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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/1267 & 1268/2012-RA/4923 Date of Issue: 2/11/19

ORDER NO. 68-69 /2019-CX (WZ)/ASRA/MUMBAI DATED 07.10.2019 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. Nirma Ltd.,

Respondent : Commissioner of Central Excise (Appeals), Vadodra

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 944 against the Orders-in-Appeal Nos. SRP/297 VDR-1/2012 dated 14.09.2012 and SRP/310/VDR-1/2012 dated 14.09.2012 passed by the Commissioner (Appeals), Central Excise & Customs,Vadodara.

ORDER

The two Revision Applications have been filed by M/s. Nirma Ltd., Detergent Complex, Village Alindra, Tal. Savli, Dist. Vadodara 391 775 (hereinafter referred to as "the Appellant") against the Orders-in-Appeal Nos. SRP/297 VDR-1/2012 dated 14.09.2012 and SRP/310/VDR-1/2012 dated 14.09.2012 passed by the Commissioner (Appeals), Central Excise & Customs,Vadodara.

Sl. No	Details	Duty Amount (Rs)	Order-in-Original & dt	Order-in-Appeal No. & dt	Revision Application
1	SCN dt 26.6.09	4,368	D/06-07/Div.1/10-11 dated 29.11.2010 confirmed duty+interest+ penalty	SRP/297 VDR-1/2012 dt. 14.09.2012- appeal rejected	F.No.195/ 1267 /2012-RA
	SCN dt 20.9.10	2,792			
2	18 Rebate claims dt 24.02.11	74,36,089	1598/10-11/DC(Rebate)/Raigad dt 14.01.2011 – sanctioned rebate of Rs. 71,09,366- and re-credit of Rs. 3,08,793/- in Cenvat account	OIA No. SRP/310/VDR-1/2012 dt. 14.09.2012 – appeal rejected	F.No.195/ 1268/2012-RA

2. The issue in brief is that the Appellant are engaged in the manufacture of Linear Alkyl Benzene (LAB) falling under Chapter 38 of the Central Excise Tariff Act 1985 (herein after as 'CETA').

In respect of Sl.No.1 :

2.1 The Appellant had cleared LAB to various locations under UT-1 for export under the provision of Rule 19 of the Central Excise Rules, 2002 (herein after as 'CER'). On scrutiny of proof of export documents filed by the Appellant, it was noticed that quantity of

LAB were short shipped/ not exported. Therefore they were issued 02 Show Cause Notices as detailed below:

Sr.No.	Dt of SCN	ARE-1 No 7 date	Qty export from factory Gate (MT)	Qty export from Port (MT)	Qty short shipment (MT)	Value of short shipment (Rs.)	Total duty involved (Rs.)
1	26.6.09	20 dt 12.5.09	99.35	98.36	0.992	53,009	4,368
2	20.9.10	41 & 42 dt 10.11.09	324.425	323.880	0.545	33,886	2,792
Total			423.775	422.240	1.537	86,895	7,160

The Assistant Commissioner, Central Excise & Customs, Vadodara-1 then vide Order-in-Original No. D/06-07/Div.1/10-11 dated 29.11.2010 confirmed duty of Rs. 4,368/- and Rs. 2,792/- along with interest and also imposed penalty of Rs. 2,500/- each. Aggrieved, the Appellant then filed with Commissioner(Appeal), Central Excise & Customs, Vadodara who vide SRP/297 VDR-1/2012 dated 14.09.2012 upheld the Order-in-Original and rejected the appeal.

In respect of Sl. No. 2 :

2.2 The Appellant had filed 18 rebate claims dated 24.02.2011 amounting to Rs. 74,36,089 under Rule 18 of the Central Excise Rules 2002. The Applicant vide their letter dated 15.04.2011 requested to reduce the rebate claim for shortage of 2.482 MT of LAB. The Assistant Commissioner, Central Excise & Customs, Vadodara-1 then vide Order-in-Original No. Rebate/58-75/Nirma/Div.1/11012 dated 21.04.2011 sanctioned rebate of Rs. 71,09,366/- as cash through payee cheque and refund Rs. 3,08,793 as re-credit in Appellant's Cenvat account. Aggrieved, the Appellant then filed appeal with Commissioner(Appeal), Central

Excise & Customs, Vadodara who vide SRP/310/VDR-1/2012 dated 14.09.2012 upheld the Order-in-Original and rejected the appeal.

3. Being aggrieved, the Appellant have filed the instant two Revision Applications on the following grounds :

In respect of Sl. No. 1 :

3.1 that the only issue to be decided in the present appeal is about the condonation of losses by way of remission of duty under Rule 21 of the Central Excise Rules (herein after 'CER') for the marginal short quantity occurred during transit, storage and handling etc. in export goods, cleared from factory to port of export. The shortage is only due to natural causes.

3.2 that it is not the case of the department that the short quantity has been disposed of illicitly. There is no allegation on this issue. However, both the authorities instead of condonation of short quantity demanded and confirmed the duty on the short quantity on the ground that there is no instruction from the department to condone the loss for LAB.

3.3. that the findings in Para 8 of the impugned order that the loss due to transit and handling of the goods at port of export does not found support with any literature or documentary proof, when the quantity cleared from the factory and the quantity of export has been acknowledged from the export documents duly certified by the Customs Officer. It is failed to understand that what other literature or documentary proof is required. Therefore, the findings are apparently irrelevant and not supported by any law and hence cannot be upheld.

3.4 that in findings in Para 9 of the impugned order regarding non-applicability of Board Circular dated 24.01.1997, it is not necessary of the Government to issue the instructions for each and every items specified in the CETA, but it is to be assumed that the yard stick and guidelines issued for the particular product can be made applicable in other goods taking into consideration of the nature and variety of goods. It is but natural that the goods are cleared on weight or volume basis some variation is bound to occur which may be due to evaporation or weighment on two different weigh bridges. The variation could not be only in cases where goods are cleared in numbers or measurement bais. The requirement under the law is that whether the lost quantity is genuine or otherwise, It is a well settled law by several decision of the Appellate authority that a marginal short quantity/ loss noticed during transit, handling or weighment on other weigh bridge is required to be condones and no duty can be demanded nor any credit could be denied. Therefore, the impugned order confirming the demand of duty on short quantity is not correct and legal in the eyes of law and so required to be quashed as set aside.

3.5 that in absence of any ingredient for imposition of penalty there is no justification nor any valid ground to impose the penalty. Further in the earlier order-dated 27.10.2010, the Commissioner (Appeals) has already dropped the penalty under Rule 25 of CER. Therefore, the contrary and different views taken in the present decision by the learned Commissioner (Appeals) is not justifiable and so required to be set aside.

In respect of Sl. No. 2 :

3.6 that it is undisputed fact that LAB cleared for export from the factory in sealed containers and the same was exported out of India through Mundra Port. The entire quantity of 1029.335 MT

was cleared from the factory was exported. However, during loading the goods in foreign going vessels aggregate shortage of 2.482 MT i.e. 0.24% was noticed. This shortage was only due to natural causes viz weighment on different weigh bridges, evaporation, handling of unloading and loading at the port, etc. Therefore, the short quantity of 2.482 MT i.e. 0.24% was natural causes and so it could have been condoned and rebate should have been allowed.

3.7 that the learned Commissioner (Appeals) in Para 9 of the impugned order rejected the appeal on the ground that the loss has occurred during the transit and not while taking out the goods from the storage tank of the factory and filling in the tank lorry and therefore the same is not applicable. In this regard the Appellant submitted that there was no dispute about the clearance of LAB on payment of duty on quantity and the value shown in the ARE 1s of the export documents. The loss was during transit, handling and weighment at the port. As per the findings it could be said that only the storage loss is condonable, whereas transit loss is not condonable. This is not correct and legal, on the ground that the loss either in storage or in transit makes no difference. In both types of the cases the requirement to condone the loss is that it must be within an acceptable quantity and genuine. Therefore, when storage loss is condonable, how it is reasonable and justifiable for non-condonation of transit and handling losses. Therefore demand of rebate claim is not justifiable but incorrect and illegal.

3.8 that the learned Commissioner (Appeals) in Para 9 of the impugned order held that he decisions related to admissibility of credit on short quantity noticed during the transit allowed by the Appellate Authorities are not applicable in case of rebate claim in short

quantity during transit and handling in export goods. Here, the Appellant submitted that allowance of credit of duty paid on short quantity under CCR is as good as admissibility of the rebate of duty paid on short quantity during transit in export goods. Therefore, the findings are totally incorrect, illegal and contrary to the decisions cited by the Appellant. The ratio of the said decision is equally applicable in the present case. Therefore, the findings cannot be upheld.

3.9 that the learned Commissioner (Appeals) held that the short shipped quantity shall have to be deemed as cleared for home consumption and so refund is not admissible. In this the Appellant submitted that before arriving at such conclusion the requirement under the law is that the department shall have to bring the documentary evidences on record for illicit clearance of export goods for home consumption. There was no such allegation in the notice nor any evidence on record by the department. Therefore, the findings based on presumption are without authority and jurisdiction and hence could not be upheld.

3.10 that the impugned order is apparently erroneous, incorrect illegal and contrary to the settled law by various decisions of the Appellate Authorities.

The Appellant requested to set aside the impugned orders and their revision applications may be allowed with consequential relief.

4 A personal hearing in this was held on 21.11.2017, 27.03.2018 and 18/19.12.2018. On 19.12.2018, Shri Vikramsingh Jhala, AGM on behalf of the Appellant attended the hearing. The Appellant reiterated the submissions filed through the two Revision Applicants and Synopsis & written submission and pleaded that both the Orders-in-Appeal be set aside and their revisions application be allowed. However, there was a change in the Revisionary

Authority, hence a final hearing was granted on 19.08.2019. The Appellant nor his representative attended the same hearing.

