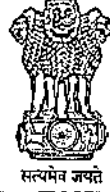


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/776/2012-RA / 4665

Date of Issue: 23/10/19

ORDER NO. 33/2019-CX (WZ)/ASRA/MUMBAI DATED 19.09.2019 OF
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

Applicant : M/s. Gitanjali Chemicals (P) Ltd.,

Respondent: Commissioner of Central Excise (Appeals), Mumbai-III

Subject : Revision Application filed, under section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal No.
US/96/RGD/2012-13 dated 24.04.2012 passed by the
Commissioner of Central Excise (Appeals), Mumbai-III.

ORDER

The Revision Application has been filed by M/s. Gitanjali Chemicals (P) Ltd., (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/96/RGD/2012-13 dated 24.04.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

Sl. No.	Rebate Claim No & Date	Amount claimed (Rs)	Order-in-Original & dt	Order-in-Appeal No. & dt	
1	29706 dt 28.03.2008	5,01,248	1598/10-11/DC(Rebate)/Raigad dt 14.01.2011 - Rejected	Appeal rejected	OIA No. BC/96//RGD /2012-13 dt 24.04.2012

2. The issue in brief is that the Applicant, manufacturer and exporter had filed rebate claim for Rs. 5,01,248/- (Rupees Five Lakh One Thousand, Two Hundred and Forty Eight Only) in terms of Rule 18 of the Central Excise Rules, 2002 (herein after 'CER'). The Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 1598/10-11/DC(Rebate)/Raigad dated 14.01.2011 rejected the rebate claim on the grounds that

- (i) tariff item mentioned in the Central Excise Invoice was not matching with that declared in the Shipping Bill;
- (ii) short shipment of export goods;
- (iii) difference in FOB value declared in two shipping bills and assessable value in Central Excise Invoice and ARE-I.

Aggrieved, the Applicant filed appeal with the Commissioner of Central Excise (Appeal), Mumbai-III who vide Order-in-Appeal No. BC/96//RGD/2012-13 dt 24.04.2012 rejected their appeal.

3. Being aggrieved, the Applicant has filed the instant Revision Application on the following grounds :

3.1 That incorrect classification in the Shipping Bill cannot be considered as ground for rejection of rebate claim. They had exported 2,4-Dichoro Meta Xylenol and classified the product under 29071400. However, the CHA while preparing the shipping bill classified the same under 29420090 and due to oversight, the same was not noticed by the Appellant. There was no dispute that the Appellant had exported 2,4-Dichoro Meta Xylenol. This fact is evident from description of goods given in Shipping Bills/ARE-1 and the same had been endorsed by the Custom Officer which is done only after verifying the goods mentioned i.e. 2,4-Dichoro Meta Xylenol are exported by the Appellant on paying correct duty. The incorrect classification code mentioned in the Shipping Bill is merely a clerical error. The difference is merely in sub-heading & not in the main chapter heading i.e. Chapter 29. The same is a procedural lapse, since there is no dispute that the goods in question are manufactured and exported on payment of correct duty, the rebate claim should not be denied merely due to procedural lapse of incorrect classification given in the Shipping Bill. In this they relied on case of Cotfab Exports [2006 (205) ELT 1027 (GOI)] which is exactly similar to their case.

3.2 the Appellant submitted legible copy of Invoice No. 64 dated 26.11.2007 and ARE-1 No. 64 dated 26.11.2007 where it will be evident that the description of goods given in page 2 of the Shipping Bills is '2,4-Dichoro Meta Xylenol' which is same description indicated in the Invoice. Further, the chapter heading in excise invoice is 29071400 whereas chapter heading mentioned in the Shipping Bill is 29420090. Thus there is difference in the chapter heading in sub-heading and not in the main chapter

heading i.e. Chapter 29. Further the tariff rate of duty on the both chapter heading i.e. 29071400 & 29420090 is same i.e. 16%. Thus there is no revenue implication. The Commissioner (Appeals) has neither sought any clarifications from the Appellants nor have issued deficient memo indicating that the said invoice copy was not legible. In this they relied on the case of Pradip Dad Vs Commissioner of Customs(Prev.), Kolkata 2009 (238) ELT 627 (Tri - Kolkata)

3.3 that there was no short shipment of export goods mentioned in the ARE-1 and Shipping Bills and refund claim should be granted.

