

SPEED POST



F.No. 195/125/SZ/2018-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.....15/03/23

Order No. 65/2023-CX dated 15-03- 2023 of the Government of India,
passed by Sh. Sandeep Prakash, 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 Order-in-Appeal No. 01/2018
(CTA-II) dated 28.02.2018, passed by the Commissioner of
CGST & Central Excise (Appeals-II), Chennai.

Applicant : M/s BASF Catalysts India Pvt. Ltd., Maraimalai Nagar, Tamil
Nadu.

Respondent : The Commissioner of CGST & Central Excise, Chennai Outer.

ORDER

A Revision Application No. 195/125/SZ/2018-RA dated 20.07.2018 has been filed by M/s BASF Catalysts India Pvt. Ltd., Maraimalai Nagar, Tamil Nadu (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 01/2018 (CTA-II) date 28.02.2018, passed by the Commissioner of CGST & Central Excise (Appeals-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 02/2017 (CE) dated 17.02.2017, passed by the Additional Commissioner of Central Excise, Chennai-III Commissionerate, Chennai.

2. Brief facts of the case are that the Applicants are engaged in manufacture of catalytic converters and automotive catalysts for reducing/controlling emissions from the automobiles. They import duty paid raw materials & components etc. and avail cenvat credit and also manufacture and clear the said automotive catalysts for export on payment of duty and claim rebate under Rule 18 of the Central Excise Rules, 2002. On the basis of specific intelligence, the Central Excise officers undertook investigations against the Applicants herein and found that the Applicants had allegedly contravened the conditions of Notification No. 32/97-Cus dated 01.04.1997 by importing precious metals, free of cost from their parent company in Germany, without payment of import duty for the purpose of jobwork and availing the rebate claims on such exports. A show cause notice dated 18.12.2013 was issued to the Applicants herein by the Assistant Commissioner of Central Excise, Tambaram-II Division, Chennai III requiring them to show cause as to why a total amount of Rs. 1,90,49,432/- sanctioned to them as rebate (in total 56 cases) on such exports should not be recovered from them under Section 11A(1) of the Central Excise Act, 1944 as erroneous refund, along with the applicable interest, and why penalty under Rule 25 of the Central Excise Rules, 2002 should not be imposed on them. After following the principles of natural justice, the original authority, vide the aforesaid Order-in-Original dated 17.02.2017, confirmed the demand of Rs. 1,90,49,423/-, along with applicable interest, and also imposed equal penalty of Rs. 1,90,49,423/- on the Applicants herein under Rule 25 ibid. The appeal filed

by the Applicants has been rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The Revision Application has been filed, mainly, on the grounds that the recovery proceedings under Section 11A(1) are not sustainable as the department has not filed appeal against the orders sanctioning the rebate; that the activities undertaken by the Applicants amount to manufacture and, therefore, the duty paid on the goods exported is as per law; that it is not correct to hold that there is no manufacture involved in 'jobbing'; that, as per Rule 18, rebate should be sanctioned on duty 'paid' and not 'payable'; that the Customs Circular No. 54/2002 dated 27.08.2002 has no applicability in the present case; that there is no bar under notification no. 32/97-Cus dated 01.04.1997 from availing rebate of excise duty upon export of the final product; that duty paid on exported goods, if not required to be paid, ought to be refunded to the Applicants as its collection is without sanction of law; that there is substantive compliance on part of the Applicant and the factum of exports is not in doubt, a liberal interpretation should be given as rebate is a beneficial scheme; that the show cause notice demanding an amount of Rs. 1,90,49,423 has been issued without jurisdiction by the Assistant Commissioner, in terms of Board's Circular No. 752/68/2003-CX dated 01.10.2003 as amended by Circular No. 922/12/2010-CX dated 18.05.2010; that there was no suppression involved in the matter and, therefore, extended period of limitation under Section 11A could not have been invoked; and that no penalty is imposable and no interest is payable.

