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SPEED POST



F.NO. 198/17,192,193/12-RA-Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..... 2/3/14

ORDER NO. 68-70 /2014-CX DATED 3.3.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D P SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the orders-in-appeal as detailed in table in para 1 of this order

Applicant : Commissioner of Central Excise, Chennai-I Commissionerate,

Respondent : M/s Godrej Sara Lee Ltd., Kattukuppam, Puducherry

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ORDER

These revision applications are filed by Commissioner of Central Excise, Chennai-I against the orders-in-appeal passed by the Commissioner (Appeals), Central Excise, Chennai with respect to orders-in-original passed by Maritime Commissioner of Central Excise, Chennai-I Commissionerate as detailed in table below:

TABLE

Sl. No.	Revision Application No.	Order-in-appeal No. & Date	Name of Applicant	Name of respondent
(1)	(2)	(3)	(4)	(5)
1	195/17/12-RA	32/2011(M-I) dt. 1.11.11	CCE, Chennai	M/s Godrej Sara Lee Ltd., Puducherry
2	195/192/12-RA	27/2012(M-I) dt. 9.4.12	-do-	-do-
3	195/193/12-RA	26/2012(M-I) dt. 9.4.12	-do-	-do-

2. Brief facts of the cases are that the respondents M/s Godrej Sara Lee Ltd., Puducherry had filed various rebate claims in respect of duty paid on the goods exported namely Mosquito Repellant Liquid manufactured by them alongwith imported Mosquito Repellant Machine as combipack on payment of duty. They had filed rebate claims of duty paid on exported goods. On scrutiny of the Shipping Bills and Export invoices, it was found that the goods mosquito repellant machine were imported under Advance Licence and had been packed along with their manufactured excisable goods viz. mosquito repellant liquid/refill. The original authority observed that the mosquito repellant machine had not undergone any manufacturing activity. Accordingly, show cause notices were issued proposing to reject the claims in respect of duty paid on mosquito repellant machine. Subsequently, the lower Adjudicating Authority passed the impugned orders-in-

original allowing rebate of duty paid only for Mosquito Repellant Liquid portion which had been manufactured and rejecting the remaining rebate claim of duty paid on the Mosquito Repellant Machine portion which had been imported.

3. Being aggrieved by the orders-in-original, the respondents filed appeals before Commissioner (Appeals) who set aside the impugned orders of the original authority and allowed the appeals.

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

4.1 The invoice under which the products were exported clearly shows that the Mosquito Repellant Machines classified under 85167920 and Mosquito Repellant liquid is classified under 3808109, which are assessed separately and not as a combipack as observed by the Commissioner (Appeals). Hence the conclusion of Commissioner (Appeals) that since the goods were repacked in combipacks, it amounts to manufacture is not based on facts. The assessee himself has classified the products separately and valued them accordingly.

4.2 Section 2(f) (iii) states that "*manufacture*" includes any process which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it. Section 2(f) (iii) specifically mentions 'goods specified in the Third Schedule'. The Mosquito Repellant Machine do not fall in the list of description of the products mentioned in Third Schedule under CETH 8516 and hence, it cannot be considered as a product specified under Third Schedule.

4.3 Section 2(f)(iii) also states that activity of altering or declaring the RSP in respect of products under Third Schedule would amount to manufacture. This explanation will hold good for products falling under Third Schedule and that needs

to be valued under Section 4A of Central Excise Act, 1944. The Mosquito Repellant Machine falling under CSH 8516, are not valued under Section 4A but under Section 4 of the said act as the said goods are exported.

4.4 Therefore, 'Mosquito Repellant Machine' has not undergone any process before export. Since no manufacturing activity had taken place, the question of duty payment and claiming the same as rebate does not arise. Thus Commissioner(Appeals) has erred in allowing the rebate on that portion of duty paid on export of 'mosquito repellent machine in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004.

