use;

b) However, as observed by the adjudicating authority in the OIO, the raw material used in the process is polyester yarn waste (CETSH 55062000/55051090). The polyester yarn is subjected to manual sorting by labourers. After that it is fed into the cutter machine for cutting. On this cutter machine, long fibre is cut into fibres of shorter length. The procedure again is repeated for further shortening of the fibre. Thereafter the shortened fibre is subjected to the opener machine wherein the fibre is opened and is separated into fine filaments. In short, they did a process of cutting the length of fibre and then short fibre is opened into filaments form again. Thus, polyester yarn (raw material) is cut and fibre is opened and get separated. The product emerging out of the above said process is also fibre filaments. No new product emerges, and therefore it appears to be covered under the criteria of the condition (ii) of Para 27 of the decision of Hon'ble Supreme Court in the case M/s. Servo-Med Industries Pvt. Ltd. Vs. CCE, Mumbai- 2015(319) ELT 578 (SC), wherein it was held that where the goods remain essentially the same

after the particular process, there can be no manufacture. Hence, in the instant case, as observed by the adjudicating authority, both the polyester yarn waste of staple fibre and polyester waste carded/ sliver are classified under CETH 55062000 and therefore there appears no difference in the raw material and the processed goods as held in the OIO. Therefore, the Commissioner (Appeals) has erred in treating the finished products i.e. polyester waste carded/ sliver as different product. The final product may be named differently and may also be used differently by since the goods remain essentially the same after the processing, the processing cannot be said to be manufacture and thus the observation of the Commissioner (Appeals) appears not correct;

c) In case of polyester waste (CETH 55051090), a simple process of cutting length of fibre is carried out. In other words, polyester yarn waste remains polyester yarn waste. The chemical examiner also considered it as yarn waste. Therefore, waste generated from waste cannot be treated as new product because the physical & chemical properties of the raw material as well as of the finished goods remain same. The above said process appears to be covered under the criteria laid down by Supreme Court in Para 27 (i) of the decision in the case of M/s. Servo-Med Industries Pvt. Ltd. (ibid) and not in Para 27(iv) as held by the Commissioner (Appeals);

d) Further, the OIO relied upon by the Commissioner (Appeals) in the instant case is not relevant as the raw materials on which the respondent starts their processes is a waste of polymer/ so called "residual waste", which remain exactly the same even after the processes admittedly taking place at the premise of the respondent and hence there is obviously no manufacture involved. By way of such processes the respondent is only removing foreign matter, i.e. unusable waste of polymer-from goods complete in themselves and/or processes which clean goods that are complete in themselves-i.e. usable polyester staple fibre;

e) The Commissioner (Appeals) has erred in holding at Para 12.2 of the OIA that the resultant product (smaller lumps) is different from the raw material (polyester waste lumps) as there is a physical change in the shape & quality of the big lumps. However, the above said process

of breaking/cutting bigger lumps into smaller falls under the criteria laid down by Supreme Court at Para 27(ii) of the decision in the case of M/S. Servo-Med Industries Pvt. Ltd. (ibid) and therefore, do not amount to manufacture as in the process there is no change in the chemical properties and the raw material & the finished product is essentially the same i.e. polyester wastes;

f) When the process carried out by the respondent for the above said products does not amount to manufacture then the respondent cannot avail the benefit of Cenvat Credit of the duty paid on inputs and also are not liable for payment of Central Excise duty on smaller lumps.

g) In terms of the provisions of Rule 3 of the Cenvat Credit Rules, 2004 the benefit of Cenvat Credit of duties/ Taxes paid on inputs/capital goods/ input services are available to be taken only if such inputs/ capital goods/ input services are used in or in relation to manufacture of the dutiable excisable goods. Since in the present case, such duty paid raw materials were not put to use in or in relation to the manufacturing process within the meaning of Section 2(f) of the Act, (ibid) the benefit of Cenvat Credit of duty paid on such inputs are not available to the respondent.

h) Once the Cenvat Credit availed by the respondent on the inputs used for their final non-excisable products is not legal & proper, the utilization of the same Cenvat Credit for payment of duty for the purpose of export under claim of rebate is not admissible.

