REGISTERED SPEED POST

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. 195/443/2016-RA/3925 Date of issue: 05.09.2022

ORDER NO. 813/2022-CX (WZ)/ASRA/MUMBAI DATED 30.8.2022 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. Accusynth Speciality Chemicals Pvt. Ltd.

Respondent: Commissioner of Central Excise, Thane-II

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SK/123/THANE-II/2016 dated 15.03.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

ORDER

This Revision Application has been filed by the M/s. Accusynth Speciality Chemicals Pvt. Ltd., Shivam Chambers, 106/108, 1st floor, S.V. Road, Goregaon, Mumbai 400 062 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. SK/123/THANE-II/2016 dated 15.03.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods falling under chapter heading 27 of the Central Excise Tariff Act, 1985. The applicant had filed claims for rebate of duties paid on goods exported by them with the Maritime Commissioner of Central Excise, Raigad, which were sanctioned. However, subsequently it was found that the value of the goods exported declared in relevant ARE-1s was higher than the FOB value declared in the corresponding shipping bills. It appeared that the applicant had debited the duty at the time of export on the basis of the export invoice value by including the amount of international freight and insurance. Hence, the excess amount totalling to Rs. 82,395/- rebated for the period from 14.10.2009 to 04.03.2010 was demanded along with interest vide show cause notice No. V.Adj(SCN)Chamagis/78/BSr-II/11 dated 29.08.2011. The adjudicating authority, vide Order-in-Original No. R-07/12-13 dated 13.09.2012 confirmed the demand alongwith applicable interest. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide impugned Order-in-Appeal. However, the applicant was allowed to take re-credit of the excess paid amount after paying the demand amount of Rs.82,395/- alongwith interest.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

(a) The Commissioner (Appeals) has not recognized that the goods were removed during the period 14.10.2009 through 4.3.2010 & the SCN is issued on 29.08.2011 i.e. much beyond the period of limitation of 1 year therefore the SCN is not valid.

(b) In the CBEC clarification issued in respect of transaction value vide F. No. 6/59/2000-CX.I dtd. 15.12.2000, it was clarified that in case of composite price, the freight & insurance cannot be deducted to arrive at the transaction value. The CIF contract means a composite price & therefore under no circumstances the freight & insurance can be deducted to pay the duty. The assessee has given a certificate to the effect that the place of delivery is the destination port in case of the shipments effected therefore how can a contrary conclusion can be reached by the department without assigning any reason. The certificate given by the exporter is not challenged & therefore any contrary conclusion is untenable. Finally, as evidenced by the Apex court decision in case of M/s. Roofit Industries wherein it is ruled that when the title to the property passes to the buyer that will be the place of delivery & the value at the place of delivery is to be the transaction value for the discharge of duty liability. Under these circumstances, there is no way that freight & insurance can be deducted to arrive at the transaction value for the payment of duty. Therefore the order is untenable & needs to be set aside.

(c) The Commissioner himself relies upon S 4, S 4(3)(c) & Rule 5 of the valuation Rules in the order. As per the S 4 (3) (d) of the CEA, 1944, the duty is payable on transaction value & the transaction value includes outward handling i.e. freight & insurance in case of composite price shown in the excise invoice. This is established by the binding CBEC circular No. issued from F. No. 6/59/2000-CX. 1, dated 19-12-2000 as specified earlier. Further, the Commissioner (Appeals) has not disputed the fact that the place of delivery is the destination port as per the contract & the certificate placed on record by the exporter is not disputed therefore any contrary conclusion is

untenable. The error is apparent & therefore the order of the Commissioner (Appeals) needs to be set aside.

