

F. No. 195/454/16-RA
F. No. 195/457/16-RA
F. No. 195/450/16-RA
F. No. 195/474/16-RA

REGISTERED SPEED POST AD



**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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005**

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Date of Issue:

Og-11

ORDER NO. /2019-CX (WZ) /ASRA/MUMBAI DATED 29.08.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Desai Brothers Ltd.
Gat No. 204 to 266,
Pune Bangalore Highway,
A/P - Sarole, Taluka Bhore,
District - Pune, Pin 412 205,
Maharashtra

Respondent : Commissioner, Central Excise, Pune-III

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016, OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016, OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016 passed by the Commissioner of Service Tax(Appeals), Pune.

ORDER

These revision applications have been filed by M/s. Desai Brothers Ltd., Gat No. 204 to 266, Pune Bangalore Highway, A/P - Sarole, Taluka Bhore, District - Pune, Pin 412 205, Maharashtra (hereinafter referred to as "the applicant") against OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016, OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016, OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016 passed by the Commissioner of Service Tax(Appeals), Pune.

2.1 The issue in brief is that the applicant is holding central excise registration and are engaged in the manufacture of products falling under chapter no. 09 & 20 of the First Schedule to the Central Excise Tariff Act, 1985. They had exported their excisable goods and filed claims for rebate on the central excise duty paid on inputs/raw materials used in the manufacture of the said finished products under Rule 18 of the Central Excise Rules, 2002. In the cases involved under OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016 & OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016, the rebate claims were sanctioned in full after due scrutiny by the Assistant Commissioner, Central Excise, Division-IV, Purandhar, Pune-III.

2.2 During the review proceedings, the Commissioner of Central Excise, Pune-III on scrutiny of the shipping bills found that the applicant had exported their products under Duty Drawback Scheme; that these facts had been declared by them in the corresponding export invoices; that para 9(a) of the Notification No. 98/2013-Cus(NT) dated 14.09.2013 stipulating the terms and conditions for availment of benefit of "Duty Drawback Scheme" clearly restricts the benefits of Duty Drawback in a situation where rebate has been claimed in respect of the duty paid materials used in the manufacture of finished goods. It was found that in the instant case, the applicant had exported goods under "Duty Drawback Scheme" and by

claiming and obtaining rebate of duty paid on inputs they had availed double benefit and therefore the original authority had erred in granting the rebate as the drawback had already been granted to them. In the cases involved under OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016, the rebate sanctioning authority had rejected the rebate claims filed by the applicant in their entirety on the grounds taken by the Commissioner of Central Excise, Pune-III in review. The applicant then filed appeals before the Commissioner(Appeals).

3. The Commissioner(Appeals) on perusal of Para 9(a) of the Notification No. 98/2013-Cus(NT) dated 14.09.2013 found that it stipulates that once the exporter avails the facility of duty drawback, they will not be entitled to rebate of central excise duty paid on materials used in the manufacture or processing of such commodity/product under Rule 18 of the Central Excise Rules, 2002. He averred that the exporter is entitled to either avail the benefit of duty drawback or rebate of central excise duty paid on materials used in the manufacture or processing of such commodity/product. Commissioner(Appeals) opined that since this was the stipulation under the notification, he being a creature of the Central Excise Act could not traverse beyond what is prescribed in the notification and therefore was bound by the stipulation. With regard to the contention of the applicant that there was no restriction in Rule 18 of the Central Excise Rules, 2002 or the notification issued thereunder that drawback cannot be claimed once the rebate of duty paid on inputs is claimed by the exporter, the Commissioner(Appeals) found that the applicant had interpreted the law conveniently and stated that he disagreed with that contention. He further observed that the exporter is required to exercise his option to avail the benefit of drawback while filing the shipping bill. After the exporter decides to avail the benefit of drawback, he is required to abide by the relevant customs notification issued in this regard; viz. Notification No. 98/2013-Cus(NT)[condition 9(a)] which clearly bars claiming the benefit of drawback

once the benefit of rebate is claimed by the exporter. The Commissioner(Appeals) in such manner held that the rebate claims were not admissible.

