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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.195/613/2013-RA / 1284

Date of Issue: 28.02.2021

ORDER NO. 52/2021-CX (WZ)/ASRA/MUMBAI DATED 27.02.2021 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 : M/s Aimco Pesticides Ltd.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/610/RGD(R)/2012-13 dated 26.02.2013 passed by the Commissioner (Appeals), Central Excise Mumbai-III.



ORDER

This Revision Application is filed by the M/s AIMCO Pesticides Ltd., 'Akhand Jyoti', 8th Road, P.B. No. 6822, Santa Cruz (East), Mumbai- 400 055 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/610/RGD(R)/2012-13 dated 26.02.2013 passed by the Commissioner (Appeals), Central Excise Mumbai-III.

2. The issue in brief is that the Applicant, merchant exporter had filed two rebate claims amounting to Rs.99,759/- (Rupees Ninety Nine Thousand Seven Hundred and Fifty Nine Only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 -CE (NT) dated 06.9.2004 (herein after as 'Notfn 19/2004') for the duty paid on the goods exported. The Deputy Commissioner (Rebate), Central Excise, Raigad, vide Order-In-Original No 1983/12-13/DC(Rebate)/Raigad dated 02.11.2012 rejected the entire rebate on the following grounds

- (a) That the Applicant had exported the 'inputs as such' without carrying out any process on it and since no manufacturing process has been undertaken on the inputs, such export inputs are not excisable and in terms of Rule 18 of Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods only.
- (b) That the impugned inputs had not been exported directly from the factory of manufacture, the condition 2(a) of Notification No. 19/2004 was violated making rebate inadmissible.

Being aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai-III, who vide Order-in-Appeal No. BC/610/RGD(R)/2012-13 dated 26.02.2013 rejected the appeal.

3. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds:



- 3.1 The learned Commissioner (Appeals) has grossly failed to comprehend the provisions pertaining to claim of rebate under Rule 18 of Central Excise Rules, 2002. The Applicant had furnished all the specified documents for grant of rebate claim and admittedly satisfied the conditions and limitations as laid down under paragraph 2 of the Notification No. 19/2004 issued under Rule 18 of Central Excise Rules, 2002 and also followed the procedures specified in the said notification.
- 3.2 The rebate sanctioning authority or learned Commissioner (Appeals) in their findings has nowhere disputed compliance of the conditions to the Notification No. 19/2004 issued under Rule 18 of Central Excise Rules, 2002. The learned Commissioner (Appeals) has given her findings on the finished goods manufactured by the manufacturer, who removed the inputs as such under Rule 3(5) of the Cenvat Credit Rules. The issue raised by the Superintendent having jurisdictional over the manufacturer's factory does not have any bearing on the conditions stipulated and the procedures envisaged under Notification No. 19/2004, since, they have fulfilled all the conditions and followed the procedures of the said notification.
- 3.3 The show cause notice was issued on the grounds:
- (i) M/s. Organica Industries, Gandhinagar, the manufacturer had cleared inputs as such which are not excisable; and
 - (ii) Goods were not exported directly from the factory premises.
- 3.4 M/s. Organica Industries purchased Sulphur classified under C.H No. 2503 00 10. The Sulphur, inputs were grinded to powder form to be used in the manufacture of pesticides. However, Sulphur after grinding were cleared as such under the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 for export on payment of duty of excise, were cleared directly from the factory premises of the manufacturer on payment of excise duty.



3.5 As per Section 2(d) of Central Excise Act, 1944 "excisable goods means goods specified in the first scheduled and the second scheduled to the central excise tariff Act,1985 as being subject to a duty of excise and includes salt." In light of the rebate sanctioning provisions, Sulphur is falling under Chapter SH No. 2503 00 10 under First Scheduled to CETA, 1985 and same is subjected to duty of excise @ 12% adv and the same was cleared by M/s. Reliance Industries on payment of duty to M/s. Organica Industries. Since Applicants have cleared the goods as such under the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 for export on payment of Central Excise duty, the rebate claim ought to have been sanctioned. Therefore, there cannot be any dispute that Sulphur is excisable goods.

