F.No. 195/21/WZ/2018-RA
F.No.195/02/2017-RA
F.No.195/268-270/2017-RA

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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. 195/21/WZ/2018-RA /4483
F.No.195/02/2017-RA
F.No.195/268-270/2017-RA

Date of issue: ~~09.2022~~ 04.10.2022

927

ORDER NO.931 /2022-CX (WZ) /ASRA/Mumbai DATED 30 .09.2022 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 Koch Chemical Technology Group India Pvt Ltd

Respondent : Commissioner of Central Excise & GST, Vadodara – I Commissionerate.

Subject : Five Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the following Orders-in-Appeal:-

1.	VAD-EXCUS-001-APP-584-586/2016-17 dated 27.02.2017	Passed by Comm.(Appeal-I) Central Excise, Customs and Service Tax, Vadodara
2.	VAD-EXCUS-001-APP-111/2017-18 dated 30.05.2017	Passed by Comm.(Appeal-I) Central Excise, Customs and Service Tax, Vadodara
3.	VAD-EXCUS-001-APP-529/2017-18 dated 27.10.2017	Passed by Comm.(Appeal-I) Central Excise, Customs and Service Tax, Vadodara

ORDER

The subject five Revision Applications have been filed by M/s Koch Chemical Technology Group India Pvt Ltd, S.No. 315/6/7, Sankards, Bhandarava Road, At Vill. Moxi, Tal. Savli, Distt Vadodara (hereinafter referred to as 'the applicant') against the subject Orders-in-Appeal dated 27.02.2017, 30.05.2017 and 27.10.2017 passed by the Commissioner (Appeals-I) Central Excise, Customs and Service Tax, Vadodara. The issue involved in all the cases being common, the subject five Revision Applications are being taken up for decision together.

2. The facts of the case in brief are that the applicant is a manufacturer of excisable goods falling under chapter heading 84 of the Central Excise Tariff Act, 1985, filed rebate claims under Rule 18 of Central Excise Rules 2002. It was observed that the applicant had supplied the goods to the related overseas parties and valuation of said export goods should have been made under Central Excise Valuation Rules on the basis of cost of production plus 10 % profit margin as per Cost Accounting Standard (4) but the applicant had not provided the Cost of Production as per CAS(4).

2.1. The original authority held that the applicant was required to determine the valuation of export goods (stock transferred) to their related entities overseas under Rule 11 read with Rule 8 of the said Rules on the basis of cost of production plus 10% profit margin as per Cost Accounting Standard (4) for allowing export benefits like rebate of duties paid on export goods. The original authority also observed that as the rebate equivalent to Central Excise duties payable/paid was to be allowed, it was expedient to measure the Central Excise payable in terms of legislated provisions of Section 4(1)(b) of the Central Excise Act, 1944 read with Rule 11 and Rule 8 of the said Rules for the excisable goods stock transferred to related persons abroad as exports.

2.2. The original authority rejected the transaction value declared in the ARE 1's in all the claims as the same was required to be ascertained in

terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4(3) of the Central Excise Act, 1944 in light of the fact that the same have been exported to parties related to the applicant but the applicant have failed to ascertain the same as required. The original authority in all the impugned Orders-in-Original further held that as the goods covered under the claims were exported and duty paid thereon, the applicant was eligible for refund of duty paid but in the manner in which the same was paid at the time of clearance and sanctioned the claims by way of re-credit in the Cenvat account of the applicant.

2.3. The details of the Orders-in-Original issued are as under

Sr No	Order-in-Original No and date	No of rebate claims	Total amount of the claims under OIO(Rs.)	Remarks
1	Rebate/1684-1697/Koch/Div-I/16-17 dated 16.12.2016	14	35,39,368/-	Sanctioned by way of re-credit in the cenvat account
	Rebate/1707/Koch/Div-I/16-17 dated 26.12.2016	01	8,94,663/-	Sanctioned by way of re-credit in the cenvat account
	Rebate/1906-1970/Koch/Div-I/16-17 dated 24.01.2017	65	2,61,86,167/-	Sanctioned by way of re-credit in the cenvat account
2	Rebate/2400-2419/Koch/Div-I/16-17 dated 31.01.2017	20	97,09,012/-	Sanctioned by way of re-credit in the cenvat account
3	Rebate/634-659/Koch/Div-I/16-17 dated 22.05.2017	26	1,08,22,156/-	Sanctioned by way of re-credit in the cenvat account

