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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. 195/277(B)/15-RA /5660 Date of Issue: 14.09.2020

ORDER NO. 624 /2020-CX (SZ) /ASRA/MUMBAI DATED 14-09-2020 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 CENTRAL EXCISE ACT, 1944.

Applicant : M/s Godrej Consumer Products Ltd.
(Formerly M/s Godrej Sara Lee Ltd.,)
R.S. No. 131/1-4.
Kattukuppam, Manapet Post,
Cuddalore Road, Pondicherry- 607 402.

Respondent : Commissioner, CGST, Chennai (North).

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. 149/2015 (CXA-I) dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals), Chennai.

ORDER

This revision application is filed by M/s Godrej Consumer Products Ltd. (Formerly M/s Godrej Sara Lee Ltd.), R.S. No. 131/1-4, Kattukuppam, Manapet Post, Cuddalore Road, Pondicherry- 607 402 (hereinafter referred to as 'the applicant') against the order-in-appeal No. 149/2015 (CXA-I) dated 26.06.2015 passed by the Commissioner of Central Excise (Appeals), Chennai with respect to order-in-original No. 678/2013(R), dated 30-12-2013 passed by Maritime Commissioner of Central Excise, Chennai-I Commissionerate.

2. Brief facts of the cases are that the applicant had filed rebate claims for Rs. 1,45,37,618/- (Rupees Once Crores Forty Five Lakh Thirty Seven Thousand Six Hundred Eighteen Only) in respect of duty paid on the goods exported viz. "Mosquito repellent liquid alongwith mosquito machine", falling under CHS 8516 of the Central Excise Tariff Act, 1985, cleared from their manufacturing premises at Cuddalore. On scrutiny of the Shipping Bills and Export invoices, it was found that the goods 'mosquito repellent machine' were imported under Advance Licence and had been packed along with their manufactured excisable goods viz. mosquito repellent liquid/refill. The original authority observed that the mosquito repellent machine had not undergone any manufacturing activity, a show cause notice was issued proposing to reject the claim for in respect of mosquito repellent machine. Subsequently, the lower Adjudicating Authority passed the impugned order-in-original rejecting the claim of Rs. 1,45,37,618/-.

3. Being aggrieved by the order-in-original, the applicant filed appeal before Commissioner (Appeals) who upheld the impugned order of the original authority and rejected the appeal.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The Commissioner (Appeals) has erred in upholding the findings of the adjudicating authority that with respect to mosquito repellant machine, there was no manufacturing process as defined in Section 2(f)(i) and (ii) and that the deemed fiction of manufacture under Section 2(f)(iii) of Central Excise Act, 1944 was applicable to goods repacked or relabeled for retail sale in domestic market and it was not applicable to goods exported. As long as the activity of packing of the goods declared in Schedule III is done in India, it attracts Section 2(f)(iii) of the Central excise Act and accordingly the activity is deemed to be manufacturing process.

4.2 With respect to export of mosquito repellant machine along with mosquito repellant liquid in a combi-pack under claim for rebate by them, the Maritime Commissioner rejected the claim on the above ground (absence of manufacturing activity) as per order-in-original No.492/2009 dated 20.07.2009. However, on appeal, the Commissioner (Appeals), Chennai ordered for sanction of rebate as per order-in-appeal No.16/2011 M-I dated 25.08.2011. The Commissioner of Central Excise, Chennai I aggrieved by the said order-in-appeal filed Revision Application to the Government of India and the Government saw reason in the order passed by the Commissioner of Central Excise (Appeals) and accordingly rejected the Revision Application filed by Commissioner of Central Excise, Chennai I vide order No.136/2013-CX dated 18.02.2013 in F.No.198/658/2011-RA.

4.3 The counsel for the applicant brought the above said order of Revision Authority to the notice of the Commissioner of Central Excise (Appeals). However, the Commissioner (Appeals) refused to follow the same stating that the said order dated 18.2.2013 of the Revision Authority was not presented at the personal hearing and it was also not cited by the original authority in the impugned order-in-original No.492/2009 and that he was not to admit additional evidence.

4.4 The applicant submitted that the Commissioner of Central Excise (Appeals) has erred in treating the order passed by the Revision Authority in the applicant's own case as an evidence and refusing to follow

the same. The order of the Government of India passed in the applicant's own case is a binding judicial precedent and not evidence.

4.5 Duty was paid on the assessable value determined in terms of Section 4 of the Act and not under Section 4A. It is therefore erroneous finding in appellate order being contrary to actual facts.

4.6 The value is combined value of liquid and machine and it is the transaction value as per Section 4 of the Central Excise Act.

4.7 The Appellate Authority has entered a finding that the applicant claims that duty was paid on liquid alone and that the value of machine was not included since it was supplied free as per contract and that no such contract was produced. It is submitted that the claim made by the applicant before the Commissioner of Central Excise (Appeals) was inadvertently made and it is contrary to actual facts. It is reiterated that there was no free supply of machine and that its value was duly included and duty paid in terms of Section 4 of the Central Excise Act.

