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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

F. No. 195/205-206/2017/6303 Date of issue: 14.11.2022

ORDER NO.1056-1057/2022-CX(WZ)/ASRA/MUMBAI DATED 10.11.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Urmin Products Private Ltd.

Respondent : Commissioner of Central Excise, Ahmedabad-II.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. AHM-EXCUS-002-APP-091-092/16-17 dated 20.02.2017 passed by Commissioner (Appeals-II), Central Excise, Ahmedabad.

ORDER

These two Revision Applications have been filed by M/s. Urmin Products Private Ltd., 48, Changodar Industrial Estate,. Bavla Road, Tal. Sanand, Ahmedabad – 382 213 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. AHM-EXCUS-002-APP-091-092/16-17 dated 20.02.2017 passed by Commissioner (Appeals-II), Central Excise, Ahmedabad.

2. Brief facts of the case are that the applicant, had filed claims for rebate of duty paid on export goods viz. Chewing Tobacco, falling under Chapter Head 24039910 of the Central Excise Tariff Act, 1985. The rebate sanctioning authority, observed that the applicant was availing facility of Cenvat credit and the merchant exporter had already availed duty drawback of Excise portion in respect of exported goods and therefore rejected the claims vide Orders-in-Original No. 2479/Rebate/2015 dated 16.06.2015 and 01to04/Rebate/2016-17 dated 04.01.2016. Aggrieved, the applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Orders-in-Appeal.

3. Hence, the applicant has filed the impugned Revision Applications mainly on the grounds that:

(a) the impugned Order-in-Appeal has been passed by the learned Commissioner of Central Excise (Appeals) by not considering the submissions and various decisions of the Government of India cited by him. The applicants submit that it was obligatory on the part of appellate authority to have considered each and every submissions and decisions and in case, the adjudicating authority did not agree with the said submissions and decisions, the reasons for negating the same should have been brought on record. The impugned order being unreasoned and non speaking is thus violative of principles of natural justice and the same deserves to be quashed and set aside.

(b) The appellate authority in para 5 of the impugned order has merely reproduced the facts which are not disputed. The said facts only reveal that the Cenvat credit on the inputs used in the manufacture of goods which were exported was taken by the applicants and the same was dully reflected in the ARE-I. Thus, there was neither any mis declaration nor any mis statement on the part of the applicants. It was the merchant exporter who had claimed the all industry rate drawback on the goods which were exported under category A of the schedule to the all industry rate. The applicant submit that the Cenvat credit is admissible instantly on the inputs on receipt of goods for manufacture where as the drawback is admissible after the goods are exported and the sales proceeds are realised. Therefore in the instant case, the drawback which was claimed subsequently by the merchant exporter under category A should have been disallowed. In any case, the rebate of duty paid on the goods are which are exported does not becomes inadmissible only because the merchant exporter had claimed the all industry drawback under an incorrect category.

(c) The appellate authority has referred to the Notification No. 92/2012-Customs (NT). The applicant submit that vide the para 6 of the said notification, the methodology for sanction of drawback rate has been explained. The said notification nowhere stipulates that in the event of claiming all industry drawbacks under and incorrect category by the merchant exporter, the rebate of duty paid by the manufacturer would be inadmissible.

(d) The applicant had relied on the decision of the Government of India in the case of Munot Textiles (2007 (207) ELT 298 (GOI.) and Four Star Industries reported at 2014 (307) E.L.T. 200 (GOI.). In the said decisions, the Government of India has held that there is no restriction on claiming of rebate of duty paid on the exported goods even if the exporter has claimed All Industry Rate Drawback. The

appellate authority in the impugned order has superbly held the decisions relied by the applicants are not applicable in the present case, without discussing as to how the said decision were not applicable.

(e) The applicant crave to refer and rely on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Kamlakshi Finance Corporation Ltd. reported at 1991 (55) ELT 433 (SC), wherein it was held by the Hon'ble court that as a Principle of judicial discipline, the revenue should unreservedly follow appellate authority's order unless operation thereof suspended by a competent Court. The Hon'ble Court further held that mere fact of appeal having been filed against the order no ground for not following it. In the present proceedings, the applicant had submitted before the adjudicating authority as well as the appellate authority, the decisions of higher appellate forums, which were binding on the said authorities. The impugned order having been passed in violation of the judicial discipline is highly perverse, arbitrary and illegal and the same deserves to be quashed and set aside.

(f) The applicant submit that the adjudicating authority as well as the appellate authority have failed to consider that the excess amount of drawback had been returned by the merchant exporter and the evidence to that effect was also produce. The return of the excess amount of drawback by the merchant exporter implies that the said amount was never claimed and the drawback under All Industry Rate was sanctioned under category B of the schedule to the drawback rates. That being so, the rejection of the rebate claim of duty paid on excisable goods exported is not sustainable.

(g) The applicant had relied on the decision of the Government of India in the case of Jubilant Organosys Ltd. (2012 (286) E.L.T. 455 (GOI.)) and in the case of Shreyas Packaging (2013 (297) E.LT.476

(GOI.)). The applicant relied that the fundamental requirement for rebate was manufacture of goods, its duty payment and its exports. In the present case all the above fundamental requirements are not in dispute and therefore there was no reason for the appellate authority for not accepting the above binding decisions. The impugned order having been passed in violation of judicial discipline is legally not sustainable.

(h) The applicant crave to refer and to rely on the decision of the Hon'ble High Court of Madras in the case of Shashun Pharmaceuticals Ltd. (2013 (291) E.L.T. 189 (Mad.)) and the case of Ford India Ltd. (2011(272) E.L.T. 353 (Mad.) The appellate authority has failed to consider that grant of rebate is a beneficial scheme and has to be construed liberally in order to encourage exports. The appellate authority was duty bound to follow the above decisions and order for sanction of rebate under Rule 18 of the said Rules

In the light of the above submissions, the applicant prayed to set aside the impugned Order-in-Appeal issue orders for sanctioning the rebates claimed.

