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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.198/07/2013-RA
F.No.198/16/2013-RA

2352

Date of Issue: 12.12.2018

ORDER NO. 411-412 /2018-CX (WZ)/ASRA/MUMBAI DATED 30.11.2018 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE
ACT, 1944.

Applicant : Commissioner, Central Excise, Raigad.

Respondent : M/s Sonal Impex Ltd.

Subject : Two Revision Applications filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal Nos.
US/659-660/RGD/2012 dated 15.10.2012 and
US/861/RGD/2012 dated 10.12.2012 both passed by
the Commissioner(Appeals-II), Central Excise, Mumbai.



ORDER

These two Revision Applications have been filed by the Commissioner, Central Excise, Raigad (hereinafter referred to as "the applicant") against the two Orders-in-Appeal Nos. US/659-660/RGD/2012 dated 15.10.2012 and US/861/RGD/2012 dated 10.12.2012, both passed by the Commissioner(Appeals-II), Central Excise, Mumbai. wherein he rejected both the appeals filed by Department.

2. The issue in brief is that the M/s Sonal Impex Ltd, Merchant Exporter, had filed Rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Deputy Commissioner(Rebate), Central Excise, Raigad Commissionerate sanctioned the rebate claims. Aggrieved, the Department then filed appeals with the Commissioner(Appeals), who upheld the impugned Orders-in-Original. The details are as below

Sl. No	OIO No. & date	OIA No. date	Total amount of Rebate claimed (Rs.)
1	1041/11-12/DC(Rebate)/Raigad dt 21.10.2011 Sanctioned	US/659-660/RGD/2012 dated 15.10.2012	10,85,398
	1490/11-12/DC(Rebate)/Raigad dt 15.12.2011 Sanctioned		9,62,752
2	2418/11-12/DC(Rebate)/Raigad dt 14.03.2012 Sanctioned	US/861/RGD/2012 dated 10.12.2012 Rejected Deptt.'s Appeal	4,06,637

3. Being aggrieved, the Applicant filed these Revision Applications on the following grounds:



- 3.1 The rate of duty on the exported goods was covered by the Notifications No. 29/2004-CE and 30/2004-CE both dated 9.7.2004. Notification No. 30/2004-CE dated 9.7.2004 fully exempted the goods in respect of which credit of duty had not been taken under the provisions of Cenvat credit Rules, 2002. Under Section 5(1A) of the Central Excise Act 1944, the exemption was compulsory and the Respondent could not have paid the duty at the time of clearance of the goods exported.
- 3.2 The Commissioner(Appeals) erred in not taking note that the goods exported were manufactured by the M/s Sonal Adhesives Ltd. On verification of the records maintained by M/s Sonal Adhesives Ltd., the Range Superintendent had reported that they had received and used duty free imported P.P. Granules for subject export of Twine/Ropes under Advance License Scheme.
- 3.3 In a similar case against M/s Tutropes Pvt Ltd. the same Hon'ble Commissioner(Appeals) had passed Order-in-Appeal No. US/71-73/RGD/2012 dated 09.02.2012 and held that if the claimant had exported the goods against Advance License Scheme, they could not have availed Cenvat credit on inputs. He discussed the Notification No. 93/2004-CUS, Para 4.1.3 of the FTP and Para 4.4.7 of the FTP 2004-2009. Commissioner(Appeals) has taken into consideration the Para 4.4.7 of the Foreign Trade Policy 2004-2009 which states that

“ No CENVAT credit facility shall be available for inputs either imported or procured indigenously against the authorization.”

This condition is squarely applicable in the instant case and the Respondent was not entitled to avail the Cenvat credit on Additives and P.P. Bags which are also inputs but in negligible quantity. However, the Commissione(Appeals) erred in holding that if credit on any input, in whatever quantity, used in the manufacture of goods is taken, the manufacturer cannot claim exemption under Notification No. 30/2004-CE dated 9.7.2004. Since the main raw material were



procured duty free under Advance License Scheme and Cenvat credit was not admissible on othe inputs procured indigenously, the Respondent should have availed Notification No. 30/2004-CE and thereby they are not entitled for rebate of duty, they have paid at their own without any authority. Thus, it appears tha the Commissioner(Appeals)is not consistent with his earlier decision in a similar cases. In the instant case he has taken a different stand and decided the matter against the Revenue without taking into consideration that the Cenvat credit availed on inputs other than main raw material (which was imported under Advance License Scheme), is just an excuse for having availed the Notification No. 29/2004-CE dated 9.7.2004.

