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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/639/13-RA/3854 Date of Issue:- 10.8.2020

ORDER NO. 492/2020-CX (WZ) /ASRA/Mumbai DATED 08.06.2020 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 Pidilite Industries Ltd.
Plot No. A-21 & A-22-1, MIDC,
Mahad, Dist. Raigad,
Maharashtra- 402 309.

Respondent : Commissioner, CGST & Central Excise, Raigad.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/45/RGD/2013 dated 31.01.2013 passed by the Commissioner (Appeals), Mumbai Zone-II.

ORDER

This revision application is filed by M/s Pidilite Industries Ltd., Plot No. A-21 & A-22-1, MIDC, Mahad, Dist. Raigad, Maharashtra- 402 309 (hereinafter referred to as "the applicant") against the Order-in-Appeal No.US / 45 / RGD / 2013 dated 31.01.2013 passed by the Commissioner (Appeals), Mumbai Zone-II.

2. The applicant holding Central Excise Registration No. AAACP4156BXM002 have filed 27 rebate claims under Rule 18 of Central Excise Rules 2002 in respect of duty paid by them on excisable goods falling under Chapter No. 29, 32 & 39 of the first Schedule to the Central Excise Tariff Act, 1985 for the total rebate amount of Rs. 48,10,774/- (Rupees Forty Eight Lakh Ten Thousand Seven Hundred Seventy Four Only) on ARE-1 Value of Rs. 3,89,22,095/- (Rupees Three Crore Eighty Nine Lakh Twenty Two Thousand Ninety Five Only). During the scrutiny of the said rebate claims, the Assistant Commissioner, Central Excise, Mahad Division, Raigad Commissionerate observed that the transaction value of ARE-1 is more than the FOB value of exported goods shown in the corresponding shipping bills. Since transaction value under Central Excise provisions does not include freight and insurance, any amount paid on these counts will not qualify as duty paid. The Rebate Sanctioning Authority observed that ARE-1 value i.e. Transaction Value is more by Rs. 18,59,465/- when compared with corresponding shipping bills and the duty @ 12.36% adv. on the said differential value of is Rs. 2,29,828/- which has to be reduced from the rebate claimed. Further the Rebate Sanctioning Authority observed that out of the excess value only Rs. 6,16,426/- pertained to the freight and or insurance and hence the duty @ 12.36% on such value Freight and Insurance amount i.e. RS. 76,190/- (12.36% of Rs. 6,16,426/-) is qualified to be allowed as re-credit in the applicant's Cenvat Credit Register. In view of above, the Rebate Sanctioning Authority sanctioned the rebate claim of Rs. 45,80,946/- and allowed re-credit of Rs. 76,190/- in the Cenvat Account of the applicant. Further the difference amount of Rs. 1,53,638/- (i.e. 2,29,828 – 76,190) was rejected as the same dose not pertain to the duty paid towards the freight and / or insurance.

3. Aggrieved by the said Order in Original, the applicant filed an appeal before Commissioner (Appeals), Central Excise, Mumbai Zone-II. The Appellate Authority vide impugned Order in Appeal rejected the appeal filed by the applicant. The appellate authority held that the transaction value cannot be higher than FOB value. In the instant case, the transaction value was more than the correct FOB

value and therefore, there was excess payment of duty and excess rebate could not be sanctioned by the adjudicating authority to the extent of said excess payment.

4. The instant revision application has been filed by the applicant against the said Order in Appeal No. US/45/RGD/2013 dated 31.01.2013 passed by the Commissioner (Appeals), Mumbai Zone-II on the following grounds that :-

4.1 Rule 18 of the Central Excise Rules, 2002 inter-alia allow rebate of duty paid on excisable goods. This has been admitted in the impugned Order in Appeal and there is no dispute regarding factual payment of extra / excess duty. The expression used in the said rule is duty paid and not duty payable.

4.2 The amount paid by the applicant as duty at the time of removal of goods for export is to be allowed as cash rebate of duty under Rule 18 of CER, 2002.

