

	<p>Govt. of India</p> <p>Office of the Commissioner of Central Excise</p> <p>'Siddhi Sadan', Plot No.6776/B-1, Narayan Upadhyay Road, Off Waghawadi Road, Bhavnagar</p>
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F. No. 15/18-14/Refund/1999/Pt III

Date of Order: 15/03/2012

Date of Issue: 09/04/2012

Passed by

IMAMUDDIN AHMED
Joint Commissioner
Central Excise
Bhavnagar

Order-in-Original No: 25/BVR/Jt.Commr/2012

This copy is granted free of charge for private use of the person(s) to whom it is sent.

Any person(s) deeming himself aggrieved by this Order may appeal against this order to the Commissioner Central Excise(Appeals), Rajkot, Central Excise Bhavan, Race Course Ring Road, Rajkot-360001 within 60 days from the date of its communication. The appeal should bear a court fee stamp of Rs 2.50/- paise only.

The appeal should be filed in form EA 1 in duplicate, as per the provisions of Section 35(1) of the Central Excise Act, 1944 read with Rule 3 of the Central Excise (Appeals) Rules, 2002. It should be signed by the appellants in accordance with the provisions of sub-rule (2) of Rule 3 of the Central Excise (Appeal) Rules, 2002.

- It should be accompanied with the following:
- Copy of appeal in duplicate

Copies of the order, one of which shall be certified copy **OR** the other must bear a court fee stamp of Rs 2.50/- paise as per Schedule 1 to Article 6 of the Court Fee Stamp Act, 1870.

BY R.P.A.D.

To,
The Liquidator and Joint Registrar, C. S.
M/s. Gujarat Co-operative Oil Seeds Growers' Federation Ltd.,
4th Floor Narayan Chamber, Ashram Road, Ahmedabad-380 009

Subject: - D. F. No V. 15/18-14/Refund/1999/Pt III/ Centralized SCN No. V.J ND/JAC/SCN No. 10/2003 demanding Central Excise duty/Refund of Rs. 10,02,375/- on Rape Seed Oil.

BRIEF FACTS OF THE CASE :-

1 M/s Gujarat Co-operative Oil Seeds Growers' Federation Ltd., Junagadh (Through the Liquidator and Joint Registrar, GROFED, Ahmedabad, hereinafter referred to as the "Noticee") were engaged in job work of processing of Rape Seed Oil through Solvent Extraction (SE) method for State Trading Corporation, Ahmedabad and were eligible for exemption of basic excise duty as contained in Notification No.262/86-CE dated 24.06.1986.

2 The Noticee had cleared 1336.500 MT of Rape Seed Oil on payment of Excise duty during the period from 28.10.1987 to 20.11.1987 and had subsequently filed a refund claim on 15.01.1988 on the ground that they were not required to pay excise duty as they were eligible for exemption of excise duty under Notification No.262/86-CE dated 24.06.1986.

3 Thereafter the case travelled the following journey of decisions by the adjudicating and appellate authority:

- (i) The refund claim was rejected by original adjudicating authority by Order-in-Original No.1/1988 dated 06.01.1989 and on appeal, Collector (Appeals), Bombay remanded the matter for deciding it afresh. The adjudicating authority after issuing a SCN dated 07.12.1992 rejected the claim vide Order-in-Original No.07/93 dated 29.01.1993/09.02.1993. Collector (Appeals), Ahmedabad in Order-in-Appeal No.62/94(20 RAJ)/ Collr (A)/AHD dated 07.06.1994 upheld the Order-in-Original dated 29.01.1993/09.02.1993. The Noticee had moved to the Hon'ble High Court, Gujarat who in their Order dated 09.12.1994 directed the Noticee to approach to the Tribunal. The Tribunal by its Order No.C-I/1551/99-WRB dated 09.07.1999 remanded the matter to adjudicating authority with direction to Noticee to demonstrate to adjudicating authority in two months that the Oil was manufactured out of unprocessed rape seed oil by Solvent Extraction method.
- (ii) The adjudicating authority in Order-in-Original No.77/Refund/1999 dated 22.12.1999 had rejected the refund claim.
- (iii) On an appeal by the Noticee, the Commissioner (Appeals), Rajkot in Order-in-Appeal No.23/2001/Commr(A)/Raj dated 11.01.2001, set aside the Order-in-Original dated 22.12.1999 and allowed appeal by remand.
- (iv) The adjudicating authority in Order-in-Original No.25/Refund/2001 dated 23.08.2001 rejected the refund claim.
- (v) Commissioner (Appeals), Rajkot in Order-in-Appeal No.67/2002/Commr(A)/Raj dated 31.01.2002/05.02.2002 had allowed Noticee's appeal with consequential reliefs, in the result, adjudicating authority sanctioned refund of Rs. 10,02,375/-. Commissioner (Appeals), Rajkot side by in Order-in-Appeal No.393/2002/Commr(A)/Raj dated 18.10.2002 for Noticee's

