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. 195/19/WZ/2018-RA/1145 Date of Issue: 22.12.2023

ORDER NO. 66 /2023-CX(WZ)/ASRA/MUMBAI DATED 20.12.23 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 : Vimalachal Print & Pack Pvt. Ltd.,
5, Saket Industrial Estate, Survey No. 437, Nr.
Changodar-Balwa National Highway, Moraiya-382213,
Tal. Sanand, Dist-Ahmedabad.

Respondent : Pr. Commissioner of CGST & Central Excise, Ahmedabad.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. AHM-EXCUS-002-APP-113-17-18 Dated 27-09-2017 passed by the Commissioner of Central Excise(Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Vimalachal Print & Pack Pvt. Ltd., 5, Saket Industrial Estate, Survey No. 437, Nr. Changodar-Balwa National Highway, Moraiya-382213, Tal. Sanand, Dist-Ahmedabad.(hereinafter referred to as "the applicant") against Order-in-Appeal No. AHM-EXCUS-002-APP-113-17-18 Dated 27-09-2017 passed by the Commissioner of Central Excise(Appeals), Ahmedabad.

2. The brief facts of the case are that the applicant M/s. Vimalachal Print & Pack Pvt. Ltd., holding Central Excise Registration Certificate bearing No. AAACV7000QXM001 and is engaged in the manufacture of excisable goods falling under Chapter 39 & 48 of the Central Excise Tariff Act, 1985, filed rebate claim amounting to Rs. 48,349/- of Basic Excise duty and Rs. 17,467/- of Additional Excise duty on export made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004.

3. Assistant Commissioner, Central Excise, Div-IV, Ahmedabad-II after following the process of law rejected the rebate claim vide Order-in-Original No. 1871/Rebate/2016-17 Dated 10.05.2016 for non-submission of duly certified triplicate copy of ARE-1; & as Countervailing duty (CVD) and Special Additional duty (SAD) are not specified duties as per Notification No. 19/2004-CE(NT), issued under Rule 18 of the Central Excise rules, 2002 so benefit of granting of rebate cannot be extended to the applicant.

4. Being aggrieved, the applicant preferred appeal against the Order-in-Original Dated 10.05.2016. The Commissioner (Appeals) vide Order-in-Appeal No. AHM-EXCUS-002-APP-113-17-18 Dated 27-09-2017 rejected the appeal and upheld the Order-in-Original.

5. Aggrieved by the said Order in Appeal applicant has preferred Revision Applications mainly on the following grounds-

5.1 They submitted that learned Assistant Commissioner as well as Commissioner (Appeals) has grossly failed to comprehend the provisions pertaining to claim of rebate under Rule 18 of CER. In this regard Rule 18 of the said Rules provides that where any goods are exported, the central government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods. Accordingly, in exercise of the powers conferred by Rule 18 of said rules, the Central Government under Not. No.19/2004-CE(NT) dated 6-9-2004 as amended stipulated that there shall be granted rebate of whole of the duty paid on excisable goods falling under the First Schedule to Central Excise Tariff Act, 1985, exported to any country other than Bhutan. It is thus clear that the provisions of rebate of duty on export of goods are governed by Notification No.19/2004-CE (NT) dated 6-9-2004 as amended. The notification stipulates that rebate claim shall be granted subject to the conditions specified in paragraph 2 and procedures, specified in paragraph 3 of the notification.

5.2 The applicants submitted that rebate claim has been rejected against the provisions of Rule 18 of CER, inasmuch as applicants complied with all the conditions stipulated under notification No. 19/2004-CE(NT). Thereafter, applicants demonstrated that all the conditions of notification No. 19/2004-CE(NT) stand satisfied.