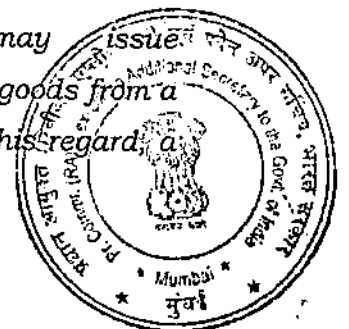
3.6 CBEC under its Circular No. 283/117/96-CX dated 31-12-1996 has observed as under:

"It is also observed that in case such inputs are cleared on payment of duty by debit in RG 23A Part-II account by virtue of Rule 57F(4)(iii), the manufacturer will be entitled for rebate under Rule 12(1)(a) of the Central Excise Rules."

In light of the provisions of Rule 18 of Central Excise Rules, 2002 and the Board circular, the order passed by the learned Deputy Commissioner needs to be quashed and set aside.

3.7 With respect to the findings that inputs had not been exported directly from the factory of the manufacturer, general permission had been granted by the Board in as much as in Clause (ii) of Part-I to Chapter 8, relates to exportation of goods, Board has granted a general permission in respect of the goods exported from a place other than the factory. The relevant text of the clause (ii) is reproduced herein below:

"(ii) In certain cases, the Board may issue instructions/procedures for exporting the duty paid goods from a place other than the factory or the warehouse. In this regard, a



general permission has been granted in respect of goods where it is possible to correlate the goods and their duty paid character."

In spite of the Applicant having controverted the grounds of the show cause notice, the learned Commissioner (Appeals) has rejected the appeal on a ground beyond the scope of the show cause notice.

3.8 The Deputy Commissioner had rejected the rebate claim just because the jurisdictional Superintendent of M/s. Organica Industries, had disputed availment of Cenvat credit on Sulphur granules by M/s Organica Industries. The Range Superintendent had made presumption that M/s. Organica Industries is engaged in the manufacture of Sulphur powder. However, the fact is that M/s. Organica Industries is engaged in the manufacture of pesticides falling under Chapter Heading No. 3808. Since there is no reason to dispute Cenvat credit availed by M/s. Organica Industries nor any show cause notice has been issued to recover the Cenvat credit from M/s. Organica Industries, the order impugned based on the report of Range Superintendent having jurisdiction over the M/s. Organica Industries is bad in law.

3.9 The Applicant prayed the order of the Commissioner (Appeals), may please be set aside and consequential relief be granted.

4. A personal hearing in the case were held on 19.01.2018, 06.02.2018 and 23.08.2019. However, neither the Applicant nor the Respondent attended the said hearings. Still in view of a change in the Revisionary Authority, fresh hearing was granted on 07.01.2021,13.01.2021 and 20.01.2021. The Applicant vide their letter dated 07.01.2021 submitted that they do not want hearing in the matter further and requested to decide the case on the grounds of their revision application.



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 the records, the Government notes that Sulphur is falling under Chapter SH No. 2503 00 10 under first Scheduled to Central Excise Tariff Act, 1985 and is subjected to duty of excise @ 12% adv. M/s. Organica Industries, manufacturer had procured un-refined Sulphur granules from M/s. Reliance Industries on payment of duty. M/s. Organica Industries, after grinding the un-refined Sulphur granules, in the form of Sulphur powder, cleared the same as 'inputs cleared as such' under the provision of Rule 3(5) of Cenvat Credit Rules, 2004. The Applicant, Merchant exporter, then exported the Sulphur powder which was cleared as 'inputs cleared as such' by M/s Organica, under claim for rebate.
7. Government observes that the Applicant was issued Show Cause Notice dated 21.09.2012 of the following grounds:

- (i) The goods exported are nothing but the inputs procured and removed as such for export without undertaking any process. In term of Rule 18 of Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods only. Since manufacturing process has been undertaken on the inputs, therefore, such exported inputs are not excisable and consequently not eligible for rebate of duty paid on such exported inputs;
- (ii) The goods have not been exported directly from the factory premises as required under Para 2(a) of Notification No. 19/2004-CE(NT) dated 6.9.2004, read with Para 1(1) of Part-1 of Chapter 8 of Supplementary Instructions of CBEC Central Excise Manual.



Government finds that the ground in the SCN is contradictory in nature, as in on part of the text it says "without undertaking any process", and in the latter part of the text "manufacturing process has been undertaken on the inputs".

8. Government observes that the issue involved in the instant Revision Application is whether rebate of an amount equal to Cenvat Credit reversed under Rule 3(5) of Cenvat Credit Rules, 2004 on export of inputs goods as such, will be admissible under Rule 18 of Central Excise Rules, 2002 or not.