(a) Shipment of 180 drums-

The order placed by M/s Ascot International (1996) Ltd., were of 270 drums of 50 kgs totaling to 13500 kgs of Dichloro Meta Xylenol. The said quantity was removed from the factory vide Tax Invoice No. 64 dated 26.11.2007 and ARE-1 No. 64 dated 26.11.2007. They then filed the Shipping Bill No. 5782512 dated 24.11.2007 for total quantity of 270 drums. However at the time of stuffing only 180 drums i.e. 9000 kgs of product were stuffed resulting into short stuffing of 90 drums and they received a letter certifying the above facts from Customs. Accordingly, they received a short shipment Shipping Bill No. 5782512 dated 24.11.2007 for 90 drums. They then received Bill of Lading No. IGLL711246JNFLX which indicated that 180 kgs of product loaded on the ship and bears Shipping Bill No. 5782512 dated 24.11.2007. The Appellant had issued invoice GCPL/JAL/EXP/62/2007-08 dated 14.11.2007 for 180 drums i.e. 9000 kgs of GBP 25,200/- and the said amount was realized vide FIRC ISB/S108/133228 dated

05.03.2008. Thus it is evident that the Appellant had exported 180 drums of product.

(b) Shipment of 90 drums -

Subsequently for the export of balance 90 drums i.e. 4500 Kgs of product, the Appellant filled Shipping Bill No. 5855266 dated 18.12.2007 indicating ARE-1 No. 64 dated 26.11.2007 and received the Bill of Lading NO. IGLL711248JNFLX. The Appellant then issued invoice No. GCPL/JAL/EXP/77/2007-08 dated 13.12.2007 for 90 drums i.e. 4500 Kgs of GBP 12,600/- and the said amount was realized vide FIRC 7X0802M00801232 dated 02.04.2008. Thus it is evident that the Appellant had exported 90 drums of product.

Thus it was evident that the Appellant had exported the entire 270 drums i.e. 13500 Kgs of the product indicated in the ARE-1 No. 64 dated 26.11.2007 and that there was no short shipment of the products by them.

- 3.4 that the Commissioner(Appeal) in Para 8 of the impugned order had observed that the Appellant had submitted two Shipping Bills - one Shipping Bill No. 5782512 dated 24.11.2007 for a quantity of 180 packages and another Shipping Bill No. 5855266 dated 18.12.2007. The Appellants subsequently exported remaining drums of 90 but the proof attached was only for 10 packages and no proof was submitted for the remaining 80 packages. In this regard the Appellant submitted that total quantity of goods exported was 13,500/-kgs. Out of this 9000 kgs were exported vide Shipping Bill No. 5782512 dated 24.11.2007 wherein the net weight of 9000 is indicated in the Shipping Bill. The balance 4500 kgs were exported vide Shipping Bill No. 5855266 dated

18.12.2007 and the net weight of 4500 kgs is indicated in the Shipping Bill. The reason that the Shipping Bill No. 5855266 dated 18.12.2007 indicated total No. of packages as 10 due to the reason that the total quantity of 4500 kgs was packed into 90 drums (packages) which were further divided into 10 pallets. At the time of feeding data in the column of total packages of the shipping bill, due to clerical mistake the packages were mentioned 10, which were pallets, instead of 90 drums. Thus they submitted that the packing list and quantity mentioned in shipping bill is substantiating that difference in packages are merely due to clerical mistake. Hence, they requested to condone the procedural lapse.

- 3.5 that in respect of difference in FOB value declared in Shipping Bills & Assessable value in Central Excise Invoice the Appellant submitted that the FOB value declared in Shipping Bill No. 5782512 dated 24.11.2007 for export of 9,000kgs was declared as GBP 12,600 instead of GBP 25,200/-. Thus the FOB value declared in the said shipping bill was incorrect. The correct to be declared in the shipping bill shall be GBP 25,200/- which can be substantiated by the fact that the Invoice No. GCPL/JAL/EXP/62/2007-08 dated 14.11.2007 for 180 drums i.e. 9000 kgs was issued for GBP 25,200 wherein Shipping Bill No. 5782512 dated 24.11.2007 is indicated. Further they have also received FIRC ISB/S108/133228 dated 05.03.2008 confirming the receipt of GBP 25,200. A statement showing difference between the value declared in ARE-1 and FOB value is as follows :