3. The applicant preferred appeals against the above Orders-in-Original as the original authority rejected the transaction value declared by the applicant but sanctioned the claims by way of re-credit to the Cenvat account of the applicant. The three Orders-in-Original dated 16.12.2016, 26.12.2016 and 24.01.2017 were decided by a common Order-in-Appeal

dated 27.02.2017 and the Orders-in-Original dated 31.01.2017 and 22.05.2017 were decided by Order-in-Appeal dated 30.05.2017 and 27.10.2017 respectively. The Appellate Authority rejected the appeals on the grounds that the applicant had not valued the goods as per Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 stating that they had exported their finished excisable goods, on payment of central excise duty, to the 'Foreigner', who has been considered as related to the applicant, not for his consumption in production of other goods but such excisable goods, were further sold by the said 'Foreigner', to his independent Buyers.

4. Aggrieved, the applicant has filed the subject five Revision Application (3 in respect of OIA dated 27.02.2017 and one each in respect of OIA dated 30.05.2017 and 27.10.2017) against the said three Orders-in-Appeal on the following grounds:-

4.1. That the department had demanded CAS-4 Certificate, for each export consignment, for ascertainment of Assessable Value of export goods, for the purposes of payment of Central Excise Duty and claiming Rebate thereof, for determining Assessable Value as 110% of Cost of Production, where Cost of Production, is to be ascertained in terms of CAS-4 System;

4.2. That the goods exported by them had not been consumed by the 'Foreigner,' to whom it was exported, for production of other goods but had been sold by them to other independent buyers;

4.3. That in such cases, CAS-4 certificate would not be required for each consignment as the goods had not been consumed by the related person situated abroad;

4.4. That the original authority had not established that the buyer abroad was related to them;

4.5. That the original authority's sanction of the rebate claim by way of cenvat credit was erroneous and there was no provision in the law to grant rebate by way of cenvat credit and rebate has to be granted by cheque;

4.6. That in light of the above, the impugned Orders-in-Appeal deserve to be set aside and directions to be issued to the original authority to grant the rebate claims with interest.

5. Personal hearing in the matter was scheduled for 14.06.2022 and 28.06.2022. Shri Jaydeep Patel, Advocate, appeared for personal hearing on behalf of the applicant and reiterated his earlier written submissions in the matter. He also stated that valuation cannot be decided at the time of the sanction of rebate and submitted a few citations in support of their contentions.

6. Government has carefully gone through the relevant case records available in case files, the written submissions and also perused the impugned Orders-in-Original and the Orders-in-Appeal.

7. Government observes that the original authority rejected the transaction value declared in the ARE 1's in all the claims as the same was required to be ascertained in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Section 4(3) of the Central Excise Act, 1944 in light of the fact that the same have been exported to parties related to the applicant but further held that as the goods covered under the claims were exported and duty paid thereon, the applicant was eligible for refund of duty paid but in the manner in which the same was paid at the time of clearance and sanctioned the claims by way of re-credit in the Cenvat account of the applicant.

8. Government notes that in the present case, the rebate claims filed by the applicant were 'sanctioned' by the original rebate sanctioning authority, yet the amounts not refunded and were allowed only as re-credit in their Cenvat credit account, on the grounds that the valuation of the goods exported was not proper.