3.4 Prayed that the Orders-in-Appeal and Orders-in Original all be set aside.

4. The Respondent then filed Cross Objections on the following grounds:

4.1 The present Revision Application is entirely mis-conceived as none of the grounds stated are sustainable, being the result of complete misconception of the department.

4.2 The Commissioner(Appeals) had also observed in the first para of the impugned order that even in the appeal filed by the department, also it was stated that the Respondents were taking Cenvat credit on small quantities of inputs viz. Additives and PP bags. Further, he has also noted that the agreed position was that the Respondents were taking Cenvat credit on Additives and PP bags which are also inputs. The aforesaid finding on facts is nowhere disputed by the Applicant in the present Revision Application and therefore on this ground alone the order impugned deserves to be upheld by rejecting the Revision Application.

4.3 In the Revision application and more particularly in the later part of Para 6.3 thereof, the Department has accepted that Cenvat credit was



availed on inputs other than the main raw material. The department failed to appreciate that the Respondents could not have taken Cenvat credit on the main raw material i.e. PP granules which were imported free of duty without payment duty and therefore question of availing Cenvat credit on the PP granules did not arise.

- 4.4 The grounds urged in Para 6.3 of the Revision application that the Commissioner(Appeals) in the case of M/s Tufropes Pvt. Ltd., had taken a contrary decision is entirely irrelevant inasmuch as in the present case, even Department does not dispute the fact that Cenvat credit was availed by the Respondent on their inputs, other than the principal inputs. The Department failed to appreciate that Notification No. 30/2004-CE dated 9.7.2004 is a conditional Notification inasmuch as in the proviso to the main Para granting exemption, it has been stipulated that nothing contained in the Notification shall apply to the goods in respect of which credit of duty on inputs has been taken. The Department has not offered any reason as to why the said proviso would not come in the way of the Respondents to avail the exemption. Therefore on this ground also the present appeal is liable to be dismissed.

- 4.5 The first ground urged in the present Revision Application based on the provisions contained in Section 5A(1A) is also not sustainable and is the result of mis-interpretation of the said statutory provision which reads as under :

"5A(1A) for the removal of doubts, it is hereby declared that where unambiguously evident that a manufacturer is obliged to not pay the duty of excise on such goods".

From the plain reading of the aforesaid statutory provisions, it is granted absolutely the manufacturer of such excisable goods shall from the whole of the duty of excise leviable thereof has been an exemption under sub section 1 in respect of any excisable goods compulsorily avail an exemption only when such exemption has been granted absolutely and not in any other case. In the present case from



the proviso to Notification No. 30/2004-CE, it is unambiguously clear that the exemption is not absolute, on the contrary it is unambiguously evident that the same is conditional, condition that the manufacturer shall not avail Cenvat credit on inputs, which has not been fulfilled by the Respondents in the present case. The Respondent is therefore not eligible for availing any benefit of Notification No. 30/2004 and consequently Section 5A (1A) of the Central Excise Act, 1944 has no application whatsoever to the facts of the present case.

- 4.6 The grounds urged in Para 6.3 of the present Revision Application in respect of order passed by the Commissioner(Appeals) in the case of M/s Tufropes Pvt. Ltd., they submitted that the same cannot be cited as a ground to hold that the impugned order passed by the Commissioner (Appeals) is incorrect. The facts in the aforesaid case are different as would be evident from the order passed by the Commissioner (Appeals) in the said case Therefore the aforesaid order whether legal or illegal, proper or improper can not be cited as a ground to set aside the just and proper order passed by the Commissioner (Appeals) in the Respondent's case.
- 4.7 The Commissioner(Appeals) in the impugned order had relied on the Tribunal's decision in the case of Cheviot Co. Ltd., Vs. CCE, Kolkata-VII [2010 (255) E.L.T. 139 (Tri.- Kolkata)], wherein it was held that benefits of Exemption Notification would not be available to an assessee even if he has taken credit of only Education Cess which is only 2%. In the said decision it was also held that Appellants having taken credit on one of the duties of excise under the Cenvat Credit Rules, has violated the condition of Notification and therefore not entitled to the benefits of the Notification. Respondents submitted that the aforesaid ratio laid down by the Hon'ble Tribunal on which reliance has been placed by the Commissioner(Appeals) clinches the issue in favour of the Respondent and therefore the present Revision



Application is liable to be rejected. The Department in their Revision Application has not stated as to how the said order of the Tribunal is not applicable to the facts of the present case.