i) The Commissioner (Appeals) has erred in not discussing the payment of duty on the exported goods from the wrongly availed Cenvat Credit by the respondent. When the duty paid on export under claim of rebate is not legal & proper, the Commissioner (Appeals) ought not have allowed the appeal of the respondent by holding that the rebate of duty on exported goods is allowed even if the finished exported goods is not excisable.

j) It is submitted that the appeal was filed before Hon'ble CESTAT, Ahmedabad on the presumption that the activities carried out by the respondent does not amount to manufacture, being a question of law. But Hon'ble CESTAT vide Final Order No. A/12693/2018 dated

14.11.2018, has dismissed the departmental appeal by holding that the issue involved in the present case is rebate in respect of export of goods under Rule 18. The impugned order was passed by the Commissioner (Appeals), therefore, as per Section 35B(1) of CEA, 1944, in case of rebate matter the Tribunal has no jurisdiction, therefore, the Revenue's appeal is not maintainable. Therefore, a Revision Application is filed.

In view of the above it was submitted that that the impugned Order-in-Appeal is not correct, legal and proper and needs to be set aside.

4.2 The Respondent in their written submissions has interalia submitted as under:

a) that regarding department's claim that process undertaken on export goods does not amount to manufacture, hence rebate claims liable to be rejected they have already made detailed submission before learned adjudicating authority and lower appellate authority and have nothing more to add.

b) that for the purpose of claiming a rebate for exports, there is no requirement that the activity or process carried out on export goods should amount to manufacture as defined under Section 2(f) of the Central Excise Act, 1944. This is because Rule 18 of the Central Excise Rules, 2002 (2017) does not restrict the rebate in cases where the process undertaken for the manufacture of export goods does not amount to manufacture.

c) that ongoing through the rule 18 it can be seen that the term used is material used in manufacturing or processing, which clearly shows that the law maker has cautiously used the word material and not the input and simultaneously used the word manufacturing or processing. This clearly shows that for claiming the rebate under rule 18 one has to check that – if there is export of goods, payment of duty and any material whether it falls under definition of input or otherwise, used in manufacture or processing whether it amount to manufacture or otherwise, then in such case the exporter is eligible to claim the rebate.

d) Therefore, in any case, they are entitled to a rebate of input stage duty in respect of Lumps used for manufacture of Lumps of smaller size and Polyester Filament Yarn Waste used for manufacture of Polyester fibres by the process of sorting and cutting, as Notification No. 21/2004- CE/N.T.), dated 06.09.2004 issued under Rule 18 of the Central Excise Rules allows rebate of duty paid on 'materials' used in manufacture or processing of export goods. As clarified in para 1.2 of para 1, Part-V. Chapter-8 of the C.B.E.C. Manual of Supplementary Instructions, 'export goods' refers to excisable goods (dutiable or exempted) as well as non-excisable goods. Thus, benefit of input stage duty can be claimed on export of all export goods, whether excisable or not, or whether the activity is simply a processing not amounting to manufacture such as sorting, packing etc. In support, they place reliance on the decision of Hon'ble Revisionary authority in case of AV Industries, 2011(269) ELT 122 (GOI), Bala Handloom Exports Co. Ltd. v. CCE (2008 (223) E.L.T. 100 (Trib.- Chen.)], wherein the Hon'ble Tribunal has held that refund of unutilised credit available under Rule 5 of Cenvat Credit Rules, 2004 shall be admissible even though the activity does not amount to manufacture for purpose of export, under Section 2(f) of Central Excise Act, 1944. The said decision was followed in the case of G.T. Exports versus CCE, Coimbatore-IV-2008 (230) ELT 428 (Tri. Chennai)., Ford India Pvt. Ltd. versus Assistant Commr. of C. Ex., Chennai-2011 (272) ELT 353 (Mad.) , and Punjab Stainless Steel Industries versus CCE, Delhi-1-2008 (226) ELT 587 (Tri. Del.)