plea for interest payment held that no interest would accrue on sanction of refund.

- (vi) Meanwhile, Department had preferred appeal No.E/1546/02 before Tribunal, Mumbai against Order-in-Appeal dated 05.02.2002 and the CESTAT, Ahmedabad in their Stay Order No.S/818/WZB/C-II dated 08.06.2006/14.06.2006 rejected Departmental Stay application and had fixed hearing for appeal on 17.07.2006 and finally CESTAT, Ahmedabad in their Final Order No. A/2757/WZB/AHD/07 dated 23.10.2007 rejected Departmental appeal.

During pendency of Departmental appeal before CESTAT, Ahmedabad, the Adjudicating authority issued a Show Cause No. V.15/18-14/Refund/1999/Pt III dated 29.04.2003 proposing recovery of refund of Rs.10,02,375/- erroneously sanctioned under the provisions of Section 11A of Central Excise Act, 1944.

- (vii) The CESTAT, Ahmedabad, on Departmental appeal No. E/153/08, in Final Order No. A/462/WZB/AHD/08 dated 04.03.2008 rejected the Departmental appeal holding that the refund of principal amount of refund had been decided in their earlier Order No. A/2757/WZB/AHD/07 dated 23.10.2007.

PERSONAL HEARING :-

4 A personal hearing was fixed on 12.03.2012 wherein Shri D.M.Oza, Consultant and Shri B.B. Parikh, C/o Office of Liquidator and Joint Registrar, C.S. for the Noticee appeared before the adjudicating authority and submitted that Department had preferred an appeal before CESTAT and it has decided the matter in favour of the Noticee. They stated that the CESTAT Order has been accepted by the Department and as such the matter no longer remains valid therefore they requested to drop the proceedings initiated by the subject Show Cause Notice. They submitted a copy of CESTAT's Order dated 23.10.2007.

DISCUSSION AND FINDINGS :

5 I have carefully gone through the records of the case and in view of foregoing series of events, I find that on the basis of Commissioner (Appeals), Rajkot Order-in-Appeal No.67/2002/Commr (A) /Raj dated 31.01.2002/05.02.2002 allowing Noticee's appeal with consequential reliefs, the adjudication authority had sanctioned refund of Rs.10,02,375/- on 09.05.2002. Further the Departmental appeal No.E/1546/02 against the said Order-in-Appeal dated 31.01.2002/05.02.2002 has been decided by CESTAT, Ahmedabad in their Final Order No.A/2757/WZB/AHD/07 dated 23.10.2007 and Order No. A/462/WZB/AHD/08 rejecting the Departmental appeal. Thus, the Show Cause Notice No.V.15/18-14/Refund/1999/Pt III dated 29.04.2003 issued by the Assistant Commissioner, Central Excise Division, Junagadh does not survive.

ORDER

I drop the proceedings initiated in Show Cause Notice No.V/18-14/Refund/1999/Pt III dated 29.04.2003.

Imamuddin Ahmed
09/4/12

(Imamuddin Ahmed)
Joint Commissioner
Central Excise
Bhavnagar

F.No.15/18-14/Refund/1999/Pt III.

Date : .03.2012

To,

**The Liquidator and Joint Registrar, C.S.
M/s Gujarat Co-Operative Oil Seeds Growers' Federation Ltd.,
4th Floor Narayan Chamber, Ashram Road, Ahmedabad-380 009.**

Copy to :

- (1) The Commissioner, Central Excise, (RRA), Bhavnagar.
- (2) The Assistant Commissioner, (Audit) Bhavnagar w.r.t F.No.V.15/18-14/Refund/99/III.
- (3) The Superintendent, Central Excise, A.R.II. Junagadh.
- (4) ✓ Guard file.