5.3 The learned adjudicating authority has rejected rebate claim on three grounds, which have been reproduced in para 10 of the OIO as under:

(a) Triplicate copy of ARE-1 No. 149/15-16 dated 26-09-2016 is not filed before the Range Superintendent and not got the certificate of the Range officer's certificate regarding the duty payment particulars in the said ARE-1, as stipulated vide para 3(x) and (xii) of notification No. 19/2004-CE(NT)

(b) The claimant had not filed any document under which the goods were initially procured and cenvat credit was taken in establishing that the correct amount of duty/credit is reversed through cenvat credit account under the provisions of Rule 3(5) of cenvat credit Rules, 2004.

(c) The claimant sought rebate of duty which are not specified duties of excise as per notification No. 19/2004-CE(NT).

5.4 They submitted that triplicate copy of ARE-1 was produced before the Range Superintendent, however, he denied to accept the same on the ground that rebate claim cannot be filed for removal of input as such. Therefore, triplicate copy of ARE-1 was enclosed with the rebate application. Since triplicate copy of ARE-1 was available with the rebate sanctioning authority, he could have got necessary certificate or got verified the authenticity of the duty paid character of exported goods. It is submitted that duty was debited under RG23A Pt. II vide entry No. 1454 dated 30-09-2015 and self certified copy of the folio containing debit entry was furnished with rebate application. As such duty paid character of exported goods cannot be doubted. Even otherwise, learned Assistant Commissioner could have verified the duty paid character of the goods from the Range Superintendent. Inasmuch as Triplicate copy of ARE -1 and copy of RG 23A Pt. II was available with them. Since learned Assistant Commissioner has rejected rebate claim without verifying the fact of duty paid character of exported goods, order passed by him may please be quashed and set aside.

5.5 Learned Commissioner (Appeals) failed to appreciate the submissions made by the applicants. Inasmuch as export of goods gets certified by customs authorities and original and duplicate copy of ARE-1 are endorsed by customs officer. Since applicants submitted endorsed original and duplicate copy of ARE-1 along with copy of Shipping Bill and Bill of Lading, export of goods stands established. Here it is submitted that in para 2(1) of the show cause notice it has specifically been mentioned that copy of documents enclosed with rebate claim: "Original and duplicate copy of ARE-

1 149/15-16 dated 26-09-2015, bearing endorsement by the customs authority at port." As such export of goods is not in dispute. With respect to duty paid character of the goods, applicant furnished folio of RG23A Pt. II showing debit entry No. 1454 dated 30-09-2015. As such duty paid character of the goods cannot be doubted. In fact it is the case of the department that applicant paid central excise duty by debiting cenvat credit. As such when it is on record that central excise duty has been debited from cenvat account, disallowing rebate by questioning genuineness of duty paid of export goods is bad in law. Further, obligation of endorsing triplicate copy of ARE-1 is on the Superintendent ie on department and not on the applicants.

5.6 It is submitted that learned adjudicating authority had rejected rebate claim construing payment of central excise duty by utilizing cenvat credit as payment of customs duty. They submitted that applicant has not claimed rebate of Countervailing Duty or Special Additional Duty. The rebate claim was filed in respect of duty paid on export of goods. Since inputs were cleared as such, applicants paid duty equal to the credit availed under the provisions of Rule 3(5) of CCR. It is submitted that as per Sub-rule (4)(b) of Rule 3 cenvat credit may be utilized for payment of an amount equal to cenvat credit taken on inputs if such inputs are removed as such. Accordingly, applicants utilized cenvat credit availed in respect of imported goods towards payment of duty of exported goods. Since applicant has claimed rebate of duty paid on export of goods and not on cenvat credit availed of countervailing duty of Special Additional Duty, the order is ex-facial illegal and not sustainable.

5.7 The applicant also relied on Board circular No. 283/117/96-CX dated 31- 12-96 wherein it has been clarified that inputs can be removed as such for export and such clearances should be treated as par with the "final product".

The Board under above clarification has specifically and unambiguously held that when inputs are cleared on payment of duty by debit in cenvat

account, the manufacturer will be entitled for rebate. In light of the above clarification of the Board, the order passed by learned Assistant Commissioner needs to be quashed and set aside.

