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F.No. 195/09/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue..... 31/3/14

Order No. 96/14-Cx dated 25.03.2014 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, 1944 against the Order-in-Appeal No.BC/297/SURAT-II/2011 dated 20-10-2011 passed by Commissioner of Central Excise, (Appeals), Surat-II.

Applicant : M/s. Agro Pack, Plot No. B/155, GIDC Industrial Estate, Ankleshwar.

Respondent : Commissioner of Central Excise, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395001.

ORDER

This revision application is filed by the applicant M/s. Agro Pack, Plot No. B/155, GIDC Industrial Estate, Ankleshwar against the Order-in-Appeal No. BC/297/SURAT-II/2011 dated 20-10-2011 passed by Commissioner of Central Excise, (Appeals), Surat-II with respect to Order-in Original No. ANK-III/RSR/59/R/10-11 dt. 11-05-2010 passed by the Deputy Commissioner of Central Excise, Ankleshwar.

2. Brief facts of the case are that the investigation revealed that Agro Pack resubmitted 17 rebate claims on 01-10-2008 in the office of the Deputy Commissioner of Central Excise and Customs, Division-III Ankleshwar, Surat-II Commissionerate. It was observed that photocopies of Cenvat account Register submitted along with the rebate claims at the first instance on 30-06-2008 and 22-07-2008 in respect of ARE-1 No. 6 to 11 and 14 to 16 showing the name and address of the factory of M/s. Syngeta India Ltd., B/155, GIDC, Ankleshwar. However the name of the factory in the copies of Cenvat Account Register submitted along with the revised rebate claims was changed that to M/s. Agro Pack. The name of M/s. Syngeta India Ltd., was erased/tempered and obliterated by applying white ink and new stamp bearing the name of M/s. Agro Pack, Ankleshwar was affixed in the said cenvat register to show that it pertained to M/s. Agro Pack to justify their claim as objected to by the Range Officer at the first instance. Further in respect of ARE-1, 2 and 17, copies of cenvat account register show that the same belong to M/s. Syngeta India Ltd., and not to M/s. Agro Pack. Similarly in cenvat account register in respect of ARE-1 No. 4,5,12 and 13 in name of M/s. Agro pack has been stamped after erasing the name of M/s. Syngeta India Ltd., by using white ink. Accordingly, SCN dated 07-04-2010 issued to party was subsequently adjudicated vide Order-in-Original dated 11-05-2010 wherein these rebate claims were rejected.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicant submit that the order dated 20-10-2011 passed by the Commissioner of Central Excise (Appeals), Surat-II is not only improper and unjustified but also is not based on the facts of the case. He has neither considered the factual position nor considered the substantial evidences in respect of the export of the goods and payment of duty. He has rejected the appeal on grounds which are quite baseless. This would be found from the actual facts discussed below.

4.2 On perusal of the Order-in-Appeal, it would be found that the main grievance of the Commissioner (Appeals) is that in the present case the payment of duty is under dispute because the applicant has debited the amount of duty from the cenvat account in which the name of Syngenta India Limited was mentioned and for this reason, she has held that payment of duty is under dispute. It is not the case of the Commissioner (Appeals) that the applicant has not debited/paid the amount of duty but only grievance of the Commissioner (Appeals) is that the name of M/s. Syngenta India Ltd. (Principal Manufacturer) was mentioned on the Cenvat register and she has concluded that the payment of duty is under dispute.

4.3 As regard the contention of the Commissioner (Appeals) that the cenvat account register are in the name of M/s. Syngenta India Ltd. in which cenvat credit and debit entries are made and not in the name of M/s. Agro Pack (the appellant) who is registered with the Central Excise department the appellant submit that the Commissioner (Appeals) has erred in holding so in as much the clarification for this issue has already been furnished to the Assistant Commissioner of Central Excise, Division-II vide letter dated 09-01-2009.