5. Show cause notices were issued to the respondent under Section 35 EE of Central Excise Act 1944 to file their counter replies. The respondent vide their written reply dated 8.2.14 has mainly made following submissions:

5.1 The review order of the Commissioner of Central Excise, Chennai-I Commissionerate appears to be a replica of the revision application filed by the Additional Commissioner (R&T), Chennai-I Commissionerate as authorized by the Commissioner. It does not appear to be a proper review order as there is nothing to say that the Commissioner applies his mind. It is stated in the grounds of appeal (it should be grounds of application) that the observation and finding of the Commissioner of Central Excise (Appeals) were not based on facts and therefore should not be accepted. The revision application however fails to state as to how the Commissioner of Central Excise (Appeals) has passed the order based on wrong facts. As has been stated by the Commissioner of Central Excise (appeals) in his order-in-appeal, the fact that the goods were exported was not disputed. The amount of rebate claimed was equivalent to the actual duty paid on the goods exported. This was also not disputed. The facts which are to be considered for the purpose of sanctioning the rebate are that the goods have been exported and that duty has been paid on the exported goods and the rebate claim is equivalent to the duty paid thereon. It is not therefore correct on the part of the Commissioner to say

that the Commissioner of Central Excise (Appeals) passed the order contrary to the facts.

5.2 It is stated by the applicant that the invoices under which the products were exported clearly showed that the mosquito repellent machines and mosquito repellent liquid were assessed separately and not as a combi-pack as observed by the Commissioner (Appeals). It is further stated that the Commissioner (Appeal's) conclusion that the goods were repacked in combipacks and therefore amounted to manufacture was not based on facts. The respondent invites kind reference of the Revision Authority to paragraph 5 of the Order-in-Original wherein it is stated that: "in the subject claims on scrutiny of the shipping bills and export invoices, it is observed that the goods viz mosquito repellent machine imported under Advance licence were packed along with their manufactured excisable goods viz mosquito repellent liquid/refill and the said goods were exported as combi-packs on payment of duty so as to claim the said duty payment under rebate. Apparently, the applicant did not go through the records. It is submitted that the goods were indeed exported in combi-packs.

5.3 The second ground taken by the applicant is also a ground taken without properly studying the Third Schedule relating to goods notified for MRP based assessment. It is stated by the applicant that packing or repacking could not be considered as manufacturing activity since Section 2(f)(iii) which deems such activity as manufacture is not applicable to goods which are not appearing in the Third Schedule. It is submitted that goods falling under 8516 are very much appearing against S.No.80 of the Third schedule. Further, the notification issued viz 14/2008 CE NT dated 1/3/2008 notifying the goods for MRP based assessment covers goods falling under tariff heading 8516 vide S.No.86 of the said notification.

5.4 The respondent submits that having failed to study the relevant schedule and the notification mentioned above, the applicant claims that packing or repacking would not amount to manufacture and therefore the mosquito repellent machine was not entitled for rebate in the absence of undergoing any process before export.

5.5 The respondent submits as all the grounds raised by the applicant in the Revision Applications, is contrary to the admitted facts and the legal position, the Revision Application have to be rejected in limine. Accordingly, the question of annulling the Order-in-Appeal as proposed in the SCN does not at all arise. The Order-in-Appeal passed by the Commissioner (Appeals) is legal and proper and the claim made by the Applicant to the contrary is factually incorrect and legally unsustainable.

5.6 The essential requirement for the purpose of granting rebate on the goods exported are (a) duty should have been paid and (b) the goods should have been exported. The respondent submits that fact of payment of duty equivalent to rebate claimed on the exported goods is not denied by the applicant. Export of goods out of the country is also not denied. It is not the case of the Applicant that the duty was not paid on the combined value of the mosquito repellent machine and mosquito repellent liquid which were packed and exported as a combipack. It is submitted that when the duty has been paid on the combined value of the goods contained in the combopack, the respondent is rightly eligible to claim rebate of the amount of duty paid on the goods exported.