5.8 It is submitted that rebate claim has been principally disputed on the ground that payment of central excise duty under Rule 3(5) of CCR cannot be considered as "duty", as applicants have utilized cenvat credit of CVD and SAD for payment of central excise duty. In support of the ground, learned adjudicating authority has heavily relied on decision of Hon'ble High Court in the case of Intas Pharma Ltd. V/s. UOI cited 2016(332)ELT-680(Guj). In fact rebate claim has been rejected solely on the basis of the decision of Hon'ble High Court of Gujarat in the case of Intas Pharma Ltd. However, reliance has grossly been misplaced in the facts of the case. In this connection applicant in para 17 of the grounds of appeal submitted as under:

> *17. It is submitted that learned Assistant Commissioner has misdirected himself on the issue of "payment of duty" and failed to make distinction between payment of excise duty on removal of input as such and payment of countervailing duty and Special Additional Duty. Further, learned Assistant Commissioner in para 15 of his order has misplaced reliance on the decision of Hon'ble High Court of Gujarat in the case of Intas Pharma Ltd. V/s. UOL cited at 2016(332)ELT-650(Guj). Inasmuch as in the case of Intas Pharma Ltd. the claim of rebate was made with regard to additional duty (CVD) paid by suppliers of M/s. Intas Pharma Ltd.*

However, in the present case rebate claim was filed strictly following the conditions and procedures envisaged under notification No. 19/2004-CE(NT). Further, applicant filed rebate claim in respect of duty paid on clearance of input as such for export. Applicant had not claimed rebate of countervailing duty or special additional duty paid at the time of import of goods.

5.9 With respect to reliance placed on the judgment of Hon'ble High Court of Gujarat in the case of Intas Pharma Ltd. by learned Commissioner (Appeals), it is submitted that facts of Intas Pharma Ltd. and facts involved in the case of the applicants are totally different. Inasmuch as in the case of M/s. Intas Pharma Ltd. the rebate claim was filed in respect of duty suffered on the raw materials received by local dealers / traders who have either imported such raw materials from foreign countries or procured the same from local manufacturers. Whereas in the present case the rebate claim was filed in respect of central excise duty paid by the applicants under the provisions of Rule 3(5) of CCR. It is submitted that in the case of Intas Pharma Ltd. the local dealers/traders imported raw materials from foreign countries or procured the goods from manufacturer and supplied the same to M/s. Intas Pharma Ltd. The rebate claim was filed in respect of duty paid under customs law and no central excise duty was paid on the inputs supplied by traders to M/s. Intas Pharma Ltd. Since no central excise duty was paid by the traders/dealers who supplied the goods to M/s. Intas Pharma Ltd., rebate claim was rejected. Here it is submitted that question of paying central excise duty by trader or dealer does not arise, inasmuch as trader/dealer cannot pay central excise duty. As such when trader/dealer cannot pay central excise duty and in the case of M/s. Intas Pharma Ltd. when no central excise duty was paid by trader or dealer, rebate claim was rejected. It is submitted that condition (a) of notification No. 19/2004-CE(NT) stipulates that the excisable goods shall be exported after payment of duty. In the present case it is on record that applicants exported goods on payment of duty, albeit duty was paid under the provisions of Rule 3(5) of CCR. However, in the case of M/s. Intas Pharma Ltd. traders/dealers supplied the goods to M/s. Intas Pharma Ltd. situated in SEZ, as such export took place but there was no payment of duty. The rebate claim filed in respect of duty suffered on import of goods cannot be construed as payment of duty. However, in the case of applicant central excise duty was paid by utilization of cenvat credit. As such learned Commissioner (Appeals) has misplaced reliance on the decision of Hon'ble High Court in the case of

M/s. Intas Pharma Ltd., therefore, order impugned may please be quashed and set aside.