4.1 Aggrieved by the orders of the Commissioner(Appeals), the applicant has filed revision applications against all four OIA's. In the revision applications filed against OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016 & OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016, the applicant contended that the Commissioner(Appeals) had grossly erred in rejecting their arguments that the appeals filed by the department were time barred and in holding that the appeals had been filed within stipulated time. The remaining grounds were common for the revision applications filed against all four OIA's. The applicant firstly averred that there was no dispute about the duty paid nature of the inputs and their use in manufacture of export goods or that the applicants had contravened any of the conditions of Rule 18 of the CER, 2002 or Notification No. 21/2004-CE(NT) dated 06.09.2004. The contention of the Department was that they had violated the conditions of Notification No. 98/2013-Cus(NT) dated 14.09.2013 whereas the violation of customs notification was not referred to in Rule 18 of the CER, 2002 or Notification No. 21/2004-CE(NT) dated 06.09.2004 and therefore had no bearing on the instant case for grant of rebate of duty paid on inputs used in the manufacture of excisable goods. It was further stated that if it was the governments intention to deny rebate of excise duty if duty drawback is availed, then such condition would have been incorporated in Rule 18 or Notification No. 21/2004-CE(NT) dated 06.09.2004.

4.2 The applicant further contended that para 9(a) of the Notification No. 98/2013-Cus(NT) dated 14.09.2013 prescribes that duty drawback is not available to the extent of excise duty claimed as rebate. They asserted that it ought to have been appreciated by the Commissioner(Appeals) that it was settled law that no words can be added to the taxing statute and that the

words used in the taxing statute are to be read as it is. The applicant further submitted that they had filed shipping bills under schedule no. 2001B where the 'B' stood for drawback when CENVAT facility had been availed as per column (6) and (7) of the table appended to the Notification No. 98/2013-Cus(NT) dated 14.09.2013. They opined that the Commissioner(Appeals) had grossly erred in holding that in terms of para 9(a) of Notification No. 98/2013-Cus(NT) dated 14.09.2013, the exporter was entitled to either avail the benefit of duty drawback or the benefit of rebate of central excise duty paid on the materials used in the manufacture or processing of such commodity/product.

4.3 It was further asserted that condition 9(a) of the Notification No. 98/2013-Cus(NT) dated 14.09.2013 is applicable only to cases where duty drawback is claimed under column (4) & (5) of the Table appended thereto whereas in the facts of the present case, the applicant has claimed drawback under column (6) & (7) of the said Table. The applicant pointed out that the Commissioner(Appeals) failed to appreciate that nowhere in the said notification it was stipulated that drawback specified in columns (6) & (7) of the Table; i.e. customs portion cannot be availed if input stage rebate is claimed; that he had failed to note that they had availed All Industry Rate of Duty Drawback of customs duty portion and that the rebate was claimed for excise duty portion only; that there was no double benefit accruing to them. They stated that the Commissioner(Appeals) had grossly erred in setting aside the applicants contention that Rule 18 and the notification issued thereunder does not contain any restriction by which it is laid down that drawback cannot be claimed once the rebate of duty paid on inputs is claimed by the exporter. With regard to the reliance placed by the Commissioner(Appeals) on the four orders passed by the Revisionary Authority is concerned, it was submitted that the facts and circumstances in all these cases are different and hence these case laws are not applicable.

5. The applicant was granted a personal hearing on 19.08.2019. Shri Vishal Dongare – Assistant Manager, EXIM, Shri Dilip B. Harischandrakar – Sr. Manager, Indirect Tax and Shri Aamer Khan, Consultant appeared on behalf of the applicant and submitted written submissions and copy of CBEC Circular No. 1047/35/2016-CX dated 16.09.2016. Shri Rishabh Gupta – Deputy Commissioner, Division-V, Pune-II and Shri P. K. Srivastava – Superintendent, Range-II, DivisionV, Pune-II appeared on behalf of the Department and submitted a written submission.