(d) The Commissioner (Appeals) concludes that port is the place of removal is totally wrong because the goods are removed from the factory of manufacture under an invoice. The port does not belong to the exporter & no invoice is raised from there. Therefore, it is wrong to say that port is the place of removal. If port is the place of removal then please show the document for the removal of goods from the port. This is the basic requirement of the law because no goods can be removed from the place of removal without preparing an excise Invoice. The exporter has issued certificate to the effect that the place of delivery is the named destination in the contract & this is not disputed by the department therefore there is no way that freight & insurance can be deducted from the invoice value to arrive at transaction value. The transfer of property cannot be assumed/presumed by the authorities but it will be as per the contract & the exporter has therefore issued the certificate to that effect. The exporter has placed on record the Apex court decision in case of M/s. Roofit Industries Ltd. on record & the judgement categorically supports our contention & for this reason only the Supreme Court has not specified that port is the place of removal in case of exports. If the port is the place of removal conclusively then the Apex court would have said so therefore it is difficult to understand that how the Commissioner (Appeals) can use a wrong determination to deny the legitimate claim of the exporter. Under these circumstances, the rebate on the transaction value stated in the invoice/ARE-1 needs to be allowed.

(e) It is pertinent to point out that M/s. Escort JCB Ltd. reported in 2002 (146)ELT31 (SC) deals with a domestic transaction & therefore does not speak anything about ocean freight & insurance incurred beyond the port. Not only this, M/s. Escort JCB Ltd. is considered in

case of citation placed on record by us i.e. M/s. Roofit Industries Ltd. & after all due consideration the apex court has ruled that when the title to the property passes to the buyer that will be the place of delivery & the value at the place of delivery is to be the transaction value for the discharge of duty liability & therefore in this case, the same is the destination port & the same is beyond challenge. Under these circumstances, freight & insurance cannot be deducted to arrive at the transaction value for the purpose of duty payment & rebate under any circumstances.

On the above grounds the applicant prayed that the impugned O.I.A. may be set aside and their application be allowed with consequential relief.

4. Personal hearing in the case was fixed for 14.06.2022. Shri Rajiv Gupta, Consultant attended the online hearing and reiterated his earlier submissions. He submitted that the SCN is barred by normal limitation of one year as applicable as no suppression was involved. He submitted that duty paid over FOB value deserves to be returned to them in any case.

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

6. Government observes that the main issue in the instant case is whether rebate of the duty paid on amount over and above the FOB value is allowed?

7.1 Government notes that in the instant case demand notice for excess rebate sanctioned was confirmed by both the original and appellate authority on the grounds that the rebate of duty involved in FOB value of exported goods should be considered as the transaction value of exported goods in terms of Section 4 of Central Excise Act, 1944. The applicant has claimed that the buyer had placed order on CIF basis and the contract represents the composite price and thus the freight and insurance is

includible for determination of transaction value. They have contended in their revision application that they are entitled for full rebate of duty paid on CIF value as mentioned on the relevant ARE-1 forms.

7.2 Government observes that the applicant has relied upon judgment of Hon'ble Apex Court in the case of M/s. Roofit Industries Ltd. and contended that in the said judgment *'it is ruled that when the title to the property passes to the buyer that will be the place of delivery & the value at the place of delivery is to be the transaction value for the discharge of duty liability. Under these circumstances, there is no way that freight & insurance can be deducted to arrive at the transaction value for the payment of duty. Therefore the order is untenable & needs to be set aside.'*

7.3 Government notes that in the said judgment, the assessee, M/s. Roofit Industries Ltd., as per the agreement entered with its buyers, had to provide designing, manufacturing, laying, jointing and testing of PSC pipes of specified sizes at the site of its buyers and not at the factory gate. The Hon'ble Supreme Court held that as the sale of goods did not take place at the factory gate of the assessee but at the place of the buyer on the delivery of the goods, therefore, all the expenses incurred, after clearance from the factory, on account of freight, insurance and unloading charges etc. were to be considered while arriving at transaction value. Government observes that the case is in respect of domestic transactions and involves supply of customised goods and therefore the decision cannot be made applicable to the instant matter.

7.4 Government observes that the appellate authority at para 7 of impugned OIA has rightly pointed out that:

> *The Board vide Circular no. 999/06/2015-CX dated 28.02.2015 has given clarification regarding the place of removal in case of exports by manufacturer exporter. Board has clarified that —*
>
> > *"in the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and*

the goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS..."

Thus, the Government concludes that in case of export of goods, the place of removal is the port of export where sale takes place and therefore expenses incurred on account of freight, insurance, unloading charges etc. beyond the place of removal/sale are to be excluded from the value as they do not form part of transaction value in terms of Rule 5 of Central Excise Valuation Rules, 2000.

7.5 Government finds support in respect of its above view in a recent judgment of Hon'ble Gujarat High Court in the matter of M/s. Garden Silk Mills [2018 (11) G.S.T.L. 272 (Guj.)] wherein it was held as follows:

9. Coming to the merits of the case, again undisputed facts are that the petitioner had paid excise duty on CIF value of goods exported. The petitioner does not dispute the stand of the Government of India that excise duty was payable on FOB value and not on CIF value. The Government of India also does not dispute the petitioner's stand that in such a case the additional amount paid by the petitioner would be in the nature of deposit with the Government which the Government cannot withhold without the authority of law. If these facts are established, a simple corollary thereof would be that the amount has to be returned to the petitioner. If, therefore, the petitioner's request was for re-credit of such amount in Cenvat account, same was perfectly legitimate. The Government of India should not have asked the petitioner to file separate applications for such purpose. The Government of India itself in case of Balkrishna Industries Ltd. (supra), had under substantially similar circumstances, provided as under :

"8. In this regards, Government observes that the revisionary authority has passed a number of orders wherein it has been held that the rebate of duty is to be allowed of the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post-clearances expenses like freight and insurances may be allowed as recredit entry in their cenvat account. Since the Government cannot retain the amount collected without any authority of law and the same has to be returned to the applicant in the manner it was paid. Hence, Government observes that the applicant is entitled for the take (sic) credit in their cenvat account in respect of the amount paid as duty on freight & insurance charges. The applicant was not even required to make a request with the department for allowing this recredit in their cenvat account. The Adjudicating Officer/ Commissioner (Appeals) could have themselves allowed this instead of rejecting the same as time-barred."

10. In the result, the respondents are directed to re-credit the excess amount paid by the petitioner categorising as excise duty of CIF value of the goods to the Cenvat credit account.

8. The other issue raised by the applicant is regarding the validity of the impugned SCN. The applicant has alleged that the SCN has been issued beyond the period of limitation of 1 year. Government observes that the impugned SCN was issued on 29.08.2011 and covered ARE-1s issued during the period Oct'09 to Mar'10. Government also observes that in the impugned SCN it is informed that the fact of excess payment could only be revealed after records of the applicant were examined by the jurisdictional officers during which violation of various provisions of law were detected and as such extended period for recovery was applicable. In the light of this investigation, it was alleged in the SCN that the applicant had deliberately included the amount of freight and insurance in the Assessable Value,

considering the same for payment of duty, with an intention to encash extra amount. Therefore, Government finds the impugned SCN is valid as per law.

9. In view of the findings recorded above, Government upholds the Order-in-Appeal No. SK/123/THANE-II/2016 dated 15.03.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-I and rejects the impugned Revision Application.

Shrawan 30/8/22

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

ORDER No. 843/2022-CX (WZ)/ASRA/Mumbai dated 30.8.2022

To,
M/s. Accusynth Speciality Chemicals Pvt. Ltd.,
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Copy to:

1. Commissioner of CGST,
   Mumbai West Commissionerate,
   Mahavir Jain Vidyalaya,
   C.D. Barfiwala Road,
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   Mumbai – 400 058

2. Shri Rajiv Gupta,
   A-1, Divyajyot CHS Ltd.
   R.K.Singh Marg,
   Off Old Nagardas Road,
   Andheri(E), Mumbai – 400 069.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.