5.10 It is submitted that department has construed rebate of central excise duty paid under Rule 3(5) of CCR as rebate of Countervailing Duty (CVD) and Special Additional Duty (SAD) by the applicants. It is submitted that applicants procured inputs from overseas supplier and accordingly paid customs duty, CVD, SAD, etc. On receipt of inputs cenvat credit was availed on CVD and SAD. Thereafter, when applicants received order for supply of goods for export by merchant exporter, the applicants cleared goods for export under ARE-1 following the procedure laid down under notification No. 19/2004-CE(NT). The applicants also complied with all the conditions of notification No. 19/2004-CE(NT). The goods were cleared on payment of central excise duty under the provisions of Rule 3(5) of CCR. Since it was removal of input as such, central excise duty equal to cenvat credit availed was paid. However, department has misconstrued the rebate of CVD and SAD. Here it is submitted that once cenvat credit of any duty paid on inputs is availed, it becomes cenvat credit and cannot be distinguished as excise duty or CVD or SAD. In fact cenvat credit availed in respect of any duty whether duty of excise, additional duty of excise or additional duty leviable under Section 3 of Customs Tariff Act become one and may be utilized for payment of any duty of excise on any final product or removal of input as such or as per the provisions of Rule 3(4) of CCR. As such rebate of excise duty paid under the provisions of Rule 3(5) of CCR is different from rebate of duty paid under the provisions of Customs Tariff Act. In light of above facts, order passed by the learned Commissioner (Appeals) may please be quashed and set aside.

5.11 They submitted that CBEC under its circular No. 283/117/96-CX dated 31- 12-96 specifically clarified "It is not the intention of the Government to debar such manufacturer-exporters from utilising credit. Clearance of inputs as such for export under bond can still be treated at par

with final product" Further, in para 4 of the circular Board has specifically clarified that manufacturer is entitled for rebate on clearance of inputs as such and in case export of input as such is under Bond, reversal of credit is not required. Since Board has specifically clarified that removal of input as such is to be treated at par with the "final product", the rebate claim needs to be sanctioned to the applicant. Therefore, order passed by the learned Commissioner (Appeals) may please be quashed and set aside.

6. Personal hearing in this case was held on 12.10.2022. Shri P.G.Mehta, Advocate duly authorized, appeared online on behalf of the applicant. He submitted that applicant's claim was rejected based on judgement of Intas Ltd. He distinguished facts of that case with present case. He referred to Bombay High Court case of Micro Inks Ltd on identical facts. He requested to allow their claim. He stated that he will be submitting written submission in two days.

7. Applicant made their written submissions were in they reiterated their earlier submissions and stated:

7.1 Rebate claim was disputed on the ground that triplicate copy of ARE-1 was not endorsed by the Range Superintendent and that rebate of duty claimed are not specified duties of excise as per notification No. 19/2004-CE(NT).

7.2 They submitted that applicants complied with all the conditions stipulated under notification No. 19/2004-CE(NT) and followed the procedure in respect of filing rebate claim. In fact there is no dispute with regard to export of goods or compliance of the provisions envisaged under notification No. 19/2004-CE(NT).

7.3 It is submitted that rebate claim was rejected on the ground that reversal of duties as per Rule 3(5) of cenvat credit Rules can be considered

as "duty for the purpose of sanctioning rebate claim under Rule 18 of CER. With respect to reversal of credit not considered "duty", they relied on the decision of Hon'ble High Court of Bombay in the case of CCE, Raigad V/s. Micro Inks Ltd cited at 2011(270)ELT-360(Bom.)

7.4 Further, Range Superintendent certifies duty paid character of the goods exported by the assessee. However, in the present case there is no allegation or finding that goods were not duty paid. Merely because Range Superintendent did not sign or certify the triplicate copy of ARE-1, the duty paid character of goods cannot be doubted. More specifically when applicants furnished copy of RG-23A Pt. II wherein at entry No. 1454 dated 30-09-2015 duty was debited. As such order of learned Commissioner (Appeals) may please be quashed and set aside.

8. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Order-in-Original, the Order-in-Appeal and the RA. It is observed that the issues involved in the present revision application are non-submission of duly certified triplicate copy of ARE-1 and whether the applicant is eligible to the rebate of the Special Additional Duty (SAD) under Section 3 (5) of the Customs Tariff Act, 1975. Before delving any further, Government finds that it needs to be recorded clearly that the issue here is the rebate of Central Excise duty paid on the final product that was exported and that the same has been claimed under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004 which prescribes the procedures and limitation for availing such rebate.

9. <u>Non-submission of duly certified triplicate copy of ARE-1:</u>

9.1 Government observes that the applicants exported goods vide ARE-1 and filed rebate claim under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority rejected their claim mainly on the ground that the

applicants failed to file the Triplicate copy of ARE1 before the concerned Range Superintendent or Inspector and failed to get the certificate regarding the duty payment particulars in the said ARE-1. The ARE-1's contained all the particulars of central excise invoice, the destination, the name of the vessel. Moreover, the Customs Officer has signed in acknowledgment of having supervised the shipping of the export goods as detailed in the invoice no. mentioned on the front side of the ARE-1 in the Part-B of the ARE-1's and certified that the consignments were shipped under the respective shipping bills. Be that as it may, even if it is viewed as an error on their part, the failure to submit copies of the ARE-1 to the Superintendent of Central Excise was at best a technical lapse and could not render their claim to rebate fatal.

9.2 On perusal of Order in original, Order-in-Appeal and as also claimed by the applicant, they have complied with the deficiencies and have provided copies of Original and duplicate copy of ARE-1 bearing Customs endorsement, the Triplicate copy of ARE1, Copy of the S.B., B.L., Mate Receipt etc. evidencing the actual export have taken place to substantiate the factum of the goods being exported and cleared outside country. There is no case that the goods cleared have not been exported. Substantive benefit cannot be denied for procedural lapses.

10. Whether Additional Excise duty is a specified duty of Excise as per Notification No. 19/2004-CE(NT).

10.1 Government proceeds to decide the issue of admissibility of rebate of the additional Customs duty leviable under Section 3(5) of the Customs Tariff Act, 1975 (SAD).

10.2 Rule 18 of the Central Excise Rules, 2002 reads as under:

Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods

and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification

Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at the time of clearance of excisable goods for export can be claimed.

10.3 The relevant extracts of Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 read as under:

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 40/2001-Central Excise (NT), dated the 26th June 2001, [G.S.R.469(E), dated the 26thJune, 2001] in so far as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter

Explanation I - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely:

(a) the Central Excise Act, 1944 (1 of 1944);

(b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);

(e) special excise duty collected under a Finance Act;

(f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);

(g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No.2) Bill, 2004.

Government observes that the Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 relates to export of excisable goods on payment of duty and allows rebate of certain types of duties of Excise paid at the time of export. It also explains meaning of duty for the purpose of said notification. This notification does not mention about rebate of SAD or any other duty under Customs Tariff Act, 1975.

11. Government observes that the rebate claims filed by the respondent were in respect of CVD and 4% SAD paid under cover of ARE-1 at the time of export. Government observes that the OIO & OIA have rightly pointed out that 4% SAD leviable under sub-section (5) of section 3 of the Customs Tariff Act did not find a mention in the Explanation I of the said Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 and thus cannot be termed as a duty of excise and hence rebate of SAD is not required to be paid at the time of export. The impugned order is modified to this extent.

12. The Revision Application is disposed of in the above terms.

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 66 /2023-CEX (WZ) /ASRA/Mumbai Dated 31.03.23

To,

Vimalachal Print & Pack Pvt. Ltd.,
5, Saket Industrial Estate, Survey No. 437,
Nr. Changodar-Balwa National Highway,
Moraiya-382213, Tal. Sanand, Dist-Ahmedabad.

Copy to:

1. Pr. Commissioner of CGST & Central Excise, Ahmedabad.
2. The Commissioner of GST & CX, (Appeals) Ahmedabad.

3. Shri P.G.Mehta, Advocate. Khatri Consultants, 4 Padma Chambers, 1st Floor, Opp Gandhigram Rly. Station, Ellisbridge, Ahmedabad – 380 009.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.