

F. No. 198/63/2016-R.A.

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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..7/12/18...

Order No. 612-614/2018CX dated 3-12-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional 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 No. HPU/EXCUS/000/APPL-I/49/2016-17, dated 29.04.2016, HPU/EXCUS/000/APPL-I/51/2016-17, dated 29.04.2016 & HPU/EXCUS/000/APPL-I/57/2016-17, dated 29.04.2016, passed by the Commissioner (Appeals), Meerut.

Applicant : The Commissioner of Central Excise, Meerut

Respondent : M/s Swati Menthol & Allied Chemicals Ltd., Rampur.

ORDER

Three Revision Applications Nos. 198/63/2016-RA, 198/64/2016-RA and 198/65/2016-RA, all dated 04.08.2016, have been filed by the Commissioner of Central Excise, Meerut (hereinafter referred to as the applicant) against the Orders-in-Appeal Nos. HPU/EXCUS/000/APPL-I/49/2016-17 dated 29.04.2016, HPU/EXCUS/000/APPL-I/51/2016-17 dated 29.04.2016 and HPU/EXCUS/000/APPL-I/57/2016-17 dated 29.04.2016, passed by the Commissioner (Appeals), Meerut, whereby the respondent's appeals against the orders-in-original have been allowed.

2. The brief facts leading to the present proceeding before the Government are that M/s Swati Menthol & Allied Chemicals Ltd. had filed rebate claims of Rs.1,81,84,708/- (84,68,409/- + Rs.24,30,816/- + Rs. 72,85,483/-) under Rule 18 of Central Excise Rules, 2002, read with notification no. 19/2004-CE (NT) dated 06/09/2004, in respect of central excise duty paid on the goods exported out of India. However, the said rebate claims were rejected by the original adjudicating authority on the ground that the exported goods namely Cornmint Oil falling under Chapter 33 of the First Schedule of the Central Excise Tariff Act, 1985, were exempted from central excise duty in terms of Sl. No. 135 of the Notification no. 12/2012-CE dated 17/03/2012 as it had emerged as a by-product only during the manufacturing of Menthol and accordingly the duty paid by the respondent could not be treated as validly paid duty. The respondent filed appeals before the Commissioner (Appeals) who allowed the said appeals as per the above orders-in-appeal dated 10.05.2016 which have been now challenged by the revenue in the present revision application.

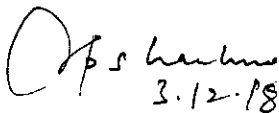
4. A personal hearing was offered on 09.10.2018 which was availed by Sh. R.M.Saxena, Advocate, for the respondent and reiterated their replies submitted earlier and furnished additional submissions dated 9.10.2018 during the hearing to emphasize that the Department's Revision Applications are not maintainable.

He vehemently opposed the department's revision application mainly on the ground that the product Cornmint Oil (Rectified terpene fraction/CIS-3 Hexanol) exported by them is manufactured by them in Unit No. 2 after processing duty-exempted final product "Terpenes" manufactured in Unit-1, Cornmint Oil is neither an intermediate product nor a byproduct as the same is not manufactured during the manufacturing of Menthol, it is manufactured independently from Terpenes by employing complex chemical processes such as fraction distillation, boration and saponification carried out on terpenes and they had paid duty from the beginning on this product when cleared for home consumption and the department never objected to it. However, no one appeared for the applicant and no request was also received from them for any other date of hearing in this matter from which it is implied that they are not interested in availing any personal hearing in this case.

5. The government has examined the matter and it is observed that the applicant has filed the present revision applications mainly on the ground that Corn mint Oil, also known as Rectified Terpenic Fraction or CIS-3 Hexanol, is a byproduct arising during the manufacturing of Menthol falling under CETH 33109059 and the same is exempted from central excise duty at Sr. No. 135 of Notification No. 12/2012-CE dated 17/03.2012. However, no relevant detail has been given in the revision application as to how the said product is a byproduct in this case and how the same is exempted from duty especially in the light of the processes involved in manufacture of the said Cornmint Oil. Their above claim is not accepted by the Commissioner (Appeals) and it has been opposed by the respondent also for the reasons already discussed in the above Para 4. The respondent has claimed that this product is manufactured by them from the raw material viz. terpenes manufactured in their other unit and not from cornmint/peppermint oil as is claimed in the revision applications. Commissioner (Appeals) has also observed in her orders that the manufacture of Menthol is complete in Unit 1 of the respondent and no evidence has been adduced by the applicant that Terpenes brought from this unit as a raw material for Unit 2 still contained Menthol. This argument appears to be convincing as the process in Unit 2 is completely unrelated to the manufacture of menthol and the

government agrees with the respondent's case that Cornmint Oil is not manufactured as a byproduct during the manufacturing of Menthol as it is undoubtedly manufactured subsequent to the manufacturing of Menthol by undertaking totally separate manufacturing processes. The CESTAT's larger bench decision in the case of M/s Markfed Vanaspati & Allied Industries Vs CCE [2000(116)ELT 204], wherein the nature and scope of byproduct is elaborated in detail, also supports the above view that the product exported by the respondent is not a byproduct. Further, the applicant's above claim in the revision application is contradictory in as much as they have always accepted the payment of central excise duty on the same product when it was cleared for home consumption from the very beginning and never objected to payment of duty on the ground that Cornmint was absolutely exempted from duty under Notification No. 12/2012-CE. The Commissioner (Appeals) has also rightly termed this attitude as a double standard and has allowed rebate of duty to the respondent by setting aside the orders of the original adjudicating authority. Thus the applicant has failed to establish that the exported goods are byproducts or intermediary goods covered under Sr. No. 135 of the above notification No.12/2012. Various decisions cited in the revision applications are also not found to be relevant as none of them dealt with the issue involved in the present proceeding as discussed above. Considering all these facts, the government does not find any fault in the Commissioner (Appeals)'s order and no merit in the revision application.

6. Accordingly, the revision application is rejected.


3.12.18

(R. P. Sharma)

Additional Secretary to the Government of India

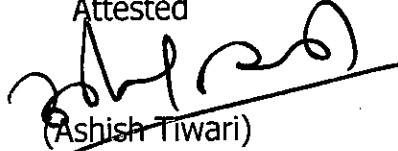
The Commissioner of Central Excise,
Meerut-I, Meerut.

G.O.I. Order No. 612 -614 /18-Cx dated 3/12-2018

Copy to:-

1. Commissioner of Central Excise, Hapur (Erstwhile Meerut-II).
2. Commissioner (Appeals) , Meerut-I, Meerut.
3. M/s Swati Menthol & Allied Chemicals Ltd.,6.5 Km, Shahzad Nagar, Bareilly Road,
P.O. Modipur, Distt. Rampur (UP).
4. P.S to AS (RA).
5. Guard file.

Attested



(Ashish Tiwari)

Assistant Commissioner (Revision Application)