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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
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Mumbai - 400 005

F. No. 195/466/16-RA /6115 Date of issue: 31.10.2022

ORDER NO. 993 /2022-CX (WZ)/ASRA/MUMBAI DATED28.10.2022 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. Meghmani Dyes and Intermediates Ltd, Unit -4

Respondent : The Commissioner, Central Excise, Ahmedabad-I.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal No. AHM-EXCUS-001-APP-071 to 073-2015-16 dated 21.04.2016 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

The Revision Application has been filed by M/s Meghmani Dyes and Intermediates Ltd, Unit IV, Plot No 96 to 98 and 103, Phase II, GIDC, Vatva, Ahmedabad-382 445 (hereinafter referred to as "the applicant") against Orders-in-Appeal No. AHM-EXCUS-001-APP-071 to 073- 2015-16 dated 21.04.2016 (Date of issue: 31.05.2016) passed by the Commissioner (Appeals–I), Central Excise, Ahmedabad.

2. The facts of the case in brief are that the applicant is engaged in the manufacture of S. O. Dyes falling under Chapter Heading No.29 of the Central Excise Tariff Act, 1985 and had cleared excisable goods as such to M/s. Meghmani Industries Ltd, SEZ unit and duty by debit of duty from RG23A Pt-II as per Rule 3 (5) of Cenvat Credit Rules, 2004 and subsequently filed three rebate claim for the duty debited. The original authority after following the due process of law sanctioned all three rebate claims partly in cash and partly by way of re-credit to the cenvat account, under the provisions of Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. The amount re-credited to the cenvat account was in respect of the amount paid by the applicant on account of 4% Special Additional Duty (SAD) on input removal as such.

3. Aggrieved by the said Orders-in-Original, the department filed appeals before the Commissioner (Appeals–I), Central Excise, Ahmedabad, on the grounds that the Adjudicating Authority had erred in sanctioning the amount of duty paid by the applicant by debiting duty credited as SAD, which was ordered by the adjudicating authority to be re-credited to the cenvat account. The Appellate Authority, vide Orders-in-Appeal No AHM-EXCUS-001-APP-071 to 073-2015-16 dated 21.04.2016 set aside the impugned Orders-in-Original relying on Para 10 of Order No 433-444/2013-CX dated 30.05.2013 of the Revisionary Authority in the case of M/s Vinati Organics Ltd [2014(311) E.L.T. 994(GOI)]which read as under :-

"Government also notes that the applicant is claiming rebate of SAD levied under Section 3(5) of the Customs Tariff Act, 1975. The said provision of Section 3(5) reads as under:

"(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification." From perusal of above position, it is clear that SAD is levied on imported goods to counter balance the sales tax, value added tax, local tax, etc., which cannot be considered as duties of excise for being eligible for rebate benefit. Further, SAD collected under Section 3(5) is also not classified as a duty in list of duties provided in Explantation-1 of the Notification No. 21/2004 C.E. (N.T.), dated 6-9-2004, Hence, such payment of SAD is not eligible for rebate claim."

4. Aggrieved by the said Orders-in-Appeal, the applicant has filed the instant revision application on the following grounds:

4.1. That the Appellate Authority has erred in ignoring the provisions and explanation given in the Union Budget 2005-06 and solely relying upon the decision in the matter of M/s Vinati Organics Limited in allowing the appeal of the revenue and setting aside the Orders-in-Original;

4.2. That SAD has been put at par with the excise duty leviable under the Central Excise Act, as far as the matter concerning Cenvat credit including the refund and rebate thereof are concerned and therefore, should be treated at par with Additional Duty of Excise (commonly known as CVD) in so far as manufacturer of excisable goods are concerned;

4.3. That the Appellate Authority had erred in arriving at conclusion that duty paid under Rule 3 (5) of the Cenvat Credit Rules, 2004 is not the 'duty of excise' or the same is not specified under Notification 19/2004 CE (NT) dated 06.09.2004 governing the rebate claim of excise duty;

4.4. That the sale of 'imported good" for home consumption, either on payment of applicable duty or under any licence/authorization, loses the character of 'imported goods' and can't be said to be the imported goods any more and the sale of such goods by the manufacturer or registered dealer is governed by the Central Excise Act, 1944 and rules framed thereunder and that Rule 3 (1) Cenvat Credit Rules 2004 makes it is clear that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit of duties specified therein and as per clause (vii) and (vii a), a manufacturer or producer is eligible to take the credit of duty paid under Section 3(1) and 3 (5) of the Custom Tariff Act, 1975;

4.5. That since at the time of import of goods, the manufacturer/dealer, had taken the credit of duty of duty paid under Section 3(1) and 3 (5) of the Custom Tariff Act, 1975, by application of Rule 3 (5) of CCR, 2004, one had to pay the duty equal to the credit availed in respect of such inputs or capital goods, when inputs or capital goods, on which CENVAT credit has been taken, are removed as such;

4.6. That 'Input' and 'Capital Goods' can be cleared for exports either under bond (without payment of duty) and on payment of duty. In case of exports with payment of duty, the appropriate duty would be as decided under Rule 3 (5) of Cenvat Credit Rules, 2004. The duty paid on ad-valorem basis or under Rule 3 (5) are duties of excise only and does not affect the character of duty nor the excisable nature of goods;

4.7. That the law envisages different situation of clearances and prescribes different methodology of charging the excise duty and charging of excise duty under Rule 3(5) of CCR, 2004 is one of them. Thus, the duty payable

on exports is duty of excise and has rightly been claimed and granted as rebate. The Commissioner (appeals) has no justification to decide the matter against the Board Circular No. 345/2/2000-TRU dated 29.08.2000;

4.8. That they had the option to export the goods/subject material under bond /without claim of rebate. In that case this credit would be available for payment of excise duty on other goods/consignment of exports by the them making them eligible to claim the rebate of duty so paid or would be available for utilization of the same in domestic clearance. That had this material been cleared in domestic market, then the buyer of the said goods would be entitled to claim the credit there of and would have used the credit available either for claim of rebate or payment of duty on local clearances and thus rebate of the same can't be denied as it would be against the basic concept of taxation policy that "taxes should not be exported";

4.9. That there were various judicial decision where in it was held that the duty paid under Rule 3 (5) of CCR 2004 is the 'duty of excise' and it did not make any difference whether the duty paid was on goods which were imported or locally manufactured goods and cleared as such. The applicant has relied upon the following case laws in support of their contention

(i) Divi's laboratories Limited – [2012 (285) ELT 469 (GOI)]

(ii) CCE, Raigarh vs. Micro Ink Ltd. [2011 (270) E.L.T. 360 (Bom.)]

4.10. That the appeal filed by the department was not maintainable in case of two appeals as the same is filed after the expiry of three months time limit for filing the appeal

5. The department filed written submissions vide letter dated 24.06.2022, wherein they reiterated the contention that SAD is levied on imported goods to counterbalance the sales tax, value added tax, local tax etc, and cannot be considered as duties of excise for being eligible for rebate benefit and SAD collected under Section 3(5) is also not classified as a duty

in list of duties provided in Explanation I of the Notification No 21/2004-CE (NT) dated 06.09.2004 and is not eligible for rebate.

6. Personal hearing in the case was scheduled for 14.06.2022 or 28.06.2022. Shri Manohar Maheshwari appeared online on behalf of the applicant and submitted that the original authority has correctly allowed rebate and re-credited SAD portion to Cenvat account. He requested to restore the Order-in-Original as the Order-in-Appeal has been passed without any basis.

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

8. Government observes that the issue involved is whether the rebate of Special Additional Duty (SAD) of Customs is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-Central Excise (N.T.) dated 06.09.2004 and whether the amount can be re-credited to the cenvat account

9. Government notes that in the instant case the department had filed appeals before the Appellate Authority on the grounds that the Adjudicating Authority had erred in sanctioning the amount of duty paid by the applicant by debiting from the SAD component of cenvat credit which was ordered by the adjudicating authority to be re-credited to the cenvat account of the applicant.

10. Government, at the outset notes that the original authority at Para 9.6 of the impugned Orders-in-Original has rejected the amounts paid towards 4% Special Additional Duty holding that the same is not eligible for rebate to the claimant and has mentioned that term 'sanction' and allowed re-credit of the amount.

11. Be that as it may, Government proceeds to examine the case on its merits. Government observes that the applicant, in their rebate claims had claimed rebate of SAD levied under Section 3(5) of the Customs Tariff Act, 1975. The said provision of Section 3(5) reads as under :

> *"(5) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent. of the value of the imported article as specified in that notification."*

11.1 *Rule 3 of the CENVAT Credit Rules, 2004 reads :-*

> *"Rule 3. CENVAT Credit - (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of-*
>
> .....
>
> *(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);*
>
> *(viia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act,*
>
> *Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;*

It is, therefore, clear that under Rule 3 of CENVAT Credit Rules, 2004, Special Additional Duty (SAD) is treated and allowed as a duty credit.

12. Government notes that Hon'ble High Court Bombay in Union of India vs. Sterlite Industries (I) Ltd. [2017 (354) E.L.T. 87 (Bom.)] at para 5 has observed as under :-

> *"Reversal of input credit is one of the recognized method for paying duty on the final product. In fact, the Central Government by its Circular No. 283, dated 31-12-1996 construing similar provisions contained in Rule 57F of the Central Excise Rules, 1944 held that where the inputs are cleared on payment of duty by debiting RG-23A Part II as provided under erstwhile Rule 57F(4) of the Central Excise Rules, 1944, the manufacturer would be entitled to rebate under Rule 12(1)(a) of the Central Excise Rules, 1944. Rule 57F in the 1944 Rules is pari materia to Rule 3(5) of Cenvat Credit Rules, 2004. Similarly, Rule 12(1)(a) of the 1944 Rules is pari materia to Rule 18 of the Central Excise Rules, 2002. Therefore, when the Central Government has held that where the duty is paid by debiting the credit entry, rebate claim is allowable, it is not open to the departmental authorities to argue to the contrary".*

13. Government observes that the Hon'ble High Court of Bombay in the case of CCE, Raigad vs. Micro Inks Ltd., reported in [2011 (270) E.L.T. 360 (Bom.)] has inter alia held that if duty is paid by reversing the credit, it does not lose the character of duty and therefore, if rebate is otherwise allowable, the same cannot be denied on the ground that duty is paid by reversing the credit.

14. Government observes that it is also on record that the applicant at the time of clearance of the goods to the Dahej SEZ, in respect of which the rebate claims had been filed had debited the duty from their Cenvat account which included the credit of 4% Special Additional Duty (SAD. However it is also a fact that SAD is levied on imported goods to counter balance the sales tax, value added tax, local tax, etc., which cannot be considered as duties of excise for being eligible for rebate benefit. Further, SAD collected under Section 3(5) of the Customs Tariff Act, 1975 is also not classified as a duty

in list of duties provided in Explantation-1 of the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004. Hence, such payment of SAD is not eligible for rebate claim under Rule 18 of Central Excise Rules, 2002.

15. Further the Hon'ble High Court of Punjab and Haryana vide judgement dated 14.01.2008 in Central Excise Appeal No. 10/07, in the case of CCE, Gurgaon vs. Simplex Pharma Pvt. Ltd., [2008 (229) E.L.T. 504 (P & H)] held that once eligibility of appellant for benefit of Cenvat/Modvat credit on CVD paid by him is not disputed by Revenue then appellant is entitled to payment/refund of said amount under Section 11B(2) of Central Excise Act, 1944. In this case, the merchant exporter exported the goods under Notification No. 21/2004-C.E. (N.T.), dated 06.09.2004 read with Rule 18 of the Central Excise Rules, 2002 and filed refund claims on the duty (CVD) paid on the imported inputs used in the processing/manufacturing of the exported goods which was rejected by the Assistant Commissioner and Commissioner (Appeals). The merchant exporter filed an appeal with the CESTAT who set aside the orders of the Commissioner (Appeals) and allowed the exporter's appeal. The department filed an appeal to the Hon'ble High Court of Punjab and Haryana who while dismissing the said appeal observed at para 11 as under :-

> *Para 11 : From the facts on the record, it is not disputed that the Countervailing Duty amounting to Rs. 9,69,250/- paid by the applicant at the time of import of raw material was in fact a duty of excise equivalent to the excise duty payable on such raw material if manufactured in India and admittedly, the said raw material was consumed in the manufacturing of excisable goods exported out of India by the applicant on which excise duty equivalent to the amount paid by the applicant at the time of import of raw material was leviable. Further, the applicant is admittedly eligible for the benefit of Modvat/Cenvat Credit on the CVD/additional duty paid by him at the time of import of raw material and if he had availed the Modvat/Cenvat Credit, then he would have got the refund of the same under the provisions of Section*

11B (2). Once the eligibility of the applicant for the benefit of Modvat/Cenvat Credit on the CVD paid by him is not disputed by the Revenue then in that case the applicant is entitled to payment/refund of the said amount under Section 11B(2) of the Act."

16. Similarly, in the instant case Government observes that the manufacturer is allowed to take the Cenvat credit of the SAD in terms of Rule 3(viia) of Cenvat Credit Rules, 2004. While clearing the said inputs as such under Rule 3(5) of the Cenvat Credit Rules, 2004 again the applicant had reversed the credit taken including the credit availed on account of SAD. Thus reading in harmony with the Hon'ble High Court of Punjab and Haryana's judgement dated 14-01-2008 Government observes that the applicant is admittedly eligible for the benefit of Cenvat Credit on the SAD paid by him at the time of import of raw material and once the eligibility of the applicant for the benefit of Cenvat Credit on the SED paid by him is not disputed by the Revenue then in that case the applicant is entitled to payment/refund of the said amount under Section 11B(2) of the Act. In terms of the Hon'ble Bombay High Court's judgements referred to in paras 12 and 15 supra, reversal of credit while clearing the goods as such for exports tantamounts to payment of duty. However, Government observes that vide Notification No. 12/2007-C.E. (N.T.), dated 01.03.2007 additional duty (CVD) levied under Section 3 of Customs Tariff Act, 1975 was added on duties to be rebated in the Notification No. 19/2004-C.E. (N.T.) as well as Notification No. 21/2004-C.E. (N.T.), dated 06.09.2004. As such, by virtue of said amendment, the rebate of CVD paid on imported materials has been allowed as per the statute. However, SAD is still out of the purview of the definition of "duty" as enumerated in Explanation I to Notification No.19/2004-C.E. dated 06.09.2004.

17. Government observes that it has been stipulated in the Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 and the C.B.E. & C. Circular No. 510/06/2000-CX, dated 03.02.2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would

mean the duty payable under the provision of Central Excise Act. In the instant case SAD paid/reversed by the applicant has not been treated as one of the duties specified in Explanation I to the Notification No.19/2004 CE dated 06.09.2004, hence the SAD does not find any premise in Section 11 B of the Central Excise Act, 1944 and therefore not rebated. Therefore, Government is of the view that SAD paid by the applicant has to be treated simply as a voluntary deposit made by the applicant with the Government which is required to be returned to the applicant in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law.

18. In view of the foregoing discussion, Government sets aside the impugned Orders-in-Appeal No. AHM-EXCUS-001-APP-071 to 073- 2015-16 dated 21.04.2016 (Date of issue: 31.05.2016) passed by the Commissioner (Appeals–I), Central Excise, Ahmedabad and upholds the impugned Orders-in-Original.

19. Revision application is disposed off on the above terms.

28/10/22

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

ORDER No. 993/2022-CX (WZ)/ASRA/Mumbai dated 28.10.2022

To,
M/s Meghmani Dyes and Intermediates Ltd,
Unit IV, Plot No 96 to 98 and 103, Phase II,
GIDC, Vatva, Ahmedabad-382 445.

Copy to:
1. The Pr. Commissioner of CGST, Ahmedabad South, 7th Floor, CGST Bhavan, Rajasva Marg, Ambawadi, Ahmedabad 380 015

2. The Commissioner of CGST, Ahmedabad Appeals, 5th Floor, CGST Bhavan, Revenue Marg, Opp. Polytechnic, Ambawadi, Ahmedabad 380 015
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.
5. Spare copy