6.1 The applicant in their written submissions stated that they have been exporting since the past 10 years & and claiming the benefit of input stage rebate and duty drawback. The jurisdictional DC/AC was sanctioning their rebate claims without any objections or queries, knowing the fact that they were claiming duty drawback. However, some of these orders were reviewed on the wrong ground that they were claiming double benefit of input stage rebate and All Industry Rate of Duty Drawback. The Commissioner(Appeals) in turn held that the rebate claims filed by the applicant were not admissible. The applicant averred that these orders had been passed overlooking the clarification given by the CBEC vide Circular No. 1047/35/2016-CX dated 16.09.2016 vide para 5 thereof stating that in respect of exports, where CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the CER, 2002, drawback of Customs portion, as per rates and caps specified in column (6) and (7) of the drawback schedule shall be admissible.

6.2 The applicant further stated that after the issue of CBEC Circular No. 1047/35/2016-CX dated 16.09.2016, they had approached the Commissioner of Service Tax(Appeals), Pune who had allowed the rebate pertaining to the period post circular vide F. No. V-2 ST(Appeals)/CE/144/2016-17/438 dated 24.10.2016 and set aside the Order-in-Original No. R-079/CEX/DIV.IV/Purandhar/2016-17 dated 22.07.2016 passed by the jurisdictional Assistant Commissioner. Therefore,

they have now claimed the benefit of the clarification issued under the circular which refers to the Customs(NT) notification for the year 2010 and would therefore be applicable even for the period prior to its issue since they were not availing both benefits simultaneously; viz. input CENVAT and duty drawback under portion A of the notification but were actually claiming input stage rebate on packing/raw material and availing All Industry Rate of Duty Drawback under Rule 3 and 4 of the Duty Drawback Rules, 1995 under portion 'B' of the duty drawback schedule rate specified by the Ministry of Finance. They also submitted copies of the CBEC Circular No. 1047/35/2016-CX dated 16.09.2016, OIA issued vide F. No. V-2 ST(Appeals)/CE/144/2016-17/438 dated 24.10.2016 holding their rebate claim admissible and sanctioned order No. R-226/CEX/Div.IV(Purandhar)2016-17 dated 05.01.2017 passed by the Assistant Commissioner, Central Excise, Division-IV, Purandhar Division. In view of these submissions, the applicants prayed that the OIA's passed by the Commissioner of Service Tax(Appeals) may be set aside.

7. The Deputy Commissioner in his written submissions stated that the appeals which the applicant had alleged were timebarred had been filed within time. He further opined that the meaning of the term "Drawback" has been defined in Rule 2(a) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as per which 'Drawback' in relation to any goods manufactured in India, and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such products. He further cited Rule 12(1)(a)(ii) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and opined that as the applicant had themselves accepted that they have availed the benefit of drawback of customs duty, the benefit of rebate claimed by them amounts to double benefit and is illegal and has been rightly rejected by the Commissioner(Appeals). Attention was also drawn to the changes effected in Form ARE-2 by Notification No. 21/2004-CE(NT) dated 06.09.2004 whereby the exporter is required to declare that they shall not claim drawback.

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

8.2 It is observed that besides the main issue there is a ground in the application which states that the appeals filed by the applicant before the Commissioner(Appeals) were time barred. However, this issue has been examined by the Commissioner(Appeals) and he has satisfied himself that the appeals were within time. Since this issue regarding the statutory period for filing appeal has been looked into by the concerned authority, Government finds no reason to interfere.

8.3 The main issue involved in these revision applications is whether the rebate claimed by the applicant in respect of duty paid on inputs used in the manufacture of goods exported under Rule 18 of the CER, 2002 read with Notification No. 41/2001-CE(NT) dated 26.06.2001 would be admissible since they have exported the goods under duty drawback scheme and whether sanction of such rebate amounts to double benefit to the claimant as duty drawback is already claimed by them under "Duty Drawback Scheme".

9.1 In their defence, the applicant has submitted that they have not contravened any of the conditions of Rule 18 of the CER, 2002 or Notification No. 21/2004-CE(NT) dated 6.09.2004. They have also pointed out that para 9(a) of the Notification No. 98/2013-Cus(NT) dated 14.09.2013 prescribes that if rebate of excise duty is claimed, duty drawback will not be available to the extent of excise duty. Consistent with this assertion, the applicant has claimed drawback at the rates specified under category 'B' of the Table appended to Notification No. 98/2013-Cus(NT) dated 14.09.2013.