4. Personal hearing in the case was fixed for 07.10.2022. Shri N.K. Tiwari, Consultant, attended the online hearing and submitted that merchant exporter has availed both Customs & Central Excise drawback. Applicant being manufacturer claimed rebate of duty paid. He also submitted that they are availing Cenvat. He requested to allow their application.

4.1 In their additional submissions mailed on 12.10.2022, the applicant submitted that the exporter had either not been paid the Drawback or had returned the excess amount of the Drawback received and that they are submitting following documents in support of their contentions:

i. Challan dated 25.01.2017 for Rs. 4630/-

ii. Challans dated 06.07.2015 for Rs. 100/- & dated 22.07.2015 for Rs. 800/-

iii. In respect of Shipping Bill No. 6507230, it has been informed by the exporter that he had not received any amount of Drawback. Copy of email is attached.

iv. Letter dated 18.04.2015 showing the excess amount of Drawback returned by the exporter.

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

6. Government observes that the issue involved is whether the rebate of duty paid on export of goods should be granted to the manufacturer when the merchant exporter has claimed duty drawback which includes Customs, Central Excise, & Service Tax duties?

7. Government observes that the applicant had exported the goods through merchant exporters who availed the benefit of duty drawback. The impugned rebate claims filed by the applicant were decided as under:

ARE-1 No./date	RC filing date	Amt. claimed (in Rs.)	OIO No./date	Remarks
15/01.09.2014	19.03.2015	1,54,129	2479/Rebate/2016 dated 16.06.2015	rejected
16/22.09.2014	10.09.2015	53,148	01 to 04/Rebate/ 2016 dated 04.01.2016	sanctioned
17/22.09.2014	11.09.2015	1,54,129		rejected
29/17.11.2014	10.09.2015	1,87,050		rejected
43/28.03.2015	11.09.2015	1,59,444		rejected

Four rebate claims were rejected on the ground that the merchant exporter had availed full drawback under category 'A' of the Drawback Schedule @1% ad valorem of the FOB Value. The rebate sanctioning authority observed that the drawback rate in the condition "*when Cenvat facility has not been availed*" is @ 1% while drawback rate in the condition "*when Cenvat facility has been availed*" is @ 0.15% and that as per the condition 7 of the Notification No. 110/2014-Cus(NT) dated 17.11.2014, it has been clearly mentioned that the difference between the two conditions relates to the

Central Excise and Service Tax component. The applicant could not be allowed double benefit on the same goods exported, by way of rebate claim of Central excise duty when drawback in category 'A' had been already availed, hence the four claims had been rejected.

8.1 Now, Government proceeds to decide the issue of admissibility of rebate claims taking into account the harmonious and combined reading of statutory provision relating to rebate as well as duty drawback scheme. 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 export goods. Every year the drawback rates are notified for each tariff heading depending upon availment/non-availment of Cenvat facility by the manufacturer. The drawback rates where Cenvat facility has not been availed by the manufacturer are generally higher.

8.2 Rule 18 of Central Excise Rules, 2002 reads as under:

> *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*

Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at any one of the stages i.e. either at the time of clearance of excisable goods for export or on inputs used during manufacture or processing of such goods can be claimed.

8.3 Government observes that the 1% drawback claimed by the merchant exporter of the applicant was total drawback viz. Customs, Central Excise and Service Tax component put together. Therefore, sanctioning the rebate claimed by the applicant would amount to violation of Rule 18 of the Central Excise Rules, 2002 which permits rebate of either duty paid on clearance of excisable goods or duty paid on inputs used in the manufacture of same.

9.1 However, Government observes that in the instant case the applicant has claimed that they had paid the duty on the export goods through PLA and not by debiting their Cenvat Account. Government observes that the applicant had an option to clear the export goods without payment of duty under Rule 19(1) of the Central Excise Rules, 2002 and they would have still been eligible to claim total drawback (customs, central excise and service tax component put together). Hence, as exports do not attract central excise duty, the amount paid through PLA by the applicant while clearing the goods exported, need to be returned to them in the manner it was paid, subject to verification by the rebate sanctioning authority.

9.2 Government also observes that the applicant has claimed that their merchant exporters had returned the excess amount of drawback received and had submitted the relevant challans as evidence. Government observes that some of these challans are dated Feb-Mar'15 and were submitted with the rebate sanctioning authority by the applicant vide letter having receipt stamp dated 20.04.2015, viz. before the impugned OIOs were issued in June'15 and Jan'16. These aspects are also required to be properly verified and if found true (viz. the excess drawback has been returned) then the impugned rebate claims are required to be reconsidered by the rebate sanctioning authority.

10. In view of the above findings, Government sets aside the impugned Orders-in-Appeal No. AHM-EXCUS-002-APP-091-092/16-17 dated 20.02.2017 passed by the Commissioner (Appeals-II), Central Excise,

Ahmedabad and remands the case back to Original Authority for carrying out verification on the basis of aforementioned directions and pass an appropriate order. The applicant should be given reasonable opportunity before deciding the matter.

10/11/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.1056-1057 /2022-CX(WZ)/ASRA/Mumbai dated 10.11.2022

To,
M/s. Urmin Products Private Ltd.,
48, Changodar Industrial Estate,
Bavla Road, Tal. Sanand,
Ahmedabad – 382 213.

Copy to:

1. Pr. Commissioner of CGST & CX,
   Ahmedabad North,
   1st Floor, Custom House,
   Near All India Road, Income Tax Circle,
   Navrangpura, Ahmedabad – 380 009.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.