9. Government notes that grinding of Sulphur is not a manufacturing activity. Moverover none of the notes of Chapter 25 of Central Excise Tariff Act, 1985 envisages the grinding of Sulphur as amounting to manufacture. Hence M/s. Organica Industries grinding the un-refined Sulphur granules, in the form of Sulphur powder, is not a manufacturing activity.

10. To arrive at a conclusion that the amount reversed on clearance of inputs as such under Rule 3(5) of Cenvat Credit Rules, 2004 by the Applicant is duty and the rebate is allowed to them under Rule 18 of the Central Excise Rules, 2002, Government finds the same has been decided by the Honorable Bombay High Court in CCE, Raigad v. Micro Ink Ltd. in W.P. No. 2195/2010 [2011 (270) E.L.T. 360 (Bom.)]. The Hon'ble Bombay High Court at Para 12, 16 & 17 of its order dated 23.03.2011 observed as under:

"12. Rule 3(4) & Rule 3(5) of the 2002 Rules to the extent relevant read thus :-

Rule 3(4). When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in rule 7.



Rule 3(5). The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4).

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16. Since rule 3(4) of the 2002 Rules is *pari materia* with Rule 57(1)(ii) of the Central Excise Rules, 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India that the assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.

17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does lose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No. 283/1996, dated 31st December, 1996 has held that amount paid under Rule 57F(1)(ii) of Central Excise Rules, 1944 (which is analogous to the Cenvat Credit Rules, 2002/Cenvat Credit Rules, 2004) on export of inputs/capital goods by debiting RG 23A Part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.



Government further notes that Department had then filed Special Leave Petition with the Supreme Court against the above judgment dated 23.03.2011 of the Hon'ble High Court. In the said case, the Hon'ble Supreme Court has dismissed the Special Leave to Appeal (Civil) No. 5159/2012 filed by the Department vide order dated 25.11.2013 -

"Order

Delay condoned.

We find no reason to entertain this Special Leave Petition, which is , accordingly, dismissed."

Hence the issue had attained finality and thus the case/ issue is Res-Judicata.

11. Government further observes that Hon'ble Bombay High Court in its order dated 24.3.2011 in W.P. No. 2094/2010 filed by the Department and while upholding the Government of India Order No. 18/09 dated 20.1.2009 in the case of M/s Sterlite Industries (I) Ltd. [2017(354ELT 87(Bom))] at para 5 & 8 observed as under:

'5. We see no merit in the above contention. Reversal of input credit is one of the recognized method for paying duty on the final product. In fact, the Central Government by its Circular No. 283, dated 31-12-1996 construing similar provisions contained in Rule 57F of the Central Excise Rules, 1944 held that where the inputs are cleared on payment of duty by debiting RG-23A Part II as provided under erstwhile Rule 57F(4) of the Central Excise Rules, 1944, the manufacturer would be entitled to rebate under Rule 12(1)(a) of the Central Excise Rules, 1944. Rule 57F in the 1944 Rules is pari materia to Rule 3(5) of Cenvat Credit Rules, 2004. Similarly, Rule 12(1)(a) of the 1944 Rules is pari materia to Rule 18 of the Central Excise Rules, 2002. Therefore, when the Central Government has held that where the duty is paid by debiting the credit entry, rebate claim is allowable, it is not open to the departmental authorities to argue to the contrary.

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back to the original authority for adjudication on the basis of observations as stated above. The Applicant is also directed to submit all the requisite documents for verification. The original adjudicating authority will complete the requisite verification expeditiously and pass a speaking order after following the principles of natural justice.

15. Revision Application is disposed off in above terms.

Shrawan
27/01/21
(SHRAWAN KUMAR)

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

ORDER No. 52/2021-CX.(WZ)/ASRA/Mumbai DATED 27.01.2021

To,
M/s AIMCO Pesticides Ltd.,
'Akhand Jyoti', 8th Road,
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Copy to:

1. The Commissioner of GST& Central Excise , Belapur Commissionerte, 1st floor, CGO Complex, Sector 10, CBE Belapur, Navi Mumbai 400 614.
2. Sr. P.S. to AS (RA), Mumbai
- ✓ 3. Guard file
4. Spare Copy.

ATTESTED



अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai