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|  | केंद्रीय कर आयुक्त (अपील) |  |
| सत्यमेव जयते | O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 | 7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 |
|  079-26305065 | | टेलिफैक्स 079-26305136 |

रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): **V2(44)13/EA-2/North/Appeals/ 2017-18** / 2785-89,
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 408-16-17**
 दिनांक (Date): **26.03.2018**, जारी करने की तारीख (Date of issue): **22/04/17**
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी
 मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No. **905-906/R/I/17-18** Dated: **22/08/2017**
 issued by: Assistant Commissioner., Central GST (Div-III), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Wood Star (India) Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India:

(1) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से

ORDER IN APPEAL

Revenue Department (*hereinafter referred to as 'appellant revenue or revenue'*) have filed the present appeals against the Order-in-Original No. 905-906/R/I/17-18 dated 22.08.2017 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, CGST Div-III, Gokuldham Arcade, Ullariya, Sarkhej- Sanand HW, Ahmedabad North (*hereinafter referred to as 'adjudicating authority'*) passed in respect of M/s Wood Star (India) Pvt. Ltd., Survey No. 258, Vasodara, Ta- Sanand, Dist. Ahmedabad- 382120 (C. Ex. Reg. No. AAAC W3570E M001) (*hereinafter referred to as 'respondent'*)

2. The-facts of the case, in brief are that respondent assessee had filed rebate claim of C. Ex. Duty amounting to Rs. 4,98,903/- paid on the goods exported under drawback scheme, vide ARE-1 No. 1/17-18 dated 02.04.2017 and ARE-1 No. 2/17-18 dated 01.05.2017 under Notification No. 19/2004- CE (NT) dated 06.09.2004 issued u/r 18 of CER, 2002. Respondent had paid duty Rs. 1,85,991/- from BED and Rs. 22,911/- from Special Additional Duty of Customs (SAD). Entire claim of Rs. 4,98,903/- was allowed by the adjudicating authority vide impugned OIO.

3. Being aggrieved with the impugned order, the appellant revenue preferred an appeal on 11.12.2017 [revenue review order No. 14/2017-18 dated 27.11.2017] before the Commissioner Appeals, CGST, GST Bhavan, Ambawadi, Ahmadabad wherein it is contended that as per Notification No. 19/2004- CE (NT) Special Additional Duty of Customs (SAD) is not included in the explanation-I of "duty". Hence benefit of granting rebate of Rs. 22,911/- paid from Special Additional Duty of Customs (SAD) can not be extended to the respondent assessee. Further it is argued that erroneously granted rebate is required to be recovered with interest applicable.

4. Copy of appeal memo was sent to respondent assessee to file cross objection if any and to inquire if they want any personal hearing in the matter. No cross objection has been filed. It is informed by the respondent vide their letter dated 28.03.2018 that they do wish to have any personal hearing in the case and the case may be decide ex-parte.

DISUSSION AND FINDINGS

5. As respondent assessee do not wish to avail opportunity of personal hearing, I take up the case to decide it ex-parte on the basis of records available. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum of revenue department.

6. It is the case of revenue department that rebate of duty of Rs. 22,911/- paid from Special Additional Duty of Customs (SAD) is erroneously extended to the respondent assessee by the adjudicating authority as Special Additional Duty of Customs (SAD) is not included in the explanation-I of "duty" given in Notification No. 19/2004- CE (NT).

7. Before dwelling on to the dispute, I would like to reproduce the following for ease of reference:

CENVAT CREDIT RULES, 2004

RULE 3. CENVAT credit. — (1) A manufacturer or producer of final products or a [provider of output service] shall be

①

allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act :

[Provided that CENVAT credit of such duty of excise shall not be allowed to be taken when paid on any goods -

(a) in respect of which the benefit of an exemption under Notification No. 1/2011-C.E., dated the 1st March, 2011 is availed; or

(b) specified in serial numbers 67 and 128 in respect of which the benefit of an exemption under Notification No. 12/2012-C.E., dated the 17th March, 2012 is availed;]

(ii) to (via)

(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)]:

[(viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act

[emphasis added]

CENTRAL EXCISE RULES, 2002

RULE 18. Rebate of duty. — Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.

[Explanation. - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.]

NOTIFICATION NO. 19/2004-CE(NT) [relevant extracts]

Rebate of duty for exports to countries other than Nepal and Bhutan — Procedure — Notification No. 40/2001-C.E. (N.T.) partially superseded

In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of

Finance, Department of Revenue, notification No. 40/2001-Central Excise (N.T.), dated the 26th June 2001, [G.S.R. 469(E), dated the 26th June, 2001] insofar as it relates to export to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,

Explanation I. - "duty" for the purpose of this notification means duties of excise collected under the following enactments, namely :

- (a) the Central Excise Act, 1944 (1 of 1944);*
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*
- (d) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003) and further amended by section 3 of the Finance Act, 2004 (13 of 2004);*
- (e) special excise duty collected under a Finance Act;*
- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);*
- (g) Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.*

[emphasis added]

The rebate of excise duty on exported goods is granted under rule 18 of the Central Excise Rules, 2002. The procedure has been prescribed in notification No. 19/2004-CE(NT) dated 6.9.2004 in case of exports to countries other than Nepal. Now the notification, *ibid*, the relevant extracts of which is quoted above, clearly states that there shall be granted rebate of the whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985, exported to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified therein. The notification further vide its explanation I defines what "duty" would be for the purpose of rebate.