9.2 Government observes that the notifications which have been issued from time to time to notify the All Industry Rates of Drawback and likewise

Notification No. 98/2013-Cus(NT) dated 14.09.2013 in condition (6) contains a detailed exposition on what the terms "Drawback when CENVAT facility has not been availed" and "Drawback when CENVAT facility has been availed" signify. The term "Drawback when CENVAT facility has not been availed" refers to the rate of total drawback(customs, central excise and service tax component put together) whereas the term "Drawback when CENVAT facility has been availed" refers to the rate of drawback allowable under the customs component. The inference that can be drawn therefrom is that the rate of drawback under the category 'B' viz. Drawback when CENVAT facility has been availed entirely pertains to the customs component. The CBEC Circular No. 35/2010-Cus., dated 17.09.2010 had clarified that the customs component of AIR drawback shall be available even if the rebate of central excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the CER, 2002.

9.3 As pointed out by the applicant, the issue has been further clarified by the issue of CBEC Circular No. 1047/35/2016-CX dated 16.09.2016. The relevant portion of the said circular is reproduced.

"5. Accordingly, it is clarified that :-

- (i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in column (6) and (7) of the drawback schedule shall be admissible;"

After considering the contents of the clarification issued by the Board and the fact that the duty drawback has been claimed by the applicant under category 'B' at the rates and caps mentioned and these as per the condition (6) pertain to the customs component, such drawback would be admissible even where the applicant has already claimed rebate of duty paid on materials. The applicant has filed shipping bills under the Schedule No.

“2001B” where the ‘B’ stands for drawback when CENVAT facility has been availed as per column (6) & (7) of the Table appended to the notification.


10. In view of the above discussions and findings, Government holds that the rebate claims would be admissible in the cases involved under OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016 & OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016 passed by the Commissioner of Service Tax(Appeals), Pune. However, in the rebate claims involved under the OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016 passed by the Commissioner of Service Tax(Appeals), Pune, the Assistant Commissioner, Central Excise, Division-IV, Purandhar had without examining the rebate claims on merits for admissibility rejected the rebate claims on the ground that the applicant had filed shipping bills under Duty Drawback Scheme and was therefore claiming double benefit. Therefore, the rebate claims involved under the OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016 passed by the Commissioner of Service Tax(Appeals), Pune are required to be remanded back to the rebate sanctioning authority for necessary action.

11. Government therefore sets aside OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016, OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016, OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016 passed by the Commissioner of Service Tax(Appeals), Pune. The rebate claims would be admissible in the cases involved under OIA No. PUN-SVTAX-000-APP-018 TO 026-16-17 dated 07/12.04.2016 & OIA No. PUN-SVTAX-000-APP-013 TO 16-16-17 dated 05.04.2016 passed by the Commissioner of Service Tax(Appeals), Pune. The rebate claims involved under the OIA No. PUN-SVTAX-000-APP-083 TO 084-16-17 dated 27.05.2016 & OIA No. PUN-SVTAX-000-APP-140-16-17 dated 11.07.2016

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passed by the Commissioner of Service Tax(Appeals), Pune are remanded back to the rebate sanctioning authority for fresh decision on merits and in terms of Board Circular No. 1047/35/2016-CX dated 16.09.2016 within 8 weeks from the date of receipt of this order after giving proper opportunity to the applicant. All four revision applications are disposed off in the above terms.

12. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

08-11
ORDER No. /2019-CX (WZ) /ASRA/Mumbai DATED 29.08.2019.

To,

M/s. Desai Brothers Ltd.
Gat No. 204 to 266,
Pune Bangalore Highway,
A/P - Sarole, Taluka Bhor,
District - Pune, Pin 412 205,
Maharashtra

Copy to:

1. The Commissioner of GST & CX, Pune-II Commissionerate.
2. The Commissioner of GST & CX, (Appeals), Pune.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
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