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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. 198/13/15, 198/03/16, 198/69-80/16,
198/166/16, 198/208/16, 198/224/16,
198/16/17, 198/01/17, 198/28/17 /1906 Date of issue: 19.05.2022

ORDER NO.M32-593/2022-CX (WZ)/ASRA/MUMBAI DATED 17.5.2022 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 : Asstt. Commissioner of Central Excise, Div.IV, Margao, Goa
Respondent : M/s. Andrew Telecommunications India Private Limited
Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against following Orders-in-Appeal passed by Commissioner (Appeals), Pune Appeal-II Cx.(at Goa):-

PUN-EXCUS-002-APP-028-14-15 dated 8.12.2014
GOA-EXCUS-000-APP-052 to 093-2015-16 dated 29.10.2015
GOA-EXCUS-000-APP-099 to 100-2015-16 dated 2.11.2015
GOA-EXCUS-000-APP-244 to 255 -16 dated 25.2.2016
GOA-EXCUS-000-APP-301 to 340 -2014-15 dated 9.3.2016
GOA-EXCUS-000-APP-39 to 54 -2016-17 dated 9.6.2016
GOA-EXCUS-000-APP-85 to 100 -2016-17 dated 29.6.2016
GOA-EXCUS-000-APP-169 to 180-2016-17 dated 30.9.2016
GOA-EXCUS-000-APP-160 to 168-2016-17 dated 30.9.2016
GOA-EXCUS-000-APP-233 to 237-2016-17 dated 18.11.2016

ORDER

Below mentioned Revision Applications have been filed by Assistant Commissioner of Central Excise, Div. IV, Margao, Goa (hereinafter referred to as "the Applicant") against Orders-in-Appeal passed by Commissioner (Appeals), Pune Appeal-II Cx. (at Goa):-

| S. No. | R.A. No./date | OIA No./date | OIO No. | Amount involved (Rs.) |
|---|---|---|---|---|
| 1 | 198/13/2015 dated 11.3.2015 | PUN-EXCUS-002-APP-028-14-15 dated 8.12.2014 | 8 OIOs | 45,28,738 |
| 2 | 198/02/2016 dated 18.1.2016 | GOA-EXCUS-000-APP-052 to 093-2015-16 dated 29.10.2015 | 42 OIOs | 8,24,476 |
| 3 | 198/03/2016 dated 18.1.2016 | GOA-EXCUS-000-APP-099 to 100-2015-16 dated 2.11.2015 | 2 OIOs | 34,41,139 |
| 4 | 198/69-80/2016 dated 6.5.16 | GOA-EXCUS-000-APP-244 to 255 -16 dated 25.2.2016 | 12 OIOs | 1,66,366 |
| 5 | 198/166/2016 dated 13.6.16 | GOA-EXCUS-000-APP-301 to 340 - 2014-15 dated 9.3.2016 | 40 OIOs | 9,94,852 |
| 6 | 198/208/2016 dated 12.9.16 | GOA-EXCUS-000-APP-39 to 54 -2016-17 dated 9.6.2016 | 16 OIOs | 1,06,022 |
| 7 | 198/224/2016 dated 28.9.16 | GOA-EXCUS-000-APP-85 to 100 -2016-17 dated 29.6.2016 | 16 OIOs | 4,15,641 |
| 8 | 198/16/2017 dated 9.1.2017 | GOA-EXCUS-000-APP-169 to 180-2016-17 dated 30.9.2016 | 12 OIOs | 4,30,921 |
| 9 | 198/01/2017 dated 9.1.2017 | GOA-EXCUS-000-APP-160 to 168-2016-17 dated 30.9.2016 | 9 OIOs | 5,00,011 |
| 10 | 198/28/2017 dated 1.3.2017 | GOA-EXCUS-000-APP-233 to 237-2016-17 dated 18.11.2016 | 5 OIOs | 40,823 |

2. Brief facts of the case are that M/s. Andrew Telecommunications India Private Limited, Plot No. N-2, Phase IV, Verna Industrial Estate, Verna, Goa – 403 722 (hereinafter referred to as the Respondent) had filed several rebate claims on various dates, under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004. The rebate claims were filed in respect of export of imported goods – "antennae parts". The rebate sanctioning authority while allowing the rebate of other duties rejected the claim amount pertaining to special additional duty of Customs of 4% (hereinafter referred as 'SAD'). Hence, the Respondent filed appeals against the Orders-in-Original (totally numbering 156) and the applicant filed appeals against 6 Orders-in-Original wherein

rebate of SAD was allowed by the rebate sanctioning authority. The Appellate authority allowed the appeals of the respondent and rejected the appeals filed by the applicant vide impugned 10 Orders-in-Appeal mentioned at para 1.