4.8 In respect of order to avail Cenvat credit for the amount of rebate not sanctioned, the Appellate Authority cited the Government of India order No.865/2011-Cx dated 1.7.2011 (reported in 2012 (281) ELT 735 (GOI) and held the order-in-original. However, the order relied upon is related to an amount paid in excess of what is statutorily required to be paid. This case law cannot be applicable to the applicant's present case.

4.9 Even if the goods are not covered by Section 2(f)(iii) of the CEA, 1944, the rebate cannot be denied for the goods which have been repacked. The applicant relied decision of the GOI in regard to AV Industries case as reported in 2011 (269) ELT 122 GOI.

4.10 The goods exported were manufactured goods only. There is no denial of fact that the mosquito repellant machine was manufactured one. There is no legal requirement that the manufacturing activity has to be undertaken by the exporter himself. If it is otherwise, the entire scheme of

export by merchant exporter loses its relevance. It is accordingly submitted that duty was paid as per law and not in excess of what is statutorily required to be paid. The rebate claimed has tobe paid in cash and not by way of cenvat credit.

4.11 The CBEC in the circular 510/6/2000 Cx dated 3/2/2000 considered the question as to whether when once the duty is paid can the rebate be reduced and if the rebate is reduced can the manufacturer be allowed to take re-credit of the duties paid through debits in RG23 on the relevant export goods. The Board said "If the rebate sanctioning authority has reasons to believe that duty has been paid in excess than what should have been paid, he shall inform, after granting the rebate, the jurisdictional Assistant/ Deputy Commissioner. The latter shall scrutinize the correctness of assessment and take necessary action, wherever necessary. In fact, the triplicate copy of AR-4 is meant for this purpose, which are to be scrutinized by the Range officers and then sent to rebate sanctioning authority with suitable endorsement. Since there is no need for reducing rebate, the question of taking of re-credit in RG23A Part-II or RG 23C Part-II does not arise".

4.12 The applicant relied upon following decisions in support of their defense :-

a) Navbharat Impex vs CCE 2009 (236) ELT 349 Trib.Delhi.

b) Sidhartha Tubes Ltd Vs. CCE - 2000 (115) ELT 32 (SC)

c) Tata Libert Ltd Vs. CCE, Mumbai - 2000 (121) ELT 474 (Tri)

d) Kerala State Electricity Deve. Corp Ltd - 1994 (71) ELT 508 (Tri)

5. Personal hearing was scheduled in this case 23-108-2018. Shri G. Vijaybalan, Advocate appeared on behalf of the applicant who reiterated the grounds of revision application. Due to change in the Revision Authority, Personal Hearing was again scheduled on 09.12.2020. The department vide letter dated 02.12.2019 forwarded the submission in the case and requested to decide the case on merit.

6. Government has carefully gone through the relevant case records, submissions from both sides and perused the impugned order-in-original and order-in-appeal.

7. It is observed that adjudicating authority rejected the rebate claim of 1,45,37,618/- (Rupees Once Crores Forty Five Lakh Thirty Seven Thousand Six Hundred Eighteen Only)in respect of duty paid on 'Mosquito repellent liquid alongwith Mosquito repellent machine' on the ground that said imported machine has not undergone any manufacturing processing after import. The Appellate Authority vide his impugned Order in Appel upheld the Order in Original. Now the applicant have filed this Revision Application on the grounds stated at para 4 above.

8. Government observes that though the 'Mosquito repellant liquid' and 'Mosquito repellant machine' are classifiable under different Central Excise Tariff heading, they were exported in combi-pack. Further, the original authority has not disputed the export of said goods in a combi-pack but at the same time did not consider the machine as having undergone any processing. So, it is fact on record that adjudicating authority has admitted the export in combi-packs form of the said goods. There is no dispute about payment of duty and export of goods.

9. It is found that the department has contended that Section 2(f)(iii) applies for goods which are specified under the Third Schedule and the mosquito repellent machine does not figure in the list of descriptions of the products mentioned in Third Schedule.

10. It is observed that the issue has been discussed at length in respect of same applicant by Government of India in Revision Order No. 136/2013 CX dated 18.02.2013 and it is held that the impugned goods i.e. combi-pack gets specific characteristic as insecticide under CHS 3808.10 and these goods also finds entry as insecticide under Third Schedule. The Government has rejected the appeal of the Department in this case and allowed rebate to the applicant. The applicant had brought the said Order passed by the Revision Authority to the notice of the Appellate Authority. However, the

Appellate Authority did not take cognisance of the said order and observed that the same was neither presented by the applicant during personal hearing nor cited in the Order in Original when the same was very much available on that date. The Government finds that the decision in the Revision Order No. 136/2013 CX dated 18.02.2013 has not been contested by the department and being precedent order, it is binding on the lower authority. Further, the appellate authority, being quasi judicial, ought to have followed the same.