e) that to deny the rebate claim to exporter, on the ground that the Process undertaken for manufacture of export goods does not amount to manufacture, therefore exporter is not entitled to avail the Cenvat Credit and not liable to pay the Excise duty on export goods, the department has to first challenge the availment of CENVAT Credit and payment of excise duty on export goods and assessment of export documents. Whereas in present case this was not done by the department. Therefore, at this stage department cannot deny the rebate claim.

f) that it is a settled legal position that taxes cannot be exported, as per the norms prescribed by the World Trade Organization, which specifically permits the remission of duties and taxes on exported products and if in any case the exporter is unable to get back the tax or duty paid on exports goods at the time of clearance from factory or warehouse, as the case may be, either by way of rebate in cash or re-credit back in CENVAT Credit account, then exporter would be compel to write-off this amount and pass on the burden of such amount to its foreign customers, which would lead to a situation of export of taxes, which is against the settled principle that taxes cannot be exported. This may be the reason that in cases where export goods cleared on payment of excise duty under claim for rebate and while sanctioning the rebate in cash, if the rebate sanctioning authority finds, any excess duty payment on export goods, then in such cases, the rebate claim of such excess payment was being rejected and the exporters were allowed to re-credit the amount of such excess duty payment in the manner it was initially paid.

g) Therefore, even otherwise, without admitting the liability, for sake of logic, if the refund is not sanctionable to appellant on ground of limitation, then also the exporter is eligible to re-credit such amount in their CENVAT Credit account, in the manner it was initially paid. However, after the introduction of GST w.e.f. from 01.07.2017, when the Cenvat Credit Rules, 2004 ceased to exist, the appellant was not in a position to re-credit such amount in CENVAT Credit Account. For such kind of situation, section 142 of CGST Act, 2017, speaks about the Transitional provisions and sub-section (3), (6)(a), (8)(b) & 9(b) of Section 142 of CGST Act, 2017 states that every claim of CENVAT Credit shall be disposed of in accordance with the existing law and any amount eventually accruing to claimant shall be paid in cash. In this regard the respondent relies on the judgment of Hon'ble High Court of Gujarat in case of Thermax Ltd. Vs. UOI, 2019 (31) G.S.T.L. 60 (Guj.)

5.1 Personal hearing in the matter was held on 23.02.2023. Shri Naresh Satwani, Consultant appeared online and reiterated earlier submissions. He submitted that manufacture is not a condition of export, even processing is sufficient. He further submitted that there is no doubt on export of duty paid goods. He further submitted that Order of Commissioner (A) is legal & proper. He requested to maintain it.

5.2 No representative from the side of the Applicant-Department appeared for the personal hearing nor has any written communication been received from them in the matter.

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

7. Government observes that the respondent is a manufacturer-exporter, who had filed 49 rebate claims totally amounting to Rs.75,81,193/- under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Out of the said 49 rebate claims, 46 rebate claims, totally amounting to Rs. 69,41,332/-, were rejected by the original authority observing that since polyester waste (lumps), polyester waste (POY) & polyester waste carded/sliver are not excisable goods therefore the Cenvat Credit taken on the inputs & utilization of the same for payment of duty for the purpose of export under claim of rebate is not admissible.

8. Government notes that the Commissioner (Appeals) has examined the issue at length, discussed the processes carried out by the respondent elaborately, and relying upon relevant case laws concluded that the activity carried out by the respondent would amount to manufacture. The relevant paras of the impugned Order-in-Appeal is reproduced below:-

*Carding of Polyester Waste*

*10.10. I also find that Govt. Of India in the case of British India Corporation Ltd.-1982 (10) ELT 686 (GOI), has held that Garnetting and Carding of wastes are liable for duty.*

*10.11. In view of my discussion and findings as above, I am of the opinion that carding transforms waste filaments into staple fibres which are different from filament waste in all aspects i.e. name, character or use. Therefore, the process of carding unambiguously amounts to manufacture under Section 2(t) and the resultant product is classifiable under CETH No. 5506, inadvertently mentioned by the Noticee as CETH No. 5505.*