4.4 The name of M/s. Syngenta India Ltd. was mentioned on the top of each page of the cenvat register because the credit was being availed in such cenvat register on the inputs received on account of M/s. Syngenta India Ltd. As stated above the applicant maintained two cenvat register for different principal

manufactures as they carry out manufacturing activities for two principal manufactures. It is further submitted that the cenvat register was not maintained in the name of only M/s. Syngenta India Ltd. as clarified vide letter dated 09-01-2009 but as under:

**M/s. Agro Pack,
A/c M/s. Syngenta India Ltd.
Plot NO. B/155, GIDC Ankleshwar.**

4.5 The applicant has maintained separate cenvat register for the said company and also mentioned on the top of the cenvat register the name as "M/s. Agro Pack A/c M/s. Syngenta India Ltd." But after submission of the rebate claims under dispute, the objection was taken vide letter dated 29-12-2008 that the duty paying documents submitted alongwith the rebate claims are in the name of M/s. Syngenta India Ltd. The applicant had filed detailed reply dated 09-01-2009 to the said letter and thereafter the executive of the applicant Mr. Tushar Patel was called by the Range Superintendent in his office and it was advised to correct the name mentioned in the Cenvat register as under:

**M/s. Agro Pack,
Plot NO. B/155, GIDC Ankleshwar.**

And accordingly the executive of the applicant had made correction in the relevant page of cenvat register. And this is how the correction was made in the cenvat register.

4.6 Since the department was of the views that the cenvat credit account should bear the name of M/s. Agro Pack the applicant had made correction in terms of the advise Range Suprintenent and put the stamp of M/s. Agro Pack. Conversely by correcting name in the cenvat register the applicant had complied with the query raised by the department. And in the circumstances, the rebate claims could not have been rejected. Thus it can never be contended that the cenvat account registers are in the name of M/s. Syngenta India Ltd. in which debit entries are made and not in the name of M/s. Agro Pack who is registered with the Central Excise department. It is therefore submitted that the order, under appeal deserves to be set aside.

4.7 As stated above, since the applicant was carrying out manufacturing activities at the factory premises situated at B/155, GIDC, Ankleshwar exclusively on behalf of M/s. Syngenta India Ltd. and M/s. Syngenta Crop Protection Pvt. Ltd., they used to maintain separate cenvat register for different parties so as to at the end of the month the liability of duty of the individual party can be arrived at and how much amount of cenvat credit is available in the particular account can be arrived at easily. So far as the present case is concerned whatever amount of credit was availed was in respect of inputs purchased by M/s. Syngenta India Ltd. only. The applicant therefore used to mention the name of the top of pages of cenvat register as under:-

**M/s. Agro Pack,
A/c M/s. Syngenta India Ltd.
Plot NO. B/155, GIDC Ankleshwar**

It is further stated that the applicant is also manufacturing the finished goods on behalf of M/s. Syngenta Crop Protection Pvt. Ltd., and also maintained separate cenvat register for the said company and also mention on the top of the cenvat register the name as " M/s. Agro Pack A/c M/s. Syngenta Crop Protection Pvt. Ltd."

4.8 In view of the ratio of the following judgments cenvat credit is admissible to the person who manufactures on behalf of other person.

- i) Rallis India Ltd., Vs CCE-2004 (178) ELT 716 (T)
- ii) Crop Health Products Ltd. Vs. CCE- 1998 (102) ELT 376 (T).
- iii) Sewak Pharma Vs. CCE- 2004 (175) ELT 645 (T).
- iv) Swil Ltd. Vs. CCE- 2008 (232) ELT 802 (T-Ahmd) CCE Vs. Pharmacom Pvt. Ltd- 2003 (156) ELT 934 (T).

4.9 It is an admitted fact that the applicant has obtained central Excise registration certificate; the applicant has received and consumed inputs; the applicant has carried out manufacturing activities; the applicant has debited the amount of duty at the time of exports. Further the effect of the availment and payment of duty towards exports of the finished goods has been mentioned regularly in the relevant ER-1 returns but the Range Superintendent has never taken objection for the same. In the circumstances, if the duty has been debited out of such balance, rebate claims cannot be denied merely on the ground that the applicant has mentioned incorrect the name on the top of the relevant duty paying

documents particularly when the actual debit of duty not under dispute. Further it is also not disputed that the applicant used to mention its own ECC number on each of the page of the cenvat register. In the circumstances it is strongly contended that even if the name of only M/s. Syngenta India Ltd. has been mentioned on the pages of cenvat register rebate claims cannot be denied particularly when as stated above the payment of duty and exports of the finished goods are not disputed.