9. Government notes that in the present case, the rebate claims filed by the applicant were 'sanctioned' by the original rebate sanctioning authority, yet the amounts not refunded and were allowed only as re-credit in their Cenvat credit account, on the grounds that the valuation of the goods exported was not proper. The Government notes that there is neither any dispute with regard to the actual export of the goods nor is there any allegation that provisions of Rule 18 of the Central Excise Rules, 2002, which provides for rebate of goods, have been violated or not complied with. The rebate sanctioning authority has contended that the goods having been exported to a related person, its valuation should have been done under Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

10. Government notes that the rebate claims in question have been filed under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE (NT), dated 06.09.2004. Rule 18 of the Central Excise Rules, 2002 lays down that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods, subject to such conditions or limitations, if any, as may be prescribed by the said notification. Notification no.19/2004-CE (NT), dated 06.09.2004, issued in exercise of the powers conferred under Rule 18 of the Central Excise Rules, 2002, specifies the conditions, limitations and procedures for claiming rebate of duty paid on the goods exported. Government has examined the said notification and finds that the only condition pertaining to the value of the goods being exported is mentioned at para 2(e) of the notification, which states as follows: –

> *"that the market price of the excisable goods at the time of exportation is not less than the amount of rebate of duty claimed;"*

10.1 Government finds that there is no allegation against the applicant that they have violated the above condition imposed by the notification. Government notes that there is no allegation that the provisions of either Rule 18 of Central Excise Rules, 2002 or notification no.19/2004-CE (NT), dated 06.09.2004, have been violated.

11. Government finds that the Department had neither challenged the valuation of the goods when they were cleared for export nor was any objection raised at the port of export. At no point during the course of the entire proceedings have the Orders-in-Original or the Orders-in-Appeal recorded that the Department had challenged the valuation of the goods being exported and that the applicant had been issued any Notice by the Department seeking to reject the values indicated by them. Government notes that the dispute of the valuation of goods arose after the applicant filed the claims for rebate. Government finds that Central Board of Excise & Customs had vide Circular no.510/06/2000-CX dated 03.02.2000 clarified the issue in question. Relevant portion of the same is reproduced below:-

> *" It is directed to say that doubts have arisen relating to the determination of the amount of rebate of excise duty in cases where prices of export-goods are doubted in foreign currency and advalero excise duty is paid after converting the value in equivalent Indian rupee. Another doubt is that once duty is paid, should 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 RG-23A Part-II or RG-23C Part-II on the relevant export goods? Yet another doubt is that in case any short payment is detected but the assessee pays the duty prior to sanction of rebate, whether the rebate amount should be reduced?*
>
> *2. The Board has examined the matter. It is clarified that in aforementioned case, the duty on export goods should be paid by applying market rate as it prevails at the time the duty is paid on such goods. Once value (in accordance with section 4 of the Central Excise Act, 1944) is determined and duty is paid, rebate has to be allowed equivalent to the duty paid. Board has already clarified in Circular No. 203/37/96-CX dated 26.4.96 that AR-4 value is to be determined under section 4 of the Central Excise Act, 1944 and this value is relevant for the purposes of rule 12 & rule 13. Thus, the duty element shown on AR-4 has to be rebated, if the jurisdictional Range officer certifies it to be correct. There is no question of re-quantifying the amount of rebate by the rebate sanctioning authority by applying some other rate of exchange prevalent subsequent to the date on which the duty was paid.* ***It is also clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim.***

3. 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 reaccredit in RG-23A Part-II or RG-23C Part-II do not arise.

[***emphasis supplied***]

A plain reading of the above Circular clearly indicates that :-

- the duty on export goods should be paid at the market rate as it prevails at the time the duty is paid on such goods, in accordance with Section 4 of the Central Excise Act, 1944 and rebate equivalent to the duty paid has to be allowed;
- the duty element shown on the AR-1 has to be rebated, if the jurisdictional Range officer certifies it to be correct;
- the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on the export goods covered by a claim;
- 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;
- Since there is no need for reducing rebate, the question of allowing re-credit in RG-23A Part-II or RG-23C Part-II did not arise.