3.1 Hence, the Applicant filed the impugned Revision Applications mainly on the grounds that:

(a) The Commissioner (Appeals) has failed to note the fact that SAD (Special Additional Duty) is the duty levied on imported goods @ 4 % in lieu of the sales tax, value added tax, local taxes and other charges leviable on similar goods on their sale/purchase/ transportation in India and cannot be equated to customs duty/CVD. Moreover, this SAD is not included within the ambit of types of duties specified for the purpose of granting rebate in the Notfn. No.19/2004-(N.T) dated 06.09.2004. The Commissioner (Appeals) has therefore erred in holding that the rebate of SAD is admissible.

(b) The exporter has cleared inputs as it is and reversed the proportionate credit availed along with SAD. At the time of export, the exporter was not required to pay the SAD as the SAD is leviable on imported goods to counter balance the sales tax, value added tax, local tax etc. which cannot be considered as duty of excise for being eligible for rebate benefit.

(c) Reliance has been placed on similar issue on the decision reported in 2014(311) E.L.T. 854 (GOI) wherein the Revisionary Authority, Department of Revenue, has held that Special Additional Duty (SAD) leviable on imported goods to counter balance the sales tax, value added tax, local tax etc. which cannot be considered as duty of excise for being eligible for rebate benefit. SAD is not classified as a duty in list of duties provided in Explanation 1 of the Notification No.21/2004-C.E.(N.T.), hence, payment of SAD not eligible for rebate claim. In the present case also, the fact is same that the SAD is not mentioned under the expression of duty of excise collected under

various enactments mentioned under Notification 19/2004 - CE(N.T.) dated 06.09.2004.

In the light of the above submissions, the applicant prayed that impugned Orders-in-Appeal may be modified to disallow rebate of SAD component of duty paid at the time of export of the imported inputs as such and uphold the orders of the lower adjudicating authority where refund of SAD was rejected; re-credit of the SAD paid at the time of export, to the CENVAT credit account of the assessee may be considered.

3.2 The respondent in their written submission has inter alia contended that:

a. the learned Assistant Commissioner has incorrectly appreciated that the duty paid at the time of export is the individual elements of the import duty for which Cenvat Credit has been taken. Though the duty paid {under Rule 3(5) of the Cenvat Credit Rules} at the time of export is the sum total of various duties equivalent to the Cenvat Credit taken but it is essentially a duty of excise and not individual customs duties. No customs duty is chargeable under Customs Tariff Act on the excisable goods cleared from the factory either for home consumption or for export. The excisable goods have been cleared under Rule 3(5) of the Cenvat Credit Rules, 2004 by debiting duty equivalent to the Cenvat Credit taken. No customs duty is chargeable on such goods (inputs) cleared on which Cenvat Credit is taken. It is just for the purpose of determining the quantum of duty to be paid that the duty equivalent to Cenvat Credit taken is paid which includes the SAD portion also. But for the nature of duty paid is essentially the duty of excise, it is again reiterated that no customs duty or more specifically SAD is payable on the goods cleared for export and it is only for the purpose of quantification that the duty payable is sum total of import duties for which Cenvat Credit has been taken.

b. the learned Assistant Commissioner has erred in appreciating that duty collected referred under Notification No. 19/2004 C.E.(N.T.) pertains to duties collected at the time of import of the goods. She has failed to correctly appreciate that the duty collected under Notification ibid refers to "duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff as appearing in para (1) of the Notification ibid and therefore her interpretation that SAD is paid on the excisable goods is totally erroneous as SAD is not an excise duty. The duty paid excisable goods is "Cenvat Duty" leviable under the Central Excise Act, 1944 (herein after referred to as "the said Act") which is quantified by taking an equivalent of the sum total of the import duties for which Cenvat Credit has been taken. This can clearly borne out by the explanation that if the excisable goods (inputs removed as such) are not exported for any reason what will be demandable is '[excise duty" (equivalent to the Cenvat Credit taken) under Section 11A of the said Act and not CVD or SAD under the Customs Act.

c. if such goods (inputs) are cleared for export in terms of Rule 19 of the CER, 2002 read with Rule 6(6)(v) of the Cenvat Credit Rules, 2004, no duty is payable and the manufacturer is entitled to retain Cenvat credit including the portion representing 4% SAD and further entitled to refund such duties under Rule 5 of the Cenvat Credit Rules, 2004. If a view as proposed in the impugned order is taken, a manufacturer is put to a disadvantageous position when he clears the goods under claim of rebate of duty under Rule 18 of the CER, 2004 which is against the spirit of export policy as declared by the CBEC in its Circular No. 283/117/96-CX, dated 31-12-1996 which details the basic fundamental principles of export policy dealing with inputs removed as such. It postulates that "The exports under 'claim of rebate' and 'export under bond should be at parity, since, intentions of both the procedures are to make duty incidence 'nil'. It is also an established principle that rules should be interpreted in a manner

which does not render them redundant". It is further mentioned that this Circular specifically deals with clearance of inputs and allows rebate of duty of inputs cleared as such.

d. They relied upon following judgments :

- Commissioner of C.Ex., Raigad vs. M/s. Micro Inks Ltd. 2011 (270) E.L.T. 360 (Bom);
- Commr. of C.Ex., Delhi - I vs. Joint Secretary (Revisionary Authority) 2013 (287) E.L.T. 177 (Del.);
- Divi's Laboratories Ltd. 2012 (285) E.L.T. 469 (G.O.I.);
- 2012 (284) E.L.T. 150 (G.O.I.) IN ASHOK LEYLAND LTD.;
- 2011 (268) E.L.T. 111 (G.O.I.) IN RE : OM SONS COOKWARE PVT. LTD.