5.7 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 RG-23A Part-II or RG 23C Part-II does not arise".

Case laws relied upon by the respondents:

- 1993(67) ELT 759 (GOI)
- 2011(269) ELT 122 (GOI)
- 2009(236) ELT 349 (Tri Delhi)
- 2011(271) ELT 148 (GOI)
- 2011(268) ELT 111 (GOI)

5.8 The revision applications filed by the Department in respect of the following files are fixed for hearing on February 14,2014.

- i. F.No.198/17/2012-RA-Cx
- ii. F.No.198/192/2012-RA-Cx
- iii. F.No.198/193/2012-RA-Cx

The respondent submits that the Joint Secretary has passed order No.136/2013-Cx dated 18.2.2013 in F.No.198/658/11-RA rejected the Revision application filed by the Department. The issue in respect of the above three revision applications is identical to that of the above mentioned order of the Joint Secretary. A copy of the said order dated 18.2.2013 is enclosed. Therefore, this order may please be taken into consideration while passing orders on the above three revision applications. The following grounds, which formed the reply to show cause notice filed by the respondent, may also be taken into consideration while deciding the above three revision applications filed by the Department.

6. Personal hearing was schedule in this case 17.2.14. Nobody attended personal hearing. The respondents vide letter dated 8.2.14 requested to decide the case on merits as they do not want any personal hearing in the matter.

7. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. It is observed that adjudicating authority allowed the part rebate claim in respect of duty paid on Mosquito repellent liquid/refill and rejected the remaining rebate claims of duty paid on the mosquito repellent machine on the ground that said imported machine has not undergone any manufacturing activity after import. Commissioner (Appeals) considering the fact that the export of impugned goods

were not questioned and the same were exported as a combi-pack the respondents are eligible for rebate since in terms of Section 2(f)(iii) of Central Excise Act 1944, such activity of packing amounts to manufacture. Now the applicant department has filed this Revision Application on the grounds stated at para 4 above.

9. Government notes that said issue has already been decided vide GOI Revision Order No.136/2013-Cx dated 18.2.13 (F.No.198/658/11) in the respondent's own case. In the said case department had filed revision application against order-in-appeal No.16/2011/M-I dated 25.8.11 passed by Commissioner of Central Excise (Appeals) Chennai in the case of respondent party M/s Godrej Lee Sara Ltd. Puducherry. The operative portion of said order is reproduced as under:

*"8. It is observed that adjudicating authority allowed the rebate claim of Rs.478405 in respect of duty paid on Mosquito repellent liquid/refill and rejected the rebate claim of Rs.584704 of duty paid on the mosquito repellent machine on the ground that said imported machine has not undergone any manufacturing processing after import. Commissioner (Appeals) considering the fact that the export of impugned goods were not questioned and the same were exported as a combi-pack the respondents are eligible for rebate since in terms of Section 2(f)(iii) of Central Excise Act 1944, such activity of packing amounts to manufacture. Now the applicant department has filed this Revision Application on the grounds stated at para 4 above.*

*9. The department has contended that the invoice under which the products were exported clearly shows that the mosquito repellent machines are classified under 85 16 7920 and mosquito repellent liquid is classified under 3808.109, which are assessed separately and not as 'combi-pack'; that said machine does not fall in the list of goods specified in the third schedule under CETH 8516 and hence the provision of Section 2(f)(iii) does not apply, that said machine has not undergone any processing before export so question of payment of duty and claiming rebate does not arise.*

*9.1 Government observes that though both the mosquito repellent liquid and repellent machine were classified under different Central Excise Tariff heading in*



*export invoices, yet they were reportedly exported in combipack as recorded in impugned order-in-original para 5 and 10, which are reproduced below:*

*"Para 5 – In the subject claims, on scrutiny of Shipping Bills and export invoices, it is observed that the goods viz. Mosquito repellent machine imported under Advance Licence were packed along with their manufactured excisable goods viz. Mosquito repellent liquid/refill. The said goods were exported as combipacks on payment of duty so as to claim said duty payment under rebate."*