4.10 In the light of the above fact, in such a case, rebate claims cannot be denied particularly when the following facts have not been disputed by the Deputy Commissioner of Central Excise, Ankleshwar-III and Commissioner of Central Excise (Appeals), Surat-II.

- i) The factory premises situated at Plot No. 155/B, GIDC, Ankleshwar is owned by M/s. Agro Pack.
- ii) The Central Excise department has granted Central Excise Registration certificate in the name of M/s. Agro Pack.
- iii) M/s. Agro Pack has entered into agreement with M/s. Syngenta India Ltd. to carry out manufacturing activities on behalf of M/s. Syngenta India Ltd.
- iv) The inputs are sent by M/s. Syngenta to M/s. Agro Pack and they receive the same directly from the different suppliers under the proper Central Excise Invoice bearing name and address as under:

Consignee:
M/s. Agro Pack,
Plot NO. B/155, GIDC Ankleshwar,
A/c M/s. Syngenta India Ltd.

- v) On the basis of such invoices, M/s. Agro pack avail cenvat credit and effect of the same is shown regularly in the monthly returns to the Range Superintendent and the same is being accepted by the Range office without any objection. The applicant is carrying out business for almost more than ten years but till date no objection has been taken.
- vi) M/s. Agro Pack had also removed the finished goods on behalf of M/s. Syngenta India Ltd. to the domestic market, in the same month and

- the amount of duty was debited in the same cenvat register in which duty had been debited for exports but the Range Superintendent/Division office had been taken objection that the amount of duty has been paid wrongly.
- vii) The rebate claims which were submitted subsequently to the instant claims under disputes, have been sanctioned without any objection as taken in this case.
 - viii) The relevant page of cenvat register bear the ECC/Central Excise Registration Certificate Number of M/s. Agro Pack.
 - ix) The audit has also been conducted in the month of February 2010 for the period December 2008 to January 2010 but no objection in respect of availment of Cenvat Credit or maintenance of cenvat register has been taken.
 - x) The exports of the goods under ARE-1s for which rebate claims have been filed are not in dispute.
 - xi) Actual debit of duty in the cenvat register in case of exports for which rebate claims have been filed has not been disputed.
 - xii) All the exports were carried out under physical examination procedure and accordingly range officer visited the factory and verified all the relevant documents including the cenvat register in which duty was debited and thereafter put their signatures on the relevant documents but no objection was taken at the time of exports of the finished goods.
 - xiii) No contravention of any of the conditions mentioned in the Notification No. 19/2004- CE (NT) dated 06-09-2004 or provisions of Rule 18 of Central Excise Rules, 2002 under which the rebate claims were filed.
 - xiv) No machineries/ equipments/ plants available in M/s. Agro Pack owned by or belonging to M/s. Syngenta India Ltd.

The applicant submit that though the said facts were mentioned in the reply to the show cause notice and in the grounds of appeal before the Commissioner (Appeals) both lower authorities have conveniently overlooked the same and has not given findings. It is thus submitted that the Commissioner (Appeals) has erred in rejecting the appeal.

4.11 By mentioning the name of M/s. Syngenta India Ltd. on the top of the Cenvat register, M/s. Syngenta does not become the actual manufacturer of the goods. Even though, name of Syngenta has been mentioned in the cenvat register, M/s. Agro Pack remain actual manufacturer of the finished goods and the right claimant of rebate of the duty paid at the time of exports of the finished goods. In this context, the applicant place reliance on the following judgments.

5. Personal hearing was scheduled in this case on 24-09-2013 & 11.3.2014. Hearing held on 11.3.2014 was attended by Shri Vinay Kansara, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicants rebate claims were rejected by the original authority on the ground that the applicant M/s Agro Pack paid duty from cenvat account register, which was in name of M/s Syngenta India Ltd. and not in name of M/s Agropack and as such, the goods should be treated as non-duty paid. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that applicants rebate claims sought to be rejected solely on the ground that the applicant paid duty from cenvat credit register which was in the name of Syngenta India Ltd., and there were also some discrepancies in the ARE-1 forms, as such goods should be treated as non-duty paid goods. The applicant contented that they manufactured finished goods on behalf of M/s Syngenta India Ltd. as per their agreement; that the applicant receives the inputs

directly from the suppliers factory premises under proper duty paying documents and accordingly availed cenvat credit; that they have showed such availment of cenvat credit in their monthly returns; and that as such factum of export of duty paid goods stands established.

8.1 Government finds that the applicants entered in an agreement with M/s Syngenta India Ltd. to manufacture finished goods on their behalf for manufacture of goods. The applicants procured the inputs on payment of duty under cover of invoice. On perusal of sample copies of invoices, the name of buyer of inputs/raw material was shown as M/s Agropack on A/c Syngenta India Ltd. As such, the goods are found to be procured by M/s Agropack, the applicant on payment of duty and in turn the applicant availed cenvat credit of duty paid on such inputs. It is not a case of department that the applicants availed cenvat credit improperly or fraudulently. Further, it is an admitted fact that M/s Syngenta India does not have central excise registration and hence, it can be logically implied that cenvat credit cannot be availed by M/s Syntenta India Ltd.

8.2 Government further notes that no show cause notice has been issued to the applicant or M/s Syngenta India Ltd. for improper availment of cenvat credit. As such, availment of cenvat credit in this case has not been disputed. Further, as discussed in para (8.1) above, the documents such as inputs invoices, AREs-1 etc. have been prepared showing the name of manufacturer/exporter as M/s Agropack A/c Syngenta India Ltd. Since, Syngenta India Ltd. did not have central excise registration, it can be logically contended that M/s Syngenta cannot avail cenvat credit. Hence, it cannot be held that the applicant paid duty from the cenvat account register of M/s Syngenta India Ltd. The applicant also contended that they filed monthly return for availment of cenvat credit. If, the availment of cenvat credit was accepted by the department initially, bonafide of such cenvat credit can be questioned subsequently.

8.3 Government also notes that the goods were cleared on ARE-1 for export under central excise supervision and there is no dispute about export of said goods. The duty paid from said cenvat credit A/c on domestic clearance has not been

disputed by department. In the absence of any SCN for recovery of cenvat credit availed irregularly, the duty paid cannot be questioned.

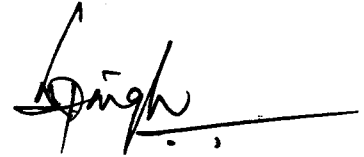
8.4 Government notes that exporter in the case as per Shipping Bill is M/s Syngenta India Ltd., Mumbai and rebate claims are filed by M/s Agro Pack. It is not on record whether applicant has filed any disclaimer certificate in this case after procuring the same from exporter of goods. Further, as per para 1.10 (ii) of order-in-original, the goods were exported under Rebate claim as well as drawback claims. If applicant has availed drawback claim of central excise portion then rebate claim will become inadmissible as both benefits cannot be granted.

8.5 In view of above, Government finds that the duty paid nature of impugned exported goods cannot be disputed merely for the reasons that some alteration in the name of cenvat account holder made unless the bonafide of such cenvat credit is questioned. Since, in this case, no show cause notice has been issued for improper availment of cenvat credit, the payment of duty from such cenvat credit account cannot be said to improperly paid. However, Government finds that applicant's claim of procurement of inputs/raw materials under various invoices on payment of duty and reporting of cenvat credit of such duty payment in form of monthly return needs to be verified from original documents and official records, to determine the correctness of payment of duty from rightly availed cenvat credit.

9. In view of above, Government finds it in the interest of justice that the case is required to be remanded back to the original authority. Accordingly, the impugned order-in-appeal is set aside and case is remanded back to original authority for fresh consideration by taking into account the observations made in para above. A reasonable opportunity of hearing will be afforded to the concerned parties before deciding the case.

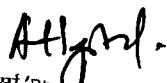
10. Revision application is disposed in above terms.

11. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India


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

Order No. 96/14-Cx dated 25.03.2014

Copy to:

1. The Commissioner, Central Excise & Customs, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395001.
2. The Commissioner (Appeals), Central Excise & Customs, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395001.
3. The Deputy Commissioner of Central Excise & Customs, Division-III, 2nd Floor, Plot No. C/4/9, GIDC, Ankleshwar.
4. ~~PS to JS (RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(B.P.SHARMA)

OSD (Revision Application)

