

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. 195/121/14-RA / 1204

Date of Issue: 23.02.2021

ORDER NO. 58/2021-CX(WZ) /ASRA/MUMBAI DATED 27.01.2021 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 Gujarat Agrochem Ltd.
Plot No. 2901, GIDC Estate,
Panoli, District Bharuch

Respondent : Commissioner
GST & Central Tax,
Vadodara-II Commissionerate

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13.01.2014 passed by the Commissioner of Central Excise(Appeals), Surat-II.



ORDER

This revision application has been filed by M/s Gujarat Agrochem Ltd., Plot No. 2901, GIDC Estate, Panoli, District Bharuch(hereinafter referred to as "the applicant") against OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13.01.2014 passed by the Commissioner of Central Excise(Appeals), Surat-II.

2. The applicant is engaged in the manufacture of agro products falling under chapter 38 of the first schedule to the CETA, 1985. They had filed various rebate claims during the period from January 2011 to June 2012 before the Assistant/Deputy Commissioner of Central Excise(Rebate), Raigad. The rebate claims were sanctioned under 47 orders-in-original whereby the sanctioning authority had restricted the rebate to the FOB value instead of value at which duty had been paid by the applicant on the exported goods. With regard to the remaining amount paid on the exported goods, in 26 orders-in-original the Assistant/Deputy Commissioner had advised the applicant in these words - "However, the manufacturer is at liberty to take up the issue with the jurisdictional Assistant/Deputy Commissioner for taking re-credit of the said amount." In the other 21 orders-in-original, although the Assistant/Deputy Commissioner had reduced the restricted the rebate claims to the FOB value, no such remark has been recorded.

3. In response to the orders-in-original, the applicant had submitted letter dated 18.07.2013 to the Assistant Commissioner of Central Excise, Ankleshwar-III requesting to allow the applicant to take re-credit of an amount totaling to Rs. 28,30,259/- in respect of the 47 orders-in-original. The Assistant Commissioner of Central Excise, Ankleshwar-III allowed the applicant to take re-credit of Rs. 17,50,822/- but disallowed re-credit of Rs. 10,79,437/- vide OIO No. Ank-III/NN/02/13-14 dated 15.10.2013. The re-credit of Rs. 10,79,437/- had been disallowed on the ground that the sanctioning authority had not given instructions for re-credit.



4. The applicant was aggrieved by the rejection of their request for re-credit for Rs. 10,79,437/- in respect of 21 orders of the Maritime Commissioner passed by the Assistant Commissioner vide OIO No. Ank-III/NN/02/13-14 dated 15.10.2013 and filed appeal before the Commissioner(Appeals), Surat-II. The Commissioner(Appeals) averred that there was no express or implied authority or power given in Notification No. 19/2004-CE(NT) dated 06.09.2004 to transfer certain part of the decision making process in respect of the same rebate claim to another authority; that there is no option provided anywhere in Rule 18 or the notification to the Maritime Commissioner to transfer his jurisdiction of entertaining and deciding part issue/matter of the same rebate claim to the jurisdictional Assistant/Deputy Commissioner in-charge of the manufacturer/exporter. He further found that re-credit of CENVAT credit of such part of the duty amount relating to insurance and freight portion(value in excess of FOB value of exported goods) of the export value declared in the relevant export invoices/ARE-1's was not declared as specified duty admissible for CENVAT credit under Rule 3 of the CCR, 2004. The Commissioner(Appeals) further averred that the question of limitation & time bar under Section 11B was involved in a few orders-in-original amongst the 47 orders-in-original of the Maritime Commissioner covered under the order-in-original appealed against as certain orders-in-original passed by the Maritime Commissioner were pertaining to the period from October 2011 onwards. He concluded that this angle had not been examined in the order-in-original appealed against. In the light of these observations, the Commissioner(Appeals) vide OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13.01.2014 rejected the appeal before him and also set aside the order-in-original appealed against in so far as it relates to allowing re-credit of Rs. 17,50,822/- being erroneous and unsustainable in the eyes of law.

5. Aggrieved by the OIA No. SUR-EXCUS-002-APP-272-13-14 dated 13.01.2014, the applicant has filed revision application on the grounds that the Commissioner(Appeals) had travelled beyond the scope of the appeal; that the Commissioner(Appeals) had not considered their pleas regarding denial of



natural justice; that circular no. 510/06/2000-CX dated 03.02.2000 supported their case; placed reliance upon the judgment of the Hon'ble High Court of Punjab and Haryana in the case of Nahar Industrial Enterprises Ltd. vs. UOI[2009(235)ELT 22(P&H)]; the applicant also placed reliance upon the decisions/judgments in the cases of In Re : Maral Overseas Ltd.[2012(277)ELT 412(GOI)], In Re : Panacea Biotech Ltd.[2012(276)ELT 412(GOI)], In Re : Radiall India Pvt. Ltd.[2013(298)ELT 149(GOI)], In Re : Unique Pharmaceuticals Laboratories[2013(295)ELT 129(GOI)], In Re : RSWM Ltd.[2012(281)ELT 735(GOI)], Shasun Chemicals & Drugs Ltd. vs. CCE[2010(255)ELT 592(Trb)], Sopariwala Exports Pvt. Ltd. Vs. CCE[2013(291)ELT 70(Trb)] & with regard to the findings of the Commissioner(Appeals) on limitation for re-credit, the applicant placed reliance upon the judgments in the case of Kodak India Ltd. vs. CCE[2012(282)ELT 478(Trb)], CC vs. Hitachi Koki India Pvt. Ltd.[2012(281)ELT 207(Kar)]. On such basis, the applicant prayed that the impugned OIA be set aside and that the revision application be allowed in full with consequential relief.

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

6.2 The issue involved is the re-credit of the excess duty paid by the applicant on the export goods in their CENVAT account. The grounds in the revision application do not contain any ground contesting the order of the Maritime Commissioner restricting the rebate claims to the extent of FOB value of the exported goods. In other words, the applicant has not disputed the amount of rebate held to be admissible in respect of the rebate claims filed by them. The dispute raised in the revision application is exclusively in respect of the recredit of CENVAT amount by certain amount held to be inadmissible as rebate and which the applicant desires to have restored as re-credit in their CENVAT account.



6.3 Government infers that the case involved in the present revision application and the impugned order issued under Section 35A of the CEA, 1944 does not relate to rebate of duty of excise on goods or excisable materials used in the manufacture of goods exported to any country and is therefore beyond the ambit of Section 35EE of the CEA, 1944 and the revisionary powers vested thereunder in the Central Government. The proper forum for the applicant to seek relief in this case would be the CESTAT.

7. Government therefore holds that the revision application filed by the applicant is not maintainable.

Shrawan
27/01/21
(SHRAWAN KUMAR)

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

ORDER No. 58/2021-CX (WZ)/ASRA/Mumbai DATED 27.01.2021.

To,

M/s Gujarat Agrochem Ltd.
Plot No. 2901, GIDC Estate,
Panoli, District Bharuch

Copy to :-

1. The Commissioner of GST & Central Tax, Vadodara-II Commrte.
2. The Commissioner(Appeals), GST & Central Tax, Vadodara
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy

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