Sl.No.	Shipping No. & date	FOB Value declared
1	S/B No. 5782512 dated 24.11.2007	12,600
2	Add: GBP 12,600 (incorrect value declared)	12,600
3	Total rectified FOB value	25,200
4	FOB value in INR (Customs Rate Re.1 = GBP 80.300)	2,023,560
5	S/B No. 5855266 dated 18.12.2007	12,600
6	FOB value in INR (Customs Rate Re.1 = GBP 81.050)	1,021,230
7	Total FOB value for goods exported under ARE-1 dated 26.11.2007 (Sl.No. 4 + 6)	3,044,790
8	Value declared in ARE-1 No. 64 dated 26.11.2007	3,041,550
9	Excess value shown in FOB value (Sl.No. 7-8)	3,240

It will be evident from the above that after taking into consideration, the facts mentioned above, the total FOB value amount to Rs. 3,044,790/- whereas the ARE-1 value comes to Rs. 3,041,550/- Thus it will be evident that the Appellant had not shown excess value in ARE-1. In view of the above, it will be evident that the findings may be the Assistant Commissioner that difference of Rs. 10,23,761 (ARE 1 Value Rs. 3,041,550/- FOB value Rs. 2,017,789/-) is completely erroneous and hence requested that the said order be set aside and refund of Rs. 5,01,248/- be granted to the Appellant.

- 3.6 That the Appellant applied for the amendment in the Shipping Bill No. 5782512 dated 24.11.2007 for rectifying the incorrect detailed feed at the time of the preparing the shipping bill in respect of incorrect FOB value and incorrect quantity indicated in page 2 & 3 of the shipping bill. In response to the said application, a Certificate of amendment bearing F.No. S/6-ARSB-35/09 Exp

dated 15.01.2009 was issued by the Assistant Commissioner of Customs, JNPT amends Shipping Bill No. 5782512 dated 24.11.2007.

Sl.No.	Amendment in	From	To
1	Export quantity (page No. 2 & 3 of shipping bill)	4500 Kgs	9000 Kgs
2	Amount	GBP 12,600.00	GBP 25,200.00
3	FOB Value	INR 10,11,780.00	INR 20,23,560.00

In view of the above, the incorrect details in the Shipping Bill No. 5782512 dated 24.11.2007 stands rectified. Thus the said allegation against does not survive against the Appellant.

3.7 that the Commissioner(Appeals) in Para 9 of the impugned order had held that since the basic documents i.e. Excise invoice & ARE-1 are legible no discussion can be made on the same. The Appellant has submitted legible copies of the Excise Invoice No. 64 date 26.11.2007 and ARE-1 64 dated 26.11.2007 and the explanations in details have been submitted in above paras. In view of the above, the Appellant submitted that they are eligible for the rebate claim.

3.8 That in the core aspect in determination of rebate claim is the fact of manufacture and payment of duty thereon and its subsequent, then if this fundamental requirement is met, other attendant procedural requirement can be condoned. In this they relied on few case laws. Hence they requested that the rebate claim filed by the Appellant be allowed.

4 A personal hearing in this was held on 20.08.2019 which was attended by Shri Pawan Deora, Exim Manager and Shri Sudhir Bhanushali, Export

Manager, on behalf of the Applicants. The Applicants reiterated the written submissions.

5. 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.

6. On perusal of records, the Government observes that the Applicant had exported 2,4 Dichloro Meta Xyleno classified under product C.H. 29071400 under ARE-1 No. 64 dated 26.11.2007 and Invoice No. 64 dated 26.22.2007 and had filed rebate claim under the provisions of Rule 18 of Central Excise Rules, 2002. The said rebate claim was rejected by the Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 1598/10-11/DC(Rebate)/Raigad dated 14.01.2011 and also by the Commissioner of Central Excise (Appeals), Mumbai-III Order-in-Appeal No. US/96/RGD/2012-13 dated 24.04.2012 on the following grounds :

- (i) that the Tax Invoice No. 64 was utterly illegible copy;
- (ii) that tariff item mentioned in the Central Excise Invoice was not matching with that declared in the Shipping Bill;
- (iii) short shipment of export goods;
- (iv) difference in FOB value declared in two shipping bills and assessable value in Central Excise Invoice and ARE-I.

7. Regarding the maintainability grounds of the rebate claim on different points, the same are taken up point wise :

7.1 The Tax Invoice No. 64 was utterly illegible copy :-

Government finds that the Appellant in their Revision Application has submitted legible copy of the Excise Invoice No. 64 dated 26.11.2017 and ARE-1 No. 64 dated 26.11.2017.

7.2. Tariff item mentioned in the Central Excise Invoice was not matching with that declared in the Shipping Bill : -

Government observes that the Appellant had exported 2,4-Dichoro Meta Xylenol and classified the product under C.H. 29071400 in their Excise Invoice No. 64 dated 26.22.2017. However in their Shipping Bills Nos. 5782512 dated 24.11.2007 and 5855266 dated 18.12.2007 the product are shown as under C.H. 29420090. In this the Appellant submitted that their CHA while preparing the shipping bill classified the same under 29420090 and due to oversight, the same was not noticed by the Appellant. Further, there was no dispute that they had exported 2,4-Dichoro Meta Xylenol and this fact is evident from description of goods given in Shipping Bills/ARE-1 and the same had been endorsed by the Custom Officer which is done only after verifying the goods mentioned i.e. 2,4-Dichoro Meta Xylenol are exported by the Appellant on paying correct duty. Government finds that the incorrect classification code mentioned in the Shipping Bills are a clerical error in sub-heading & not in the main chapter heading i.e. Chapter 29. There is no dispute that the goods in question are manufactured and exported on payment of correct duty, the rebate claim should not be denied merely due to procedural lapse of incorrect classification given in the Shipping Bill.

7.3 Short shipment of export goods:-

Government observes that the Appellant had export 13,500 kgs (270 drums) of the product, GBP 37800 i.e. Rs. 30,41,500/- and cleared the same under ARE-1 No. 64 dated 26.11.2007 and Central Excise Invoice No. 64 dated 26.11.2007 on payment of duty of Rs. 5,01,248/- after which they filed Shipping Bills No. 5782512 dated 24.11.2007. However at the time of stuffing only 9000 kgs (180 drums) of the product valued at GBP 25200 were stuffed resulting into short stuffing of 90 drums. The shortage was certified by the Customs and also the Bill of Lading No. IGLL711246JNFLX after which the Appellant also realized the

amount of GBP 25200 vide FIRC dated 08.01.2008. Subsequently for the export of balance 4500 kgs (90 drums), the Appellant then filed Shipping Bill No 5855266 dated 18.12.2007 value GBP 12600 and was issued Bill of Lading No. IGLL711248JNFLX. They realized the amount vide FIRC dated 11.02.2008.

Sr. No.	ARE-1 No & Dt	Quantity (Kgs)	Quantity (drums)	S/B. No. & dt	B/L No	Invoice No. & dt	Invoice Value (GBP)	FIRC No & Dt
1	64 dt 26.11.2007	9000	180	5782512 dt. 24.11.2007	IGLL7112 46JNFLX	GCPL/JA L/EXP/62 /2007-08 dt 14.11.07	25,200	FIRC ISB/S108/ 133228 dated 05.03.08.
2		4500	90	5855266 dt. 18.12.2007	IGLL7112 48JNFLX	GCPL/JA L/EXP/77 /2007-08 dt. 13.12.07	12,600	FIRC 7X0802M0 0801232 dated 02.04.08
	Total	13500	270					

Further Government observes that the Commissioner(Appeal) in Para 8 of the impugned order had observed that

"8.....I have perused the records and documents submitted by the appellants. The appellants have submitted two Shipping Bills. One Shipping Bills No. 5782512 dated 24.11.2007 for a quantity of 180 packages and another Shipping Bill No. 5855266 dated 18.12.2007 for packages of 10. The appellants have submitted that they have subsequently exported remaining drums of 90 but the proof attached is only for 10 packages. No proof is submitted for the remaining 80 packages. It is the appellants who are claiming the benefit of rebate and it is for the appellants to submitted necessary documents. Failing which, the appeal cannot succeed."