*"Para 10 - In the instant case the exporter had imported 'Mosquito Repellent Machine' under Advance Licence Scheme without payment of duty. The same had been exported along with 'Mosquito Repellent Liquid' on payment of duty. Even though the rebate is claimed on export, the exporter is eligible for rebate only for 'Mosquito Repellent Liquid' portion, which has been manufactured by the exporter."*

*The original authority has not disputed the export of said goods in a combipack 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 combipacks form of the said goods. There is no dispute about payment of duty and export of goods.*

*9.2 Government finds that the department has also contended that Section 2f(iii) applies for goods which are specified under the Third Schedule and the mosquito repellent machine do not figure in the list of descriptions of the products mentioned in third schedule. The respondent contended that their goods fall under Sr.No.86 of third schedule under CETH 8516. On perusal of Appendix-V of third schedule the relevant Sr.No. reads as follows:*

*86. "8516 Electric instantaneous or storage water heaters and immersion heaters, electric space heating apparatus and soil heating apparatus, electro-thermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing iron; other electro-thermic appliances of a kind used for domestic purposes."*

Government finds that the said Sr.No. 86, apart from covering other specific articles, also covers generic articles falling under category of "all electro-thermic appliances of a kind used for domestic purpose". Government notes that Hon'ble Principal Bench, CESTAT, New Delhi in the case of Karamchand Appliances Pvt. Ltd. Vs Commissioner of Central Excise, Chandigarh reported in 2012 (84) ELT 692(Tri-Del) has decided the classification issue of combipack of mosquito repellent liquid and mosquito repellent machine. The relevant para(s) of Hon'ble Tribunal's judgement is reproduced as under:

"12. In the instant case, admittedly, the appellant had cleared the combipack 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.

13. ....

14. ....

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."*

*From, perusal of above judgement, it is clear that the mosquito repellent machines were treated as electro thermo apparatus by the tribunal. The harmonious reading of tribunal's judgement with entry of sr. no. 86, of appendix V of third schedule, it can be seen that mosquito repellent machine being electro thermic apparatus, will fall under category of product listed under Sr.No.86 of Appendix-V of Third Schedule. Hence, the Government finds force in pleas of respondent that their goods fall under Sr.No.86 of Third Schedule. The Hon'ble Tribunal further held that the goods i.e. combo 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 380810. The goods falling under 380810 also finds 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.*

*10. In view of above discussion, Government do not find any legal infirmity in impugned order-in-appeal and therefore upholds the same. The revision application is rejected being devoid of merit.*

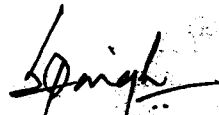
*11. Revision application is rejected being devoid of merit.*

*12. So ordered."*

10. The issue involved in the instant revision applications is identical and ratio of above said GOI Revision Order dated 18.2.13 is squarely applicable to these cases. The grounds of instant revision applications are also same which are also discussed in the said order. As such Government, in view of above order dated 18.2.13 holds that impugned orders-in-appeal are legal and proper and therefore same are upheld.

11. In revision applications are therefore rejected in terms of above:

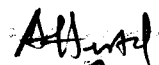
12. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

Commissioner of Central Excise,  
Chennai-I Commissionerate,  
26/1, Mahatma Gandhi Road,  
Nungambakkam  
Chennai – 600 034.



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

Copy to:

1. Goderaj Sara Lee Ltd., RS No.131/1-4, Kattupakkam Manapet Post, Cuddalore Road, Puducherry-607402.
2. The Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Chennai – 600 034.
3. The Commissioner of Central Excise, 26/1, Mahatma Gandhi Road, Chennai – 600 034
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5. Guard File.
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ATTESTED



(B.P.Sharma)  
OSD (Revision Application)

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