- 4.8 In previous similar Order-in-Appeal, in Appellant's own case passed by the Commissioner(Appeals) Order-in-Appeal No. US/155-157/RGD/2012 dated 29.02.2012 was reviewed by a Committee of Commissioners and the said Committee of Commissioners had accepted the said Order-in-Appeal vide Review vide F. No. V2(27)199/REB/RGD/11-12/5731 dated 21.05.2012 to which a reference has been made in Para 4 of the Order-in-Original dated 23.05.2012 passed by the Addl. Commissioner of Central Excise, Raigad while sanctioning one of the rebate claims to the Respondents.
- 4.9 In the present appeal, the Department challenges the impugned Order-in-Appeal dated 10.12.2012 on the ground that the rebate sanctioned to the Respondents could not have been sanctioned under Rule 18 of the Central Excise Rules inasmuch as the Central Excise duty paid on the finished goods by the manufacturer, M/s. Sonal Adhesives Ltd., cannot be considered to be payment of excise duty as the said goods were wholly exempted from the payment of Excise duty vide Notification No. 30/2004-CE. The Respondents submitted that the correctness or otherwise of payment of Central Excise duty by the said supporting manufacturer M/s. Sonal Adhesives Ltd., cannot be called in question in the present revision application, who are an entirely different entity than the supporting manufacturer, M/s. Sonar Adhesives Ltd.
- 4.10 There is no legal provision in the Central Excise law requiring an assessee to compulsorily avail exemption from payment of Excise duty which is provided in a Conditional Exemption Notification. The exemption notification in question, viz. Notification No.30/2004-CE being a conditional exemption notification, the contention in the revision application that the goods are wholly exempted from payment



of Excise duty and therefore the payment made by the assessee cannot be considered to be Excise duty is not tenable in law. In this they relied on the decisions of the Hon'ble Tribunal in the case of HMM Coaches Ltd., Vs. CCE, Panchakula [2008 (231) ELT 506 (T)] and also in the case of CCE Jaipur Vs. Capital Impex [2010(261) E.L.T.844 (T)].

4.11 They prayed that the Revision Applications may please be dismissed as not sustainable in law with consequential relief to them.

5. A personal hearing in the case was held which was on 28.02.2018 which was attended by Shri Stebin Mathew, Advocate on behalf of the Respondent. Since the Applicant was not present, in the interest of justice another opportunity of personal hearing was given. However, on the date of hearing, only the Respondent was present and no one from the Applicant's side attended. The Advocate for the Respondent reiterated the submission in cross objections and Orders-in-Appeal along with case law 2014 (314) ELT 890 (GOI). Hence it was pleased the Order-in-Appeal be upheld and Revision Applications be dismissed.

6. 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.

7. On perusal of records, Government observes that Respondents are engaged in the export of various types of goods such as HDPE Ropes/Twines, PP Ropes/Twines. The goods exported by them are excisable goods which was manufactured by M/s Sonal Adhesives Ltd., M/s Sonal Adhesives Ltd are registered with Central Excise and avails Cenvat credit of Central Excise duty/CVD paid on the indigenous/ imported inputs used in their manufacture of their final product. They have availed Cenvat credit of duty paid on HDPE/PP granules whenever such inputs are procured on payment of excise duty. During the relevant period, the Respondent exported consignments impugned goods i.e. PP ropes/twines which were manufactured and cleared from M/s Sonal Adhesives Ltd. on payment



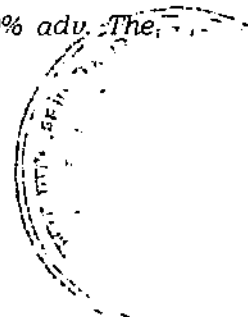
of duty under the cover of their Central Excise invoices as well as ARE-1 forms. They then filed the Rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The Deputy Commissioner(Rebate), Central Excise, Raigad Commissionerate sanctioned the rebate claims. Aggrieved, the Department then filed appeals with the Commissioner(Appeals) as it appeared that export goods were manufactured out of duty free imported input and that the said goods were exempted from payment of Excise duty vide Notification No. 30/2004-CE dated 09.07.2004. Since the goods exported were wholly exempted from payment of Central Excise dut, the payment made by the Respondent cannot be considered to be payment of Central Excise duty and consequently rebate of such amount cannot be sanctioned I terms of Rule 18 of the Central Excise Rules, 2002. However the Commissioner(Appeals) rejected the Departmental appeal and upheld the impugned Orders-in-Original.