*Polyester filament waste yarn*

*11.3 .....Thus, fibres obtained from waste are the result of a manufacturing process as envisaged under section 2(f) ibid and the criteria of condition (iv) in para 27 of the decision of the Hon'ble Supreme court in the case of ServoMed Industries Pvt. Ltd. vs. CCD, Mumbai-2015 (319) ELT 578 (S.C.) also. Consequently, cut fibres obtained from waste filaments are excisable goods.*

*11.4. I find that an identical issue has since been decided by the: Commissioner, Central Excise, Customs & Service Tax, Silvassa vide Order in Original No. SIL-EXCUS-000-COM-ooo-49-52-16-17 dated 28.11.2016, in the case of M/s. Sunshine Fibre Pvt. Ltd., Plot No. 444 1/6, Vill-Masat, Silvassa, holding that sorting/ segregation of waste amounts to manufacture. The relevant paras of the OIO are reproduced below:.....*

*Sorting of polyester waste (Lumps)*

*12.3. I further find that the department had samples of the product and the Chemical Examiner gave his report that it was other than articles of plastic of CETH 3926 & also did not fall under the category of waste/ scrap. It implies that after cutting & washing with soda and soda ash, lumps do not remain under the category of waste and these convert into a new product. Thus, the Chemical Examiner's test report also supports that the conversion of big lumps into small lumps is a result of manufacturing process as envisaged under Section 2(f) of the Central Excise Act, 1944.*

*12.4. I further find that the Hon'ble Tribunal in number of cases that process of Crushing of boulders (big size) into stones (smaller size) amounts to manufacture. Though the case laws are in respect of a different product but the ratio of the same is applicable to the present case of the appellant, as the nature of the product and the process undertaken in both the case is almost similar, i.e., conversion of larger shape into smaller one. The Appellant has relied upon following cases in their support:.....*

Government finds that the Commissioner (Appeals) has lucidly explained his findings based on the basis of evidence furnished by the respondent. The conclusion arrived at by the Commissioner (Appeals) based on these findings cannot be disputed. Government also finds that the applicant-

department have offered no comments on the case laws relied upon by the appellate authority.

9. As regards the contention of the applicant-department that *Once the Cenvat Credit availed by the respondent on the inputs used for their final non-excisable products is not legal & proper, the utilization of the same Cenvat Credit for payment of duty for the purpose of export under claim of rebate is not admissible,* Government observes that the respondent holds Central Excise registration for manufacture of excisable goods and are therefore eligible for availing Cenvat credit on the duty paid inputs used by them in the process of manufacture. If some Cenvat credit taken by the respondent appears ineligible, then appropriate steps to deny/recover the same after carrying out necessary investigation can be taken as provided in the law. However, for this reason rebate cannot be denied on the duty paid by the respondent while carrying out export under Rule 18 of Central Excise Rules,2002.

10. As regards the contention of the applicant-department that *The Commissioner (Appeals) has erred in not discussing the payment of duty on the exported goods from the wrongly availed Cenvat Credit by the respondent,* Government observes no facts have been brought on record to prove that the respondent had inadequate Cenvat credit balance after denying the alleged wrongly availed Cenvat credit.

11. In view of the discussions and findings recorded above, Government does not find any infirmity in the impugned Order-in-Appeal No. VAD-EXCUS-003-APP-37 to 39/17-18 dated 15.06.2017 passed by the Commissioner (Appeals-III), Central Excise, Customs & Service Tax, Vadodara and upholds the same. The subject Revision Applications are rejected.

Shrawan 31/7/23

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

ORDER No. 337-339/2023-CX (WZ) /ASRA/Mumbai dated 31 .07.2023

To,

The Principal Commissioner,
CGST & Central Excise, Daman,
3rd Floor, Adarshdham Building,
Vapi-Daman Road, Valsad, Gujarat – 396 191.

Copy to:

1. M/s. Chemsynth Innovations,
   Plot No. 57-B, Dan Udyog Sahakari Sangh Ltd.,
   Piparia Industrial Estate, Silvassa – 396 230.

2. Sr. P.S. to AS (RA), Mumbai.
3. Notice Board