11. On recapitulation of Revision Order No. 136/2013 CX dated 18.02.2013, it is noted that the Hon'ble Principal Bench, CESTAT, New Delhi in the case of *Karamchand Appliances Pvt. Ltd.* v. *Commissioner of Central Excise, Chandigarh* reported in 2012 (284) E.L.T. 692 (Tri.-Del.) has decided the classification issue of combipack of mosquito repellant liquid and mosquito repellant machine. The relevant para(s) of Hon'ble Tribunal's judgment is reproduced as under :

> *"12. In the instant case, admittedly, the appellant had cleared the combi-pack comprising of Allout refill bottle containing insecticides falling under Chapter heading 3808.10 and the electro thermic apparatus used for domestic purpose falling under Chapter 85 of the Schedule to the Central Excise Tariff Act, 1985. Both the refill bottle of insecticides and the electro thermic apparatus are interdependent on each other for functional use. Refill bottle without electro thermic apparatus is of no use as mosquito repellent and electro thermic is of no use without the bottle containing insecticides. Both the articles fall with different classification heading under different chapter headings of Central Excise Tariff Act, 1985. Thus that being the case, the question arises, what would be the right classification for combipack.*
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> *13. .....*
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> *14. .....*
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> *15. Now the question arises, which of the two components, i.e. electro thermic apparatus or refill bottle of pesticides gives essential character to the combination pack. To find answer to this question, it would be*

essential to look at the combination pack from the buyer's perspective i.e. what would motivate the customer to buy combipack containing the apparatus and refill bottle. Whether the buyer would be prompted to buy combination pack with a view to purchase the electro thermic apparatus or with a view to buy refill bottle of pesticides? In our considered view, a prospective buyer would purchase such combination pack for using it as mosquito repellent, which purpose is achieved by vaporizing the liquid pesticide by subjecting it to heat with the aid of electro thermic apparatus. This imply that electro thermic apparatus is merely a delivery machine but the real mosquito repellent is liquid pesticides contained in refill bottle. Thus, we find that the liquid pesticides bottle in the combination pack gives essential character of mosquito repellent to the combination pack. Thus, in our view, the right classification for the combipack would be under Chapter heading 3808.10 which relates to insecticides etc. and not under Chapter heading 8516 relating to electric heating apparatus."

On perusal of the above judgment of the tribunal, the Government finds that impugned goods fall under Sr. No. 86 of Third Schedule. The Hon'ble Tribunal further held that the goods *i.e.* combi-pack are more appropriately classifiable under Chapter Heading 3808.10 which relates to insecticides, etc., and not under Chapter Heading 8516 relating to electric heating apparatus and held that the combo pack gets specific characteristic as insecticide under 3808 10. The goods falling under 3808 10 also find entry as insecticide under Third Schedule. As such the argument of department that said goods do not fall in Third Schedule is not legally tenable. As the activity of packing of the goods declared in Schedule III is carried out in India, it is opined that the same attracts Section 2(f)(iii) of the Central Excise Act, 1944 and thus the said activity of packing is surmised to be manufacturing process.

12. It is noticed that the Appellate Authority while passing the impugned order has observed that value for the purpose of domestic clearance accepted by the department under Section 4A of the Central Excise Act, 1944 for combi-pack cannot be accepted for export clearance of the same which should be transaction value determined under Section 4 of the Central Excise Act, 1944. In this regard, the applicant has contested that,

in the instant case, duty paid by them was based on the assessable value determined in terms Section 4 of the Central Excise Act, 1944 (not under Section 4A) in accordance with Board's Circular No. 6/44/2008 CX I dated 28.02.2002. The applicant have enclosed the copy of invoice in support of their claim and further submitted that their claim that the duty was paid on Repellent liquid only without inclusion of the value of machine was made inadvertently. The Government opines that the facts on this aspect need to be verified by the original authority and the case deserves to be remanded back for limited purpose of verification to this regard.

13. In view of above discussion, Government sets aside impugned Order in Appeal and remands the case back to the original authority for denovo adjudication for a limited purpose of verification valuation aspect as discussed supra and to pass a well-reasoned order after following the principles of natural justice. The applicant are directed to submit copies of relevant invoices for necessary verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of said documents from the applicant.

14. Revision application is disposed off in above terms.

15. So ordered.

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

ORDER No. 624 /2020-CX (SZ)/ASRA/Mumbai Date 14/09/2020.

To,
M/s Godrej Consumer Products Ltd.
(Formerly M/s Godrej Sara Lee Ltd.,)
R.S. No. 131/1-4.
Kattukuppam, Manapet Post,
Cuddalore Road, Pondicherry- 607 402.

Copy to:

1. The Principal Commissioner of Central GST, Chennai North Commissionerate, 26/1, Mahatma Gandhi Road, Chennai -600 034.
2. The Commissioner Of Central GST (Appeals-I) , 26/1, Mahatma Gandhi Road, Chennai -600 034.
3. The Assistant Commissioner of Central Tax (GST) & Central Excise, No:1, Vallalar Nagar, Manjakuppam, Cuddalore-1, Tamil Nadu.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.