F. No. 195/546/13-RA
F. No. 195/547/13-RA
F. No. 195/548/13-RA
F. No. 195/549/13-RA
REGISTERED SPEED POST AD

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. 195/546/13-RA
F. No. 195/547/13-RA
F. No. 195/548/13-RA /3531
F. No. 195/549/13-RA

Date of Issue: 29.07.2020

ORDER NO. 499-502 /2020-CX (WZ) /ASRA/MUMBAI DATED 09.06.2020 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 Rohm & Haas India Pvt. Ltd.
Godrej IT Park – P2, 1st Floor,
Block B, Godrej Business District,
Pirojshanagar, LBS Marg,
Vikhroli(W), Mumbai 400 079

Respondent : Commissioner of Central Excise, Belapur

Subject: Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. BC/487/RGD(R)/2012-13 dated 30.01.2013, OIA No. BC/486/RGD(R)/2012-13 dated 30.01.2013, OIA No. BC/485/RGD(R)/2012-13 dated 30.01.2013 & OIA No. BC/483/RGD(R)/2012-13 dated 30.01.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai-III.

ORDER

These revision applications have been filed by M/s Rohm & Haas India Pvt. Ltd., Godrej IT Park-P2, 1st Floor, Block B, Godrej Business District, Pirojshanagar, LBS Marg, Vikhroli(W), Mumbai 400 079(hereinafter referred to as "the applicant") against OIA No. BC/487/RGD(R)/2012-13 dated 30.01.2013, OIA No. BC/486/RGD(R)/2012-13 dated 30.01.2013, OIA No. BC/485/RGD(R)/2012-13 dated 30.01.2013 & OIA No. BC/483/RGD(R)/2012-13 dated 30.01.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai-III.

2. The applicant is a manufacturer exporter. They had exported goods and filed rebate claims under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE dated 06.09.2004 for the duty paid on exported goods. The rebate sanctioning authority rejected rebate claims amounting to Rs. 58,19,189/-, Rs. 16,87,364/-, Rs. 4,26,002/- & Rs. 16,53,157/- respectively under the impugned orders in respect of goods classified by the applicant under chapter 38 of the CETA, 1985. The applicant had imported input "Coronate LS" & "Bayhydur" falling under chapter 39 of the CETA, 1985. No process had been undertaken on the said inputs except for packing and relabelling. However, the applicant had subsequently classified the same product under chapter 38, paid duty on the exports and claimed rebate. The refund sanctioning authority observed that since the activity of packing and relabelling of the products falling under chapter 39 does not amount to manufacture, no duty is payable on such exports. Accordingly the adjudicating authority rejected the said rebate claims.

3.1 Being aggrieved the applicant filed appeals before the Commissioner(Appeals). The Commissioner(Appeals) observed that while importing the product into India the applicant has classified the product "Coronate LS" under chapter 39 and the said classification list has been certified by the customs authorities. She averred that if the applicant was aggrieved by this classification, they should have taken up the issue with the

customs authorities and got it changed. She observed that classification cannot be changed at the receivers end. She further observed that the applicant had not submitted any details as to what activity was being carried out on such inputs. She perused section note of section VII and Chapter 39 of the CETA and found that no chapter note or section note specifically makes the activity of labelling or relabelling to amount to manufacture. Therefore, since the activity of packing and relabelling does not amount to manufacture, no duty would be payable on the exported goods. The Commissioner(Appeals) further held that even if any amount had been paid on such exports, such amount cannot be claimed to be duty.

3.2 The Commissioner(Appeals) observed that the applicant claimed that the amount has been paid on exports and hence duty was refundable. They had further claimed that the inputs had been wrongly classified by the exporter under chapter 39 whereas in fact they were classifiable under chapter 38. However, no evidence had been submitted by the applicants to substantiate that the products are classifiable under chapter 38. The Commissioner(Appeals) placed reliance upon the decision of the Tribunal in the case of Mahendra Chemicals vs. CCE(Adj), Ahmedabad[2007(208)ELT 505(Tri-Ahmd)] holding that assessee cannot disclaim benefit, pay duty and thereafter claim credit of duty or rebate. The Commissioner(Appeals) further referred Notification No. 19/2004-CE(NT) dated 06.09.2004 and observed that it provides for grant of rebate of the whole of central excise duty paid for exports and these were the duties collected under the Central Excise Act, 1944 and the Additional Duties of Excise(Goods of Special Importance) Act, 1957. Since the amount paid by the applicant was not duty, no rebate could be sanctioned under the said notification. The Commissioner(Appeals) therefore vide the impugned OIA's rejected the appeals filed by the applicant.