8. Governments notes that the issue involved in both the revision applications is same :

- (i) Whether the exported goods were exempted under Notification No. 30/2004-CE dated 09.07.2004 or were chargeable to duty under Notification No. 29/2004-CE dated 09/07/2004;
- (ii) Whether the rebate claimed by them was admissible.

9. Government observes that on verification of duty payments made by M/s Sonal Adhesives Ltd., manufacturer of the impugned goods, the Superintendent, Central Excise, Range I, Division Khopoli, Raigad vide his letter dated 26.05.2011 informed that –

- (i) *M/s Sonal Adhesives Ltd are availing Cenvat credit facility on duty paid inputs whenever received from cenvatable documents;*
- (ii) *They are not clearing any goods for home consumption at NIL rate of duty under Notification No. 30/2004-CE dated 09.07.2004, and no separate account is maintained for goods cleared for export;*
- (iii) *They are paying duty on export items viz Twine ropes made of PP which are classified Central Excise Tarrif No. 56074900 at the rate of 10% adv. The,*



Notification No. 29/2004-CE dated 09.07.2004 does not appear to be applicable to the above said goods. The same also has been confirmed over telephone.

10. Government notes that Notification No. 30/2004-CE dated 09.07.2004 is a conditional notification -

"G.S.R. (E) In exercise.....,..... from the whole of duty of excisable leviable thereon under the said Central Excise Act :

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules."

11. Government notes that Section 5A(1A)

"Section 5A. Power to grant exemption from duty of excise. .

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured -

(i) in a free trade zone or a special economic zone and brought to any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and brought to any place in India.

Explanation. - In this proviso, "free trade zone", "special economic zone" and "hundred per cent export-oriented undertaking" shall have the same meanings as in Explanation 2 to sub-section (1) of section 3.

(1A) For the removal of doubts, it is hereby declared that where an exemption



under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

Here it is evident that a manufacturer is obliged to compulsorily avail an exemption only when such exemption has been granted absolutely and not in any other case.

12. Government notes that from the proviso to Notification No. 30/2004-CE dated 09.07.2004, it is clear that the exemption is not absolute, but conditional i.e. the manufacture shall not avail Cenvat credit on inputs, wherein the present case M/s Sonal Adhesives Ltd., manufacturer has availed Cenvat credit on inputs used in the manufacture of exported goods as declared and had cleared the goods on payment of duty which was verified by the jurisdictional Superintendent -

- (i) *M/s Sonal Adhesives Ltd are availing Cenvat credit facility on duty paid inputs whenever received from cenvatable documents;*
- (ii)
- iii) *They are paying duty on export items viz Twine ropes made of PP which are classified Central Excise Tarrif No. 56074900 at the rate of 10% adv. The Notification No. 29/2004-CE dated 09.07.2004 does not appear to be applicable to the above said goods. The same also has been confirmed over telephone"*

Hence, when the condition of the Notification was not satisfied, there was no way they could have availed Notification No. 30/2004-CE dated 09.07.2004 and consequently Section 5A(1A) of the Central Excise Act, 1944, has no application whatsoever to the facts of the present case. In view of above, Therefore, Government finds that the Respondent exporter herein is eligible for rebate in the manner it was granted by the original rebate sanctioning authorities.

13. Government notes that that the similar issue involved in the current Revision Applications has already been dealt by the Joint Secretary (Revision Application), vide Order No. 1755-1756/2012-CX dated 18.12.2012 [2014 (314) ELT 890(GOI)]



13. In view of the above, Government upholds the impugned Orders-in-Appeal Nos. US/659-660/RGD/2012 dated 15.10.2012 and US/861/RGD/2012 dated 10.12.2012, both passed by the Commissioner(Appeals-II), Central Excise, Mumbai and dismisses the instant two Revision Applications as being devoid of merit.

11. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁴¹¹⁻⁴¹² /2018-CX (WZ)/ASRA/Mumbai DATED 30.11.2018.

To,

1. The Commissioner of Central Excise,
Raigad.
2. M/s Sonal Impex Ltd.,
2, N Laxmi Indl. Estate,
New Link Road,
P.B. No. 11935, Andheri(W),
Mumbai 400 053.

Copy to:

1. The Commissioner of Central Excise (Appeals-II), Mumbai
2. The Dy / Asstt Commissioner(Rebate), GST & CX Mumbai, Belapur.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED

30/11/18
12/12/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