4.3 In the instant case, it is an admitted fact that the goods were exported on payment of duty and therefore the rebate sanctioning authority ought to have sanctioned the entire rebate amount.

4.4 The value declared by the applicant in the ARE-1 and the duty paid on the basis of the same should be the sole basis for sanctioning the rebate claim.

4.5 The applicant rely on the CBEC Circular No. 510/06/2000-CX dated 03.02.2000 wherein it is clearly laid down that the rebate has to be allowed equivalent to the duty paid. Further, para No. 3 of the Circular state that if the rebate sanctioning authority has reasons to believe that the duty has been paid in excess than what should have been paid, he shall inform, after granting the rebate, to the jurisdictional Asstt. / Dy. Commissioner. The later shall scrutinise the correctness and take necessary action wherever necessary.

5. A Personal hearing was heldin the case and Shri Shekhar Sawantdesai, Section Head (Indirect Taxes) appeared for hearing on behalf of the applicant and reiterated the submission filed through Revision Application.

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 the applicant is a manufacturer exporter who had filed rebate claims under Rule 18 of the said Rules read with Notification No.19/2004 CE (NT) dated 6.09.2004 for the duty paid on goods exported. The rebate sanctioning authority after re-examining the matter observed that in respect of the certain rebate claims the assessable value on the ARE-1 was found to be more than the corresponding F.O.B values. Since the ARE-1 Value was higher than the FOB Value, the Original Authority has restricted the rebate to the FOB Value declared in the Shipping Bill. Accordingly, the rebate amount of Rs. 45,80,946/- out of total rebate of Rs. 48,10,774/- claimed by the applicant was sanctioned. Further, the rebate sanctioning authority had allowed the rec-credit of excess duty paid on differential value. However, while allowing the same the re-credit allowed was restricted to Rs. 76,190/- instead the entire balance amount of Rs. 2,29,828/- i.e. (Rs. 48,10,774/- - 45,80946/-) on the grounds that the re-credit can be allowed to the extent of duty paid @ 12.36% on Rs. 6,16,426/- which pertains to freight & insurance.

8. The Government has noted the relevant statutory provisions for determination of value of excisable goods i.e. Section 4(1) (a) of the Central Excise Act, 1944, definition of word of 'Sale" in Section 2 (h) of the Central Excise Act, 1944, definition of Place of removal defined under Section 4 (3) (c) (i), (ii) (iii); Rule 5 of the Central Valuation (Determination of Price of Excisable Goods) Rules, 2000.

On perusal of the above provisions, it was observed that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of the word "any other place" read with definition of "sale" cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. The Government opines that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. Under such circumstances, the place of removal is the port of export where sale takes place.

In the instant case, Government observes that the identical issue has been decided by Government vide Revisionary Order No. 97/2014-Cx, dated 26-3-2014 in Re: Sumitomo Chemicals India Pvt. Ltd. reported in 2014 (308) E.L.T. 198

(G.O.I.). While deciding the issue Government, in its aforesaid Order discussed the provisions of Section 4(1)(a) of Central Excise Act, 1944, Rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 as well as the definitions of 'Sale' and 'Place of Removal' as per Section 2(h) and Section 4(3)(c)(i), (ii), (iii) of Central Excise Act, 1944 respectively, and observed as under :-

8.5 Government observes that from the perusal of above provisions it is clear that the place of removal may be factory/warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. Under such circumstances, the place of removal is the port of export where sale takes place. The GOI Order No. 271/2005, dated 25-7-2005 in the case of CCE, Nagpur v. M/s. Bhagirth Textiles Ltd. reported in 2006 (202) E.L.T. 147 (GOI) has also held as under :-

> *"the exporter is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on the transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944". It is clear from the order that in any case duty is not to be paid on the CIF value.*

8.6 Supreme Court in its order in Civil Appeal No. 7230/1999 and CA No. 1163 of 2000 in the case of M/s. Escorts JCB Ltd. v. CCE, Delhi reported in 2002 (146) E.L.T. 31 (S.C.) observed (in para 13 of the said judgment) that

"in view of the discussions held above in our view the Commissioner of Central Excise and CEGAT erred in drawing an inference that the ownership in the property continued to be retained by the assessee till it was delivered to the buyer for the reason that the assessee had arranged for the transport and transit insurance. Such a conclusion is not sustainable".

