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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue: 20/4/15

ORDER NO. **01 - 04 / 2015-CX** DATED **17.04.2015** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT 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.95-98(RDN)/CE/JPR-II/2012 dated 2.11.2012, passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-II
Applicant	:	M/s Iscon Surgicals, Jodhpur
Respondent	:	The Commissioner of Central Excise, Jaipur-II

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ORDER

These Revision Applications have been filed by M/s Iscon Surgicals, (hereinafter referred to as 'the applicant') Jodhpur against the Orders-In-Appeal No.95-98(RDN)/CE/JPR-II/2012 dated 2.11.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-II.

2. Brief facts of the case are that the applicant is manufacturer and exporter of Pricon disposable surgical products falling under Chapter 90 of the Central Excise Tariff Act, 1985. The applicant filed claims of rebate of duty paid on the finished goods exported under Rule 18 of the Central Excise Rules, 2002. The adjudicating authority rejected rebate claims on the ground that since applicant also availed the benefit of full duty drawback (Customs as well as Central Excise), therefore, rebate under Rule 18 of the Central Excise Rules, 2002 was not admissible as it would amount to double benefit.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who upheld the impugned Order and rejected the appeal.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government mainly on following grounds:

4.1 The applicant contends that they have not taken rebate claim of inputs used in the manufacture of the goods they have claimed drawback at input stage and have not taken two benefits of rebate. The language of Rule 18 of the Central Excise Rules, 2002 makes it ample clear that there are two types of rebates allowed by the Government, both being separate and distinct, one being input stage and other being finished goods stage. The applicant have filed the rebate claim of duty paid on finished goods under the provisions of Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004. Nowhere in the Rule is it mentioned that claiming rebate is equal to sanctioning drawback. While 2 types of rebate claim are there, drawback is of only one type covering input

stage. Further, the definition of drawback given in the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 makes it clear that the drawback is allowed only in respect of duty paid on any imported materials or excisable materials used in manufacture of export goods. On comparison of the provisions of rebate claim and drawback, it is ample clear that the drawback is allowed only on the input stage duties whereas rebate is allowed both on the input stage duties as well as finished goods stage duties. The applicant has claimed the drawback for "input stage duties" and rebate of duty paid on export goods in respect of "finished goods stage duties".

4.2 Drawback is allowed under Rule 12(a)(ii) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This Rule is reproduced as follows:-

> *"(ii) in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 has been or will be made to the Central Excise authorities."*

The analysis of this Rule makes it clear that the declaration to be given is regarding "the duty paid on containers, packing material and other material used in manufacture of export goods". In other words, the declaration to be given while claiming drawback, is regarding the input stage rebate, it does not says finished goods stage rebate. Therefore, there is no embargo in claiming the drawback along with finished goods stage rebate.

The language of Rule 12(1)(a)(ii) of Drawback Rules as produced here above, is plain and unambiguous. It is specifically stated therein that the rebate of input stage duties is not allowed alongwith drawback. Thus, denial of rebate claim of duty paid on export goods by suo motu including the finished goods stage duty in the provision which is simply meant for input stage duties, is not justified.

4.3 The simultaneous availment of input stage rebate and drawback is not allowed as further clarified in Circular No. 89/2003-Cus., dated 06.10.2003. This circular is regarding fixation of brand rates for drawback. It has been clarified therein that the drawback will not be allowed if an exporter avails the rebate facility in respect of the inputs/materials used in manufacture of the export goods. There is embargo on simultaneous availment of drawback & rebate of inputs/materials used in manufacture of export goods. This is not the case here. The applicant have not availed the rebate of input stage duties alongwith drawback. They have availed the rebate of "duty paid on finished goods." And there is no restriction on the same, there is only restriction on availment of rebate of duty paid on material used in the manufacture of export goods as also clarified in the above circular.

4.4 The applicant further contended that the Commissioner (Appeals) referred to the case of Commissioner of Central Excise, Nagpur Vs. Indorama Textiles Ltd. – 2006(200) ELT 3(Bom.) while denying the rebate claim. This decision pertained to rebate claims filed under Rule 18 of the Central Excise Rules, 2002 and assessee had filed the rebate claims of both inputs used in the manufacture of the export goods as well as of the duty paid on export of these goods. This is not the case of applicant here. They have not claimed the both type of rebates. Rather they have claimed drawback for input stage benefit and the rebate of duty paid on finished goods.