In this the Appellant submitted that 4500 kgs were exported vide Shipping Bill No. 5855266 dated 18.12.2007 and the net weight of 4500 kgs is indicated in the Shipping Bill. The Shipping Bill No. 5855266 dated 18.12.2007 indicated total No. of packages as 10

due to the reason that the total quantity of 4500 kgs was packed into 90 drums (packages) which were further divided into 10 pallets. However, inadvertently the Shipping Bill mentioned 10 packages which were actually pallets, instead of 90 drums. They have submitted that the packing list and quantity mentioned in shipping bill substantiates the same. Hence, they requested to condone the procedural lapse. Government finds that in the Shipping Bill No. 5855266 dated 18.12.2007, the details are shows as "Total Pkgs: 10" and "Net Wt(KGS) : 4500.000". However, in the Bill of Lading No. IGLL711248JNFLX it is clearly shown as "TEN PALLETS ONLY (90 DRUMS STC 10 PALLETS)" and "Net Wt/KGS 4,500.000". The clerical mistake made in respect of numbers of the pkgs in the Shipping Bill can be condoned as in the Bill of Lading the total numbers of drums is 90 which is correctly shown. Hence the clerical mistake is condoned as procedural lapse. Further, the Government finds that it is evident that the Appellant had exported the entire quantity of 13,500kgs (270 drums) = 9000kgs (180 drums) + 4500 kgs (90 drums) indicated in the ARE-1 No. 64 dated 26.11.2007 and Invoice No. 64 dated 26.11.2007. Further, the Appellant has also realized the amount of GBP 37800= GBP 25200 vide FIRC dated 08.01.2008 + GBP 12600 vide FIRC dated 11.02.2008. Hence, there was no short shipment of the products by the Appellant.

- 7.4 Difference in FOB value declared in two shipping bills and assessable value in Central Excise Invoice and ARE-I – Government observes that the Deputy Commissioner in his findings have stated that “

“I find that the clarification furnished by the claimant is not substantiated & far from satisfactory. If there are any clerical error, the same should have been rectified subsequently by approaching

the Customs Authorities. However, no such amendment have been obtained by them till date nor any efforts appear to have been made by them in this regards. Now submission of BRC will not suffice. It is to be noted that the Assessable Value is Rs. 30,41,550/- whereas together FOB value in two shipping Bills is Rs. 20,17,789. It therefore appears that the difference could be due to short shipment or some other reason. Hence I am not inclined to accept the clarification of the claimant."

Government finds that in Shipping Bill No. 5782512 dated 24.11.2007 in respect of incorrect FOB value and incorrect quantity indicated in page No. 2 & 3 of said shipping bill, the Assistant Commissioner of Customs, JNPT vide F.No. S/6-ARSB-35/09 Exp Punjab Conware/EXP CFS dated 15.01.2009 had issued Shipment Certificate /Certificate of Amendment as follow :

Sr.No.	Amendment in	From	To
1	Export quantity	4500 Kgs	9000 Kgs
	Amount	GBP 12600.00	GBP 25200.00
	FOB Value	INR 1011780.00	INR 2023560.00
	Adv.LIC.Import Qty	1. 3735.00 KGS 2. 1372.50 KGS	74700 KGS 2745.00 KGS


Hence Government finds that the FOB value and quantity has been amended.

8. In view of the foregoing, the Government holds that detail verification of the rebate claim by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoices and ARE 1 as produced by the appellants has to be taken into consideration. The Applicant is also directed to submit their relevant records/documents to the original authority in this regard for verification.

9. In view of the above, Government set aside the impugned Order-in-Appeal No. US/96/RGD/2012-13 dated 24.04.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III and remands back the instant case to the original authority who shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity to the Appellant within eight weeks from receipt of this order.

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

12. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 33/2019-CX (WZ)/ASRA/Mumbai DATED 19.09.2019.

To,
M/s. Gitanjali Chemicals (P) Ltd.,
26/28-A, Cawasji Patel Street,
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Copy to:

1. The Commissioner, Central Goods & ST, Belapur, 1st floor, CGO Complex, Sector 10, CBD Belapur, Navi Mumbai 4400 614.
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