4. Personal hearing opportunities were given to the applicant and the respondent on 27.10.2021 and 25.11.2021. The applicant did not attend on any date. However, Shri Abhijit Saha, Advocate and Ms. Saumya, C.A., appeared online on behalf of the respondent on 25.11.2021 and submitted that the duty paid on re-export of imported goods was done by reversing (basic excise duty + SAD) availed as credit. They requested for allowing rebate in cash as per Board Circular No. 687/87/3/2003-CX dated 3/1/2003.

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

6. Government observes that the issue involved is whether the rebate of special additional duty (SAD) of Customs is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004.?

7. Government observes that the matter in hand can be summarized as follows:

i. The respondent had imported goods and taken Cenvat of the customs duties paid thereon.

ii. Subsequently they exported the goods imported viz. 'antennae parts'. The goods were cleared under Rule 3(5) of the Cenvat Credit Rules, 2004 by debiting an amount equivalent to the Cenvat Credit taken on such goods including special additional duty of Customs of 4% (SAD).

iii. The respondent filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 for the duty reversed while clearing the above mentioned export goods.

iv. The rebate sanctioning authority while allowing the rebate of other duties rejected the claim amount pertaining to special additional duty of Customs of 4% (SAD).

v. The Additional Customs duty leviable under Section 3(5) of the Customs Tariff Act, 1975 is also termed as SAD. The rebate sanctioning authority observed that SAD is not mentioned as duty in the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004. Further, the respondent could not clarify as to why SAD should be refunded when it is specifically not mentioned in the said notification. Therefore, the portion of rebate claims of the respondent as regards SAD was rejected by the original authority.

8.1 Now, Government proceeds to decide the issue of admissibility of rebate claims taking into account the harmonious and combined reading of statutory provision relating to rebate as well as the additional Customs duty leviable under Section 3(5) of the Customs Tariff Act, 1975 (SAD).

8.2 Government notes that the said Section 3(5) ibid reads as under:

***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.*

Thus, Government observes that this levy is imposed at the time import of goods.

8.3 Government notes that the Rule 3(1)(viia) of the Cenvat Credit Rules, 2004 allows an assessee to take credit of SAD:

***Rule 3. CENVAT credit.*** *-*

*(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -*

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*(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*

*(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act;*

Thus, the cenvat credit taken by the respondent of SAD paid at the time of import of goods was valid and proper.

8.4 Rule 3(5) of the Cenvat Credit Rules,2004 reads as under:

***Rule 3. CENVAT credit. -***

*(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:*

Thus, reversal of credit taken on duty paid (including SAD) on imported goods at the time of clearing them for export was proper and appropriate as per Rule 3(5) ibid.

8.5 Rule 18 of the Central Excise Rules, 2002 reads as under:

*Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification*

Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at the time of clearance of excisable goods for export can be claimed.

8.6 The relevant extracts of Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 read 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. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R.469(E), dated the 26thJune, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff*

*Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter*

*Explanation I - "duty" for the purpose of this notification means duties of excise collected under the following enactments, 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.*

Government observes that the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 relates to export of excisable goods on payment of duty and allows rebate of whole of duty paid at the time of export. It also explains meaning of duty for the purpose of said notification.

9. Government observes that the rebate claims filed by the respondent were in respect of CVD and 4% AED (SAD) paid under cover of ARE-1 at the time of export. Government observes that the Applicant has rightly pointed out that 4% SAD leviable under sub-section (5) of section 3 of the Customs Tariff Act did not find a mention in the Explanation I of the said Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 and thus cannot be termed as a duty of excise and that SAD is not required to be paid at the time of export. However, in plethora of judgments, it has been held that any amount paid in excess of duty liability is to be treated as voluntary deposit with the Government which is to be returned in the manner in which it was

paid. In this regard, the Applicant has rightly prayed to re-credit the SAD paid at the time of export, to the Cenvat credit account of the respondent.

10. The Revision Applications are disposed of on above terms.

Shrawan 17/05/22

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

ORDER No. 432-593 /2022-CX (WZ)/ASRA/Mumbai dated 17.5.2022

To,
M/s. Andrew Telecommunications India Pvt. Ltd.,
Plot No. N-2, Phase IV, Verna Industrial Estate,
Verna, Goa – 403 722.

Copy to:

1. Commissioner of CGST, Goa,
   GST Bhavan, EDC Complex,
   Plot No. 6, Patto,
   Panaji, Goa – 403 001.

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