4.5 The applicant further submitted that it has been held by the impugned order that the Joint Secretary, Govt. of India has decided the identical Revision Application filed by the applicant themselves, vide Order No.828-861/12-Cx dated 23.07.12 and it has been held that the principles laid down in the said High Court judgment are to be followed while considering the rebate claim under Rule 18 of the Central Excise Rules, 2002. It has been further held that allowing both types of rebate of duty at input stage as well as finished goods stage will be contrary to the above said judgment of Hon'ble Bombay High Court and of Rule 18 of the Central Excise Rules, 2002. In this respect, the applicant submit that the applicant is preferring to file

appeal to the High Court in respect of the above cited revision order passed by the Joint Secretary and so merely the grounds that such an order has been passed against the assessee cannot be taken to reject the rebate claims of the applicant for further periods.

4.6 It is submitted that there is prohibition in the drawback rules that the drawback will not be allowed if the rebate of duty paid on containers, packing material and materials and service tax paid on input services is claimed. This prohibition is in the Central Excise Duties and Service Tax Drawback Rules, 1995 which says that -

> ***"Drawback will not be allowed*** *if the goods are:-*
>
> *"(e) manufactured* or *exported by availing the rebate of duty paid on materials used in the manufacture* or *processing of such commodity* or *product in terms of rule* 18 *of the Central Excise Rules, 2002;"*

Thus, the drawback is not allowed if rebate is claimed, it reveals that the drawback should have been denied for non-fulfillment of the condition of this Notification. As such, the action should have been undertaken for recovery of the drawback by invoking the provisions of Customs Act. But instead, the Assistant Commissioner has rejected the rebate claim governed by the provisions of Central Excise Act, 1994 and the same order is being confirmed by the respected Commissioner (Appeals). Though this is not the case of the applicant as they have not claimed the input stage rebate (which only is prohibited in the drawback rules), yet even if it is accepted for the sake of argument also that it is not allowed; then also the provisions of Drawback Rules are contravened. But the Commissioner Appeals have confirmed the rejection of rebate under the provisions of Central Excise Rules, which is not allowed. This is because for contravention of the drawback rules, the provisions of drawback rules were to be invoked and drawback should have been forfeited instead of the rebate, that too the finished goods stage which is not justified at all. There is no such prohibition, neither in the Rule 18 of the Central Excise Rules, 2002 nor in the Notification No.19/2004-CE (NT) dated 6.9.2004 that the rebate is not allowed when drawback is claimed. Therefore the Commissioner (Appeals) have erred in confirming the rejection

of rebate claim in spite of the fact that there is no such prohibition that it is not allowed when the drawback is claimed. Thus, confirmation of an order issued on the basis of wrongly invoked provisions is not justified and is liable to be set aside.

4.7 The applicant has cited several judgements and specifically relied upon following case laws in favour of their contention:

- Jubilant Organosys Ltd. Vs Asstt. Commr. of C.Ex., Mysore-III [2012(276)ELT 335(KAR.)]
- Commissioner of Central Excise, Bangalore versus Srikumar Agencies]2008(232)ELT577(SC)]
- CC Vs Essar Oil Limited [2010-TIOL-560-HC-AHM-CUS]
- In Re: Munot Textiles [2007(207)ELT 298(GOI)]
- LG Electronics Pvt. Ltd. Vs CCE [2010-TIOL-651-CESTAT-MUM]
- In Re: Benny Impex Pvt. Ltd. [2003(154)ELT 300(GOI)]
- Associated Dye-Stuff Industries Vs Commr. of C.Ex., Ahmedabad [2000(117) ELT 732(Tribunal)]
- Aptar Beauty & Home India Pvt. Limited [2011(267)ELT 401(GOI)
- State of Himachal Pradesh Vs Sardara Singh [2008 TIOL-160-SC-NDPS]
- M/s Kansara Modler Ltd. GOI Order No.222-229/2003 dated 19.11.03

5. Personal hearing scheduled in this case on 30.3.2015 (rescheduled to 24.3.15) was attended by Shri Pradeep Jain, Chartered Account on 24.03.2015 on behalf of the applicant and he reiterated the grounds of Revision Application. Parawise comments were received from the Jurisdictional Commissionerate wherein they mainly reiterated contents of impugned orders. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government notes that the applicant in this case exported the goods under Duty Drawback Scheme and filed claims for rebate of duty paid on final

export product. The Original authority rejected the rebate claims on the ground that the full duty drawback of Customs and Central Excise portion was already claimed by the applicant and hence, rebate under Rule 18 of the Central Excise Rules, 2002 was not available. Commissioner (Appeals) upheld the impugned Orders-in-Original. Now, applicant has filed these Revision Applications on grounds mentioned in para (4) above.