4. Personal hearing in the matter was held, in virtual mode, on 10.03.2023. Shri Shanmuga Dev, Advocate appeared for the Applicant and requested that the compilation emailed on 08.03.2023 may be taken on record. He reiterated the contents of the RA with the help of compilation. Shri G.K. Radhakrishnan, AC supported the orders of Commissioner (Appeals). Upon being asked about the status of GOI Order No. 309-315/2021-CX(SZ)/ASRA/Mumbai dated 13.09.2021, Shri Radhakrishnan sought for and was granted time upto Tuesday, 14.03.2023 to submit the status. The Assistant Commissioner of Central Tax, Maraimalai

Nagar Division has, vide letter C.No. IV/11/01/2017-TECH TAR dated 14.03.2023, informed that the GOI order 309-315/2021-CX(SZ)/ASRA/Mumbai dated 13.09.2021 in the Applicant's own case has not been reviewed.

5.1 The Government has carefully examined the matter. Several preliminary/legal issues such as issue of show cause notice cum demand by the Assistant Commissioner in excess of his jurisdiction and raising of demand without reviewing the Orders sanctioning the rebate etc. have been raised. However, the Government finds that the matter can be decided on merits itself without traversing these issues.

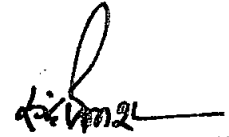
5.2 In the present case, it is not disputed that the inputs were imported duty free, under Notification No. 32/97-Cus dated 01.04.1997. Further, the final products were exported on payment of central excise duty in respect of which the rebate was claimed and sanctioned to the Applicants. The contention of the department is that having imported inputs duty free, under Notification No. 32/97-Cus dated 01.04.1997, the Applicants were required to export the goods without payment of duty as simultaneous benefit of duty free import and the benefit of rebate is not available. It is also contended that since the duty free import was meant for 'jobbing', the central excise duty was not required to be paid as 'jobbing' would not amount to manufacture.

5.3 At the outset, it has been brought on record that in the Applicant's own case, the Government has, vide GOI Order No. 309-315/2021-CX(SZ)/ASRA/MUMBAI dated 13.09.2021, held that the rebate of duty paid on resultant products is admissible under Rule 18 *ibid*, even though inputs were imported duty free, under Customs Notification No. 32/1997-Cus dated 01.04.1997. While holding so, the Government observed that the said Notification dated 01.04.1997 does not restrict/bar export of resultant goods under claim of rebate. This Order of the Government has been accepted by the department and no material has been placed on record, at this stage, to take a different view on the subject.

5.4 In the present case, Commissioner (Appeals) has referred to the Circular No. 54/2002 to hold that the benefits of rebate under Rule 18 would not be admissible where inputs have been imported duty free under Notification No. 32/97-Cus dated 01.04.1997. As correctly pointed out by the Applicants herein, this Circular is applicable only in respect of exports made under claim of Drawback/DEPB benefits. There is nothing in the Circular to justify the findings of the Commissioner (Appeals) that the instructions therein are applicable mutatis-mutandis to the goods exported under claim of rebate.

5.5 Further, even if it was to be presumed that the final products ought not have been cleared for export after payment of excise duty, as these had been produced/manufactured out of duty free imported inputs or that there was no 'manufacture' involved, the central excise duty paid, has to be treated as having been paid and collected without authority of law. It is trite to say that the amounts so paid and collected cannot be retained by the Government and, in such a case as well, the subject amount would be required to be returned. Therefore, looking at the case from any perspective, the orders of the authority below cannot be sustained.

6. In view of the above, the Revision Application is allowed and the orders of the authorities below are set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s BASF Catalysts India Pvt. Ltd.
E-17 & 18, Industrial Estate,
Maraimalai Nagar,
Chennai – 603 209.

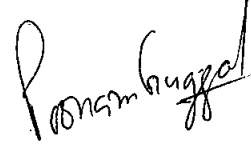
G.O.I. Order No. 65/23-CX dated 15-03-2023

Copy to: -

1. The Commissioner of CGST & Central Excise, Chennai Outer, No. 2054-(I, II) Avenue, 12th Main Road, Newry Towers, Anna Nagar, Chennai-600034.

2. The Commissioner of CGST & Central Excise (Appeals-II), Newry Towers, Plot No. 2054, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040.
3. M/s Lakshmikumaran & Sridharan Attorneys, No. 2, Wallace Garden, 2nd Street, Nungambakkam, Chennai – 600006.
4. PPS to AS (RA)
5. Guard File.
6. ~~Spare Copy~~
7. Notice Board

ATTESTED



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