8. On examining the rebate claims in this back drop I find that [a] the appellant has filed the rebate under notification No. 19/2004-CE(NT) dated 6.9.2004; [b] the appellant has exported the goods on payment of duty from their CENVAT account. There appears to be no

dispute as far as other conditions & limitations, laid down in the notification, except that the appellant discharged the duty before exporting the goods by debiting from CENVAT credit, the amount which was lying in the credit on account of 4% SAD. The revenue has contended that the claims could not be sanctioned primarily because the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act did not find a mention in the explanation I of the notifications.

9. Explanation I [reproduced above], clearly lists the duty on which rebate will be granted. The adjudicating authority has nowhere stated that the rebate claim filed by the appellant is in respect of 4% SAD paid by the appellant. There is no doubt in my mind that the rebate claims are in respect of duties of excise paid under the Central Excise Act, 1944, before export of goods under rebate. This payment of duty of excise under Central Excise Act, 1944, clearly finds mention in (a) under Explanation I [extracts provided supra].

10. Now coming to the second grounds on which rebate was rejected that is utilization of amount standing to the CENVAT credit under 4% SAD towards payment of Central Excise duty. Neither the notification nor the concerned central excise rule, put any bar in so far as utilization of CENVAT credit lying to the credit of 4% SAD is concerned. Though not directly relevant, I have reproduced the relevant extract of Rule 3 of the CENVAT Credit Rules, 2004 to primarily see whether the CENVAT credit availed in respect of duty paid in respect of 4% SAD was eligible as credit to the appellant. The relevant extracts, clearly shows that the availment of CENVAT credit by the appellant was correct. When there is no bar on availment of CENVAT credit in respect of amount paid towards 4% SAD and there is no bar towards utilization of the said CENVAT credit towards payment of duty under the Central Excise Act, 1944, in respect of claim of rebate for exports, the allowing of rebate claim by the adjudicating authority appears to be correct.

11. Now I would like to deal with the contention of the appellant revenue, in so far as reliance on the case laws of Vinati Organics Limited [2014(311) ELT 994(GoI)] and Alpa Laboratories Limited [2014(311) ELT 654 (GoI)] is concerned, I find that in both the cases the rebates were filed under notification No. 21/2004-CE(NT) dated 6.9.2004. The relevant text of the notification *ibid*, is reproduced below of ease of reference:

NOTIFICATION NO. 21/2004-CE(NT) [relevant extracts]

Rebate of duty on excisable goods used in manufacture/ processing of export goods — Procedure — Notification No. 41/2001-C.E. (N.T.) superseded

In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No. 41/2001-Central Excise (N.T.), dated the 26th June, 2001 [G.S.R. 470(E) dated the 26th June, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter :-

[Signature]

Explanation. - "duty" means for the purposes of this notification, duties of excise collected under the following enactment, namely :-

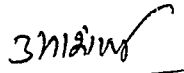
- (a) *the Central Excise Act, 1944 (1 of 1944);*
- (b) *the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);*
- (c) *the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);*
- (d) *the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) and further amended by Section 3 of the Finance Act, 2004 (13 of 2004);*
- (e) *special excise duty collected under a Finance Act;*
- (f) *additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);*
- (g) *Education Cess on excisable goods as levied under clause 81 read with clause 83 of the Finance (No. 2) Bill, 2004.*

As is evident notification no. 21/2004, grants rebate of whole of the duty paid on excisable goods used in manufacture/processing of export goods. The notification thereafter defines duty under explanation. There is a clear distinction between both the notifications issued under Rule 18 of the Central Excise Rules, 2002. While notification No. 19/2004-CE(NT) dated 6.9.2004 grants rebate on export of excisable goods, notification no. 21/2004, ibid, grants rebate on duty paid on excisable goods used in the manufacture/processing of export goods. Under notification No. 21/2004, no rebate can be claimed on materials used, in respect of 4% SAD, since the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, does not find a mention in the list of duties under explanation to the notification. Now to stretch this logic to notification No. 19/2004-CE(NT) dated 6.9.2004, when it clearly speaks of rebate of excise duty on exports of excisable goods on payment of duty under the Central Excise Act, 1944, is not a valid argument. Hence, the reliance of the appellant revenue on the aforementioned two case laws is not tenable since they are not at all relevant to the present dispute.

12. In view of the foregoing, the appeals filed by the appellant revenue, is rejected and the impugned OIO is upheld.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

13. The appeals filed by the appellant stand disposed off in above terms.


(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD

To,

M/s Wood Star (India) Pvt. Ltd.,

Survey No. 258, Vasodara,

Ta- Sanand, Dist. Ahmedabad- 382120

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad .
- 2) The Commissioner Central Tax, CGST, Ahmedabad North, Customs House, Navrangpura, Ahmedabad.
- 3) The Asst. Commissioner, Central Tax, GST Div-III, Ahmedabad North , Gokuldharm Arcade, Sarkhej- Sanand HW , Village Ullariya, Sanand, Ahmedabad 382110
- 4) The Asst. Commissioner(System), Hq, Ahmedabad North.
- 5) Guard File.
- 6) P.A. File.