8. Government observes that the issue at hand already stands settled by the Revisionary Authority in the identical issue in case of the same applicant vide GOI Revision Order No.828-861/12-Cx dated 23.7.2012, wherein it was held that rebate claims of duty on exported goods is not admissible under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004 when exporter has already availed duty drawback of Excise portion in respect of exported goods.

9. The Government observes that in this case also the applicant has sought rebate on goods exported after having claimed drawback (for both Customs & Excise portion) upon export of goods. The duty on the exported goods was paid by the applicant through their CENVAT Credit Account in order to avail benefit of rebate under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004. The applicant's claim has been denied on the ground that since they have taken full benefit of duty drawback (both Customs as well as Central Excise duties), rebate under Rule 18 of Central Excise Rules 2002 for duty paid on finished goods exported is not admissible to them. The admissibility of the rebate claim has to be decided keeping in view the various provisions of law relating to drawback as well as rebate of duty on export goods.

10. Government notes that in the case matter both the applicant party as well as respondent department are relying on the same statutory provisions of relevant applicable rules/notifications but both differ on their interpretations. Government observes that applicant has claimed that they have not taken Cenvat Credit for such exports and exported goods under

drawback scheme. On the other hand finished goods are exported by paying duty from accumulated Cenvat Credit in order to avail benefit of rebate claim under Rule 18 of Central Excise Rule 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. They have already availed duty drawback (Customs as well as Central Excise portion) in respect of said exports. Applicant has contended that as per conditions No. 7(e) & 7(f) of Notification No. 68/2007-Cus(NT) dated 16.07.2007, drawback will not be admissible if input rebate is claimed under Rule 18 of Central Excise Rule 2002 or duty free inputs are procured under Rule 19(2) ibid and in this case rebate of duty paid on finished exported goods is claimed and same is not barred under the said provisions. In this regard, Government finds that the said conditions do not put any restriction on availment of rebate of duty paid on finished exported goods. It only restrict the availment of input stage rebate if drawback of Central Excise portions is already availed. Similarly the condition 12(1)(a)(ii) also stipulates that while claiming drawback no separate claim for inputs rebate will be made before Central Excise authorities. But admissibility of the instant rebate claim has to be determined taking into account the harmonious and combined reading of statutory provisions relating to rebate as well as drawback scheme.

11. Government notes that the term Drawback has been defined in Rule 2(a) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (as amended) as under:-

"(a) "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".

The said definition makes it clear that drawback is rebate of duty chargeable on inputs used in the manufacture of exported goods. Rule 18 of Central Excise Rules, 2002 stipulates that where any goods are exported, 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. The provisions of Rule 18 of Central Excise Rules

2002 are interpreted by Hon'ble High Court of Bombay at Nagpur bench, in the case of CCE Nagpur Vs. Indorama Textiles Ltd. 2006(200) ELT 3(Bom) wherein it was held that Rebate provided in Rule 18 of Central Excise Rule 2002 is only on duty paid on one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Hence, assessee is not entitled to claim rebate of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage. The principles laid down in said judgement are to be followed while considering rebate claim under Rule 18 of Central Excise Rules, 2002. Applicant is now claiming rebate of duty paid on exported goods while he has already availed benefit of duty drawback of Central Excise in respect of said exported goods. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and therefore allowing rebate of duty paid on exported goods will amount to allowing both types of rebates of duty at inputs stage as well as finished goods stage which will be contrary to the above said judgement of Hon'ble Bombay High Court and provisions of rule 18 of Central Excise Rules, 2002. Since applicant has already availed Central Excise portion duty drawback, the rebate of duty paid on finished exported goods cannot be held admissible.

12. Government also notes that it is an undisputed fact that applicant had paid duty on exported goods from Cenvat Credit account. Therefore, he cannot claim that Cenvat facility has not been availed for goods under exports and as such he has violated condition No.12(ii) of Notification No. 68/2007-Cus(NT) dated 16.07.2007. Since he had availed Cenvat facility in respect of exported goods, the duty drawback was admissible to the extent of Customs portion only. He was not eligible for duty drawback of Central Excise portion. Since the applicant has already availed said duty drawback is violation of said condition No. 12(ii), allowing rebate of duty paid on exported goods will definitely amount to double benefit, which is not permissible under the scheme of duty Drawback as well as rebate of duty. This authority had held in its order in the case of M/s Swatantra Bharat Mill Vs. CCE reported in 1993 (968) ELT 504 (GOI) that such claim of rebate is allowable if drawback