Further, CBEC vide it (Section) 37B Order 59/1/2003-CX, dated 3-3-2003 has clarified as under :-

"7. Assessable value' is to be determined at the "place of removal". Prior to 1-7-2000, "Place of removal" [Section 4(4)(b), sub-clauses (i), (ii) and (iii)], was the factory gate, warehouse or the depot or any other premises from where the goods were to be sold. Though the definition of "place of removal" was amended with effect from 1-7-2000, the point of determination of the assessable value under Section 4 remained substantially the same. Section 4(3)(c)(i) [as on 1-7-2000] was identical to the earlier provision contained in Section 4(4)(b)(i), Section 4(3)(c)(ii) was identical to the earlier provision in Section 4(4)(b)(ii) and Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, took care of the situation covered by the earlier Section 4(4)(b)(iii). In the Finance Bill, 2003 (clause 128), the definition "place of removal" is proposed to be restored, through amendment of section 4 to the position as it existed just prior to 1-7-2000.

8. Thus, it would be essential in each case of removal of excisable goods to determine the point of "sale". As per the above two Apex Court decisions this will depend on the terms (or conditions of contract) of the sale. The 'insurance' of the goods during transit will, however, not be the sole consideration to decide the ownership or the point of sale of the goods."

The Government also observed in its aforesaid Revision Order No. 97/2014-Cx, dated 26-3-2014 in Re: Sumitomo Chemicals India Pvt. Ltd. that

"it has been stipulated in the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the CBEC Circular No. 510/06/2000-CX, dated 3-2-2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provisions of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11-9-2008 in CWP Nos. 2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. v. UOI reported in 2009 (235) E.L.T. 22 (P&H).

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat credit is appropriate. As such the excess paid amount/duty is required

to be returned to the respondent in the manner in which it was paid by him initially.

10. As the facts of the instant Revision Application are similar to the above quoted case, the ratio of the same is squarely applicable to this case.

11. In view of the foregoing discussion, Government holds that in this case the duty was paid on CIF value and therefore, rebate of excess duty paid on said portion of value which was in excess of transaction value was rightly denied to the applicant. As the department is not authorised by law to retain such excess duty paid by the applicant with themselves, the re-credit of the same should be allowed.

12. The Government is, therefore, of the view that the excess paid amount of duty which is not held admissible for being rebated under Rule 18 of CER, 2002, is to be allowed as re-credit in the Cenvat credit account from where said duty was initially paid subject to compliance of provisions of Section 12B of Central Excise Act, 1944.

13. In view of above, Government holds that the excess paid amount of duty of Rs. 1,53,638/-(Rupees One Lakh Fifty Three Thousand Six Hundred Thirty Eight only) which is not held admissible for being rebated under Rule 18 of CER, 2002, is to be allowed to the applicant as re-credit in the Cenvat credit account. The Government modifies the impugned Order in Appeal passed by the lower authorities for the limited purpose as discussed above.

14. Revision application is disposed of in terms of above.

15. So, ordered.

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

To,

M/s Pidilite Industries Ltd.
Plot No. A-21 & A-22-1, MIDC,
Mahad, Dist. Raigad,
Maharashtra- 402 309.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt. of India * Mumbai *

F.No.195/639/13-RA

ORDER NO. 492/2020-CX (WZ)/ASRA/MUMBAI DATED 08.06.2020.

Copy to:

1. The Commissioner of CGST & Central Excise, Raigad, Gr. Floor, Kendriya Utpat Shulk Bhavan, Sectior-17, Khandeshwar, Navi Mumbai -410206.
2. The Commissioner of Central Excise, (Appeals), Raigad, 5th floor, CGO Complex, C.B.D. Belapur, Navi Mumbai – 400 614.
3. The Assistant Commissioner (Maritime Commissioner) (Rebate), Central Goods & Service Tax, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.