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 records

6.1 In respect of Sl.No.1, the Government observes that the Appellant had cleared LAB under UT-1 for export under the provision of Rule 19 of the CER. The Appellant then vide their letters No. NL/ALN/ANN/EX.19/09-10 dated 13.06.2009 and 19.12.2009 respectively, filed for condonation under Rule 21 of the CER on evaporation loss during transit and requested to condon the remission of duty of Rs. 4,368/- and Rs. 2,792/- on export of LAB which was under condonable limit as per Board Instruction. The Department then issued 02 Show Cause Notices. Government notes that the provisions of Rule 21 of the CER reads as under :

> *"Where it is shown to the satisfaction of Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacture as unfit for consumption or for-marketing, at any time before removal, he may remit the duty payable on such goods, subject to conditions as may be imposed by him by order in writing".*

And CBEC Circular No. 292/8/97-CX dated 24.01.1997 reads as under :

> "**Subject:** Condonation limit for storage loss, handling loss and transit loss in respect of Natural Gasoline Liquid (NGL) - regarding.

It is been reported to the Board that Natural Gasoline Liquid (NGL) is a highly volatile item and losses are noticed due to evaporation during the course of loading, unloading, transportation and warehousing / storage of this item and therefore a Condonation limit for storage losses, transit losses and handling losses should be prescribed by the Board as in the case of some other petroleum products.

The matter has been examined by the Board.

It has been decided to prescribe a cumulative loss allowance towards storage losses, transit losses and handling losses, upto a maximum ceiling of 0.5% of the NGL, subject to adjustments and decision on losses on monthly basis."

Government finds that the Rule 21 of the CER for remission clearly says "*at any time before removal*". In this case, the goods have already been removed from the factory, so the question of remission of duty after removal does not arise. The Government also finds that the CBEC Circular No. 292/8/97-CX dated 24.01.1997 is specifically for Natural Gasoline Liquid (NGL) only which is highly volatile and the same cannot be applied or equated with LAB. Further, Government finds that though there was no evidence of deliberate evasion on the part of the Appellant, however the fact remains that the short shipped quantity of 1.537 MT valued at Rs. 86,895/- had suffered duty of Rs. 7,160/-. In this, the Government agrees with the findings of the Commissioner (Appeals).

6.2 In respect of Sl.No.2, the Government observes that the Appellant had filed 18 rebate claims dated 24.02.2011amounting to Rs. 74,36,089 under Rule 18 of the CER. The Appellant vide their letter dated 15.04.2011 had requested to reduce the rebate claim for shortage of 2.482 MT of LAB detailed as given below:

ARE-1 No. & dt	Total Qty cleared from factory (MT)	Total Qty exported from port (MT)	Total Qty short shipment (MT)	% of Short Qty
120 to 145 dt 6.12.10 to 7.12.10	1029.335	1026.853	2.482	0.24%

Based on the Appellant's request letter dated 15.04.2011 for reduced/revised rebate claim, the Assistant Commissioner, Central Excise & Customs, Vadodara-1 has sanctioned the revised rebate i.e. findings in Para 10

> *"10..... However, since the claimant has paid an amount of Rs. 74,36,089 on 1029.335 MTs. But the actual quantity was exported only 1026.853 MT. They have short exported 2.482 MT of LAB and hence the duty involved Rs. 17,930/- is reduced from the claim at the time of filing the rebate claim by the claimant...."*

Government finds that the issue involved in this case relates to rebate claim of duty amounting to Rs. 17,930/-on the short quantity of 2.482 MT which was cleared from the factory but short exported. Here, Government finds that it is on record that the Appellant vide letter dated 15.04.2011 had conceived the short shipment of 2.482 MT of LAB and had requested the authority to reduce the rebate claim to that extent. This clearly shows that the Appellant had not filed/request for rebate claim of duty amounting to Rs. 17,930/- for the short shipment of the quantity of 2.482 MT of LAB, hence the question of issuance of Show Cause Notice by the department does not arise. Further, the Commissioner(Appeal) in his findings at Para 7 and 8 of the impugned order had clearly

dealt with the issue. Hence the Government finds that there is no infirmity in the impugned Order.

7. In view of above discussions, Government upholds the impugned Orders-in-Appeal Nos. SRP/297 VDR-1/2012 dated 14.09.2012 and SRP/310/VDR-1/2012 dated 14.09.2012 passed by the Commissioner (Appeals), Central Excise & Customs,Vadodara and dismisses the two Revision Applications as being devoid of merit.

11. So, ordered.

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

ORDER No. 68-69 /2019-CX (WZ)/ASRA/Mumbai DATED 7.10.2019.

To,
M/s. Nirma Ltd.,
Works at Detergent Complex,
Village Alindra, Tal. Savli,
Dist. Vadodra,
Gujarat 391 775..

Copy to:

1. The Commissioner, Central Goods & ST, Vadodra-II
2. Sr. P.S. to AS (RA), Mumbai.
3. Spare Copy
4. Guard file.