availed is refunded back to the department. CBEC has also clarified in its Circular No. 83/2000-Cus dated 16.10.2000 (F.No. 609/116/2000-DBK) that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of drawback is claimed. The harmonious and combined reading of statutory provisions of Drawback and rebate scheme reveal that double benefit is not permissible as a general rule. The contention of the applicant that for violation of drawback notification, the drawback should be denied and rebate claim which is in accordance with provision of Notification No. 19/2004-CE(NT) dated 06.09.2004, may be allowed, is not acceptable since input stage rebate of duty in the form of duty drawback of excise portion has already been availed by them and extending another benefit of rebate of duty paid on exported goods will definitely amount to double benefit. Such a contention of the applicant is also not found sustainable in view of the position that drawback of excise portion has already been availed, the rebate is not admissible in light of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which state that no separate claim for rebate of duty under Central Excise Rules 2002 will be made in such a situation. Applicant's claim could have been considered if he had repaid the duty drawback of availed Central Excise portion. In view of this position, the rebate of duty paid on exported goods is not admissible in these cases.

13. As regards citing of individual interpretations/applicability of above mentioned Notifications/Case laws, Government observes that Hon'ble Supreme Court in the case of Amit Paper Vs. Commissioner of Central Excise Ludhiana reported on 2006 (200) ELT 365 (SC) has held that primacy to a notification cannot be given over rules as such interpretation will render statutory provisions in rules nugatory and in the case of Commissioner of Trade Tax UP Vs. Kajaria Ceramics Ltd. reported as 2005 (191) ELT 20 (SC) has held on the issue of interpretation of statutes that context and parameters of statutory provisions under which a notification is issued, are to be read into it and when a notification is issued under one statutory provisions for same purpose as a chain of progress without overlapping, the

ambiguity of contents of such notification can be resolved by referring not only to statutory provisions but also to previous and subsequent notification. Further, Government, going by the observations of Hon'ble Supreme Court in Case (i) ITC Ltd. Vs. CCE [2004 (171) ELT -433(SC)] and (ii) Paper Products Ltd. Vs. C.C. [1999(112) ELT -765(SC)] that the plain and simple wordings of the (clarified/stipulated) statute are to be strictly adhered to, is of the considered opinion that the claimed rebate of duty paid on exported goods is not admissible in these cases.

14. Government finds that the facts of this case being identical, ratio of the above said Revision Order No.828-861/12-Cx dated 23.07.2012 is squarely applicable to this case also. The applicants submit that they have agitated the said order before the Hon'ble High Court but have not produced any stay. In the case of Jubilant Organosys Ltd. Vs Asstt. Commr. of Central Excise, Mysore-III [2012(276)ELT 335(KAR)], relied upon by the applicant, the Hon'ble Court has discussed the issue of effective date for applicability of corrigendum to Notification No.43/2002-Cus dated 19.4.2002 in respect of inputs imported under the advance license. The facts of the case being different, the ratio of Hon'ble Karnataka High Court's Judgement cannot be made applicable to the present cases. Further, in case of GOI Order dated 19.11.2003 in case of M/s Kansara Modler Ltd. also relied upon by applicant, not only are the facts not identical, but the Order also pertains to period prior to Hon'ble Bombay High Court Order dated 3.5.2006 in case of CCE, Nagpur Vs. Indorama Textiles Ltd. and hence, ratio of the same cannot apply to these cases. Further, the facts of the other case laws relied upon by the applicant are also different to fact of this case and hence, ratio of the case laws relied upon by the applicant are not applicable to this case.

15. In view of above circumstances, Government holds that the instant rebate claims of duty paid on exported goods are not admissible under Rule 18 of Central Excise Rule 2002 read Notification No. 19/2004-CE(NT) dated 06.09.2004 when exporter has already availed duty drawback of Excise

portion in respect of exported goods. As such, Government finds no legal infirmity in the impugned Orders-in-Appeal and hence, upholds the same.

16. The Revision Applications are thus rejected being devoid of merit.

17. So, ordered.

(Rimjhim Prasad)
Joint Secretary to the Government of India

M/s Iscon Surgicals,
B-70, MIA, Basni, Phase-II,
Jodhpur, Rajasthan

Attested
20/4
(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No. 01-04 /2015-CX dated 17.04.2015

Copy to:-

1. The Commissioner of Central Excise, Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals-II), Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur-302 005.
3. The Deputy Commissioner, Central Excise Division, 4, Narpat Niwas, Near Air Force Officer Mess, Jodhpur (Rajasthan)
4. Shri Pradeep Jain (F.C.A.), "Sugyan", H-29, Shastri Nagar, Jodhpur.
5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED

(B.P.Sharma)
OSD (Revision Application)