4. Aggrieved by the OIA's, the applicant filed revision applications on the following grounds.

(a) The Department is not entitled to retain the payment made by the company on export of goods. The applicant submitted that even if the

process carried out by the applicant does not amount to manufacture, there is no dispute about the fact that payment of an amount equal to appropriate excise duty is paid in respect of exported goods. Since duty is not leviable but has been paid by the company, revenue would not be entitled to retain the same as goods had undisputedly been exported and hence the amount has to be refunded. They placed reliance upon the judgment of the Hon'ble Rajasthan High Court in the case of Commissioner vs. Suncity Alloys Pvt. Ltd.[2007(218)ELT 174(Raj)].

(b) The applicant was under the bonafide belief that their activity of repacking/relabelling of goods amounts to manufacture. They submitted that they had availed CENVAT credit on imported raw materials and raw materials procured locally and paid duty on the removal of final product in the bonafide belief that the process of repacking and relabelling amounted to manufacture. They stated that they had procured automate blue RB2 marker locally and relabelled it as Space Trace to make it marketable abroad. They contended that the process of repacking and/or relabelling undertaken by them was believed to be imperative to make the product saleable and marketable which indeed is necessary to complete the process of manufacture as the manufacture of the goods is not complete till they are made marketable and saleable to prospective customers; that the process was incidental/ancillary to the transformation of unfinished product to finished product. They placed reliance on the judgments in the case of Flex Engineering Ltd. vs. CCE in Civil Appeal No. 7152 of 2004, United Repackaging vs. CCE, Calcutta[2000(121)ELT 658(Tri)], Citabul Ltd. PO Atul vs. UOI[1978(2)ELT (J 68) (Guj)] & Metro Readyware Company vs. Collector of Customs[1975(2)ELT (J 520)(Ker)].

(c) The applicant contended that rejecting rebate claims would defeat the intention of the government. They pointed out that over the years, the Government has come up with various schemes and packages such as FOCUS, SFIS, DEEC, EPCG, duty drawback etc. to boost exports from India. It was therefore the intention of the government to promote exports by providing tax exemption/benefits and not to curb exports by

charging tax/denying benefits on it. One of the initiatives taken by the government is rebate of duty paid on goods exported by the assessee. In the present case, the goods which have suffered duty have been exported by the company and the fact of export of the goods and payment of duty thereon is not disputed by the adjudicating authority. The duty has been paid by utilising CENVAT credit. Therefore, the rebate of duty paid cannot be denied to the company on the ground that the process carried out does not amount to manufacture. Reliance was placed upon the case law of Modern Process Printers[2006(204)ELT 632(GOI)].

(d) The applicant submitted that even if it is assumed that the process carried out by the company does not amount to manufacture, duty paid by the company should be regularised; i.e. even if rebate of duty paid cannot be granted, credit of duty paid should be reinstated in their account. In this regard, they placed reliance upon CBEC Circular No. 911/01/2010-CX. dated 14.01.2010 which clarified that as per Section 5B of the CEA, in case of an assessee who has paid excise duty on a product under the belief that the same is excisable but subsequently comes to the knowledge that the process of making the same is held by the court to not be amounting to manufacture, then the assessee may approach the central government for regularisation of credit and the central government may issue an order for the non-reversal of such credit in past cases. The CBEC had also clarified that in cases where the process undertaken by an assessee does not amount to manufacture, the tax authorities should inform the assessee about the correct legal position and advise him not to pay duty and not to avail credit on inputs.

(e) The applicant argued that the case referred by the lower authority was not relevant in the present case. They pointed out that the ratio of the case law of Mahendra Chemicals vs. CCE(Adj), Ahmedabad[2007(208)ELT 505(Tri-Ahmd)] was that a manufacturer cannot opt to pay duty where the goods are unconditionally exempted. In this regard, the applicant pointed out that the goods which had been

exported and on which the applicant had filed rebate claims were excisable goods and not exempted goods. They submitted that there are no notifications in force exempting products of the applicant from the whole of duty of excise.