12. Government notes that in the present cases, no objection was raised by the Department with respect to the value of the goods when the same were cleared for export. There is nothing on record to indicate that the Department had challenged the value of the goods exported, prior to the applicant claiming rebate of the duty paid on the same. In the present cases, as clarified by the above circular, the role of the jurisdictional Range Superintendent was to certify the duty element paid on the export

consignment. However, the original authority has sought to re-assess the value of the goods exported, an action which has been specifically prohibited at this stage by the above said Circular. The said Circular further clarifies that in the event it is felt that duty paid is in excess to what was required to be paid, the rebate claimed will first be paid and thereafter the jurisdictional authorities were required to be informed for initiating appropriate action. In fact, in the Order-in-Originals dated 16.12.2016, 26.12.2016 and 24.01.2017, 31.01.2017 and 22.05.2017, the adjudicating authority has allowed re-credit of entire 'sanctioned' rebate claim in the Cenvat Account, which as per the above Circular, is a situation which should never have arisen. Government notes that the decision to reject the rebate claims filed by the applicant on the grounds of improper valuation of the goods exported is not proper and legal and in clear violation of the guidelines laid down by the Board in this regard.

13. In view of the above, the Government notes that the original authority has incorrectly resorted to assessing the value of goods exported, while deciding the rebate claims filed by the applicant. The Department, not having challenged the value of the goods exported prior to the rebate claims being filed, had no grounds to dispute the same while deciding the rebate claims.

14. Further, Government finds support in the decision of the Hon'ble High Court of Delhi in the case of Dr. Reddy's Laboratories Limited vs UOI [2014 (309) ELT 423 (Del)], wherein in an identical case, it was held as under:-

> *7. "Under Rule 18 - which contemplates return of the excise duty paid in cases of exported goods, - the market price must necessarily refer to the market where the goods are sold, - in this case, the United States market. The goods in question are neither meant for, nor did they ever enter, the Indian market. If this were not to be the position, the valuation of goods meant for export (in cases of export to countries with a stronger currency valuation; or simply, "developed" countries) would always be incongruous even bizarre. In such cases, the actual value of goods sold abroad would likely exceed the value domestically. Following the Revenue's logic, unless the exporter decides to export the goods at the lower domestic price, he or she may never recover the entire excise duty paid on the higher international price. This extinguishes the purpose of Rule 18 of the 2002 Rules, and the policy of ensuring competitive exports....*

8. ..... *The stated purpose of Rule 18 is revenue neutrality, yet, time and resource has been expended on this exercise to neither party's benefit. The Supreme Court has also - at various points - recognized that minimum, if any, interference should occur in such cases, [see, Commissioner of Income Tax v. Glaxo Smithkline Asia (Pvt.) Ltd., [2010] 195 TAXMAN 35 (SC), paragraphs 3-4, Commissioner of Income Tax v. Bilahari Investment (Pvt.) Ltd., (2008) 4 SCC 232].*"

A reading of the above indicates that the Hon'ble High Court, in a similar case, has clearly decided the issue involved, in favour of the applicant.

15. Government finds that no case has been made out that the provisions of Rule 18 of the Central Excise Rules, 2002 or the notification no.19/2004-CE (NT), dated 06.09.2004 have been violated by the applicant. As stated above, the grounds on which the rebate claims have been not disbursed are not proper or legal. Therefore, the subject impugned Orders-in-Appeal passed by the Commissioner (Appeals-I) Central Excise, Customs and Service Tax, Vadodara, which upheld the subject Orders-in-Original deserve to be annulled and Government accordingly holds so. In view of the above discussions, Government holds that rebate of duty paid, which has been claimed by the applicant, is admissible to them along with consequential relief arising thereof.

16. The subject Revision Applications are allowed in the above terms.

30/9/22

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

ORDER No. 927-931/2022-CX (WZ) /ASRA/Mumbai dated 30.09.2022

To,

M/s Koch Chemical Technology Group India Pvt Ltd.,
S,No 315/6/7, Sankarad-Bhadarwa Road,
Village-Moxi, Tal: Savli
District : Vadodara 391 775

Copy to:

1. The Commissioner of CGST & Central Excise, Vadodara – I Comm'te, Central Excise Building, Race Course, Vadodara 390007.

2. The Commissioner (Appeals), GST & Central Excise, Vadodara, 'GST BHAVAN' 1st floor Annex., Race Course Circle, Vadodara – 390 007.
3. The Deputy/Assistant Commissioner, Central Excise GST Division I, Vadodara-I, 4th floor, C. Excise Bldg., Race Course, Vadodara 390007.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board
6. Spare copy.