(f) The applicant reiterated that there were several decisions which laid down that if duty is paid by the applicant, the rebate on the same should not be denied and relied upon the decisions in the case of A. V. Industries[2011(269)ELT 122(GOI)], Nav Bharat Impex vs. CCE, New Delhi[2009(236)ELT 349(Tri-Del)] and Alembic Ltd. vs. CCE, Vadodara[2007(218)ELT 607(Tri-Ahmd)].

5. The applicant was granted a personal hearing on 19.09.2019. Shri Manoj Chandak, Chartered Accountant appeared on their behalf and reiterated their submissions in the revision application. He also handed over written submissions. In the written submissions, the applicant placed reliance upon the case laws in the case of CCE, Ahmedabad vs. Tapsheel Enterprises[2007(216)ELT 284(Tri-Ahmd)], G. T. Exports vs. CCE, Coimbatore-IV[2008(230)ELT 428(Tri-Chenn)] and Bala Handlooms Exports Co. Ltd. vs. CCE, Chennai[2008(223)ELT 100(Tri-Chenn)]. Reliance was also placed upon the Circular No. 283/117/96-CX dated 31.12.1996 which states that in case where inputs are cleared as such on payment of duty by debit in RG 23A Pt. II account, the manufacturer will be entitled for rebate under Rule 12(1) of the CER.

6. Government has carefully gone through the case records, the written submissions made by the applicant, their submissions at the time of personal hearing, the revision application filed by them, the impugned order and the order passed by the adjudicating authority. Government observes that the short issue to be decided is whether rebate can be granted to the applicant when the activity carried out by them does not amount to manufacture.

7. Government finds that the lower authorities have focussed on the fact of whether the process carried out by the applicant amounts to manufacture

or otherwise. They have found that the applicant has changed the classification of goods Coronate LS from CETH 39119090 given by their suppliers to Coreactant 854 under CETH 38249090 on their own volition. Since there is no chapter note or section note specifying the process of repacking and/or relabelling as manufacture, the process would not amount to manufacture. In the circumstances, the applicant was not required to pay duty on the goods exported by them. It would therefore follow that when duty was not required to be paid on the export goods, rebate of such amount paid cannot be granted to the applicant. The case of the applicant for grant of rebate would therefore fail.

8. However, the factual matrix of the case is that the applicant has paid the amount of duty payable on the value of the export goods. The fact that the rebate is not admissible would not confer any rights upon the Department to retain the amount paid as duty. Government observes that it was seized of similar facts in a revision applications filed by A. R. Printing & Packaging (I) Pvt. Ltd. reported at [2012(282)ELT 289(GOI)]. Para 8 and 10 of the said order are reproduced below.

"8. In the instant cases, the applicant has filed rebate claims under Rule 18 of the Central Excise Rules for goods exported on which no Central Excise duty was payable by virtue of Supreme Court judgment referred above in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 which were rightly rejected by his jurisdictional Asstt. Commissioner as the rebate of duty paid final goods is permissible only if duty was payable on said goods. As no duty was payable on the goods in question, the debiting of Cenvat amount(which was otherwise not permissible) equal to the duty on such goods cannot be considered as payment of duty. It becomes a voluntary deposit with Govt."

"10. However, Government is of the view that if there is any excess, debited/paid amount, the same may be allowed re-credit in the cenvat account."

9. In view of the above discussions and findings, Government observes that the revision applications are liable to be rejected being devoid of merit. However, Government orders that the amount paid by the applicant on the exported goods may be re-credited in terms of the provisions of the extant laws applicable.

10. So ordered.

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

ORDER No. 499-502 /2020-CX (WZ) /ASRA/Mumbai DATED 09.06.2020.

To,
M/s Rohm & Haas India Pvt. Ltd.
Godrej IT Park – P2, 1st Floor,
Block B, Godrej Business District,
Pirojshanagar, LBS Marg,
Vikhroli(W), Mumbai 400 079

ATTESTED

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

Copy to:

1. The Commissioner of CGST & CX, Belapur Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Raigad
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy