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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 195/449(I to III)/16-RA/6570 Date of Issue: 21.11.2022

ORDER NO. 1092-1094 /2022-CX (WZ) /ASRA/MUMBAI DATED 21.11.2022 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Cipla Ltd.
D-22, MIDC Kurkumbh, Taluka Daund,
District Pune, 413 802

Respondent: The Commissioner, Central Excise, Pune -III

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal Nos. PUN-SVTAX-000-APP-001 to 003-16-17 dated 01.04.2016 passed by the Commissioner of Service Tax (Appeals), Pune.

ORDER

This Revision Application has been filed by M/s. Cipla Ltd, D-22, MIDC Kurkumbh, Taluka Daund, District Pune, 413 802 (hereinafter referred to as "the applicant") against the Orders-in-Appeal Nos. PUN-SVTAX-000-APP-001 to 003-16-17 dated 01.04.2016 passed by the Commissioner of Service Tax (Appeals), Pune.

2. The facts of the case in brief are that the applicant is a manufacturer of products falling under Chapter 29 of CETA, 1985 and had exported goods under Rule 18 of the Central Excise Rules, 2002, under ARE 2 and claimed rebate of duty paid on inputs raw materials used in the manufacture of finished goods under the provisions of Notification No 41/2001-CE(NT) dated 26.06.2001 as amended by Notification No 21/2004-C.E (NT) dated 06.09.2004 and the same were sanctioned by the rebate sanctioning authority as detailed below

SR No	ARE 4 dated	ARE 2 No and date	OIO No and date	Amount of Rebate sanctioned
1	08.10.2014	2/KU3/ARE2 dated 08.10.2014	R/317/CEX/2014-15 dated 22.05.2015	97,152/-
2	08.10.2014	4/KU3/ARE2 dated 08.10.2014	R/318/CEX/2014-15 dated 22.05.2015	1,30,195/-
3	08.10.2014	3/KU3/ARE2 dated 08.10.2014	R/319/CEX/2014-15 dated 22.05.2015	2,60,497/-

3. Aggrieved by the impugned three Orders-in-Original, the same were reviewed by the Commissioner of Central Excise, Pune III and appeals were filed before the Commissioner of Service Tax (Appeals), Pune. The Appellate Authority set aside the three impugned Orders-in-Original and allowed the appeals filed by the department. The Appellate Authority while setting aside the Orders-in-Original made the following observations:

3.1. That Para 11(a) of Notification No 110/2014 Customs (NT) dated 17.11.2014, does not differentiate between the Customs portion and Central Excise/Service Tax portion of drawback entitlement/facility to the exporter and simply says that once the exporter avails the facility of Duty drawback, he is not entitled to rebate of central excise duty paid on materials used in

the manufacture or processing of such commodity/products under Rule 18 of the Central Excise Rules, 2002;

3.2. That there was no merit in the argument of the Respondent (applicant in the RA) that the Drawback rate in the Schedule is the same in respect of both the cases whether Cenvat credit is availed or Cenvat credit is not availed by the Exporter;

3.3. That it was categorical that the availment of Cenvat credit in respect of such commodity in the Drawback Schedule, does not make any impact on the rate of duty Drawback which is available to the exporter and goes to prove that the Exporter is entitled to either the benefit of Duty Drawback or the rebate of Central Excise Duty paid on materials used in the manufacture or processing of such commodity/product;

3.4. That the Respondent (applicant before RA), in clear violation to the declaration in ARE-2 to the effect that they would not claim the benefit of drawback, availed the same at the time of export & also claimed benefit of rebate, which clearly, is not sustainable.

4. Aggrieved by the impugned Orders-in-Appeal, the applicant has filed the Revision Application of the following grounds:

4.1. That they had availed drawback of custom portion only and that under notification Para 7 of Notification No.110/2014 Custom (NT) dated 17.11.2014, it has been clarified that if the rate indicated in column A & B (i.e A) "drawback when cenvat facility has not been availed" & B) "drawback when cenvat facility has been availed"] are same, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat Facility or not and that drugs and pharmaceutical products drawback rates under column A & B are same. The applicant submitted that the drawback claimed by them is of Custom Component only;

4.2. That the reference to provisions of para No.11 (a) of the Notification No.110/2014 Customs (N.T) dated 17.11.2014 for reviewing Orders-In

Originals are not applicable to the instant case as the terms and conditions applies only to the drawback specified in column (4) and (5) i.e "Table A of drawback schedule, drawback when Cenvat facility has not been availed". Applicant had not claimed drawback as per column (4) and (5) but had claimed drawback specified in column (6), Table B of the drawback schedule and had correctly claim drawback of custom component only. Therefore the allegation of availing double benefit was not correct;

4.3. That simultaneous availment of cenvat as well as incentives under all industry rate drawback are allowed in case of dutiable products and there are no restrictions in availing cenvat credit of duty paid on inputs used in manufacture of dutiable products cleared for export under drawback scheme. Input stage rebate is alternate provisions for claiming rebate of duty paid on inputs in case of exempted product. There is no revenue difference position claiming cenvat and All Industry Rate drawback in case of dutiable products and claiming input stage rebate of duty paid on inputs & all industry drawback in case of exempted products;

4.4. That appeal filed by the Assistant Commissioner was time barred as it is filed after period of 4 months and 28 days;

4.5. That case law in the matter of Benny Impex Pvt. Ltd [2003 (154) E.L.T. 300 (G.O.I)] wherein it has been decided that receipt of drawback only of Custom Duty portion of goods exported not a valid ground for denial of Rebate of Central Excise duty was applicable in the case;

4.6. The applicant has also relied upon the Circular No.35/2010 Cus dated 17.09.2010 where in vide para "d" it is clarified that customs portion of All Industry Rate drawback shall be available even if the rebate of Central Excise duty paid on raw material has been taken in terms of Rule 18 of the Central Excise Rules, 2002;

4.7. The applicant prayed that to uphold the Orders-In-Original passed by the lower authority, dismiss the impugned Orders-In-Appeal, stay

enforcement of aforesaid Orders-In-Appeal or pass any order as deemed fit in the interest of law and the benefit of the applicant.

5. Personal hearing in the case was scheduled for 21.06.2022, 05.07.2022, 19.07.2022 and 26.07.2022. Mr Sambasiva Rao, Assistant Commissioner, Baramati Division appeared online on 05.07.2022 for hearing on behalf of the department and submitted that the applicant had claimed drawback and therefore rebate should not be given and requested to reject the claim. Mr. Seetaram Masurkar, Senior Manager, Finance and appeared online on 26.07.2022 on behalf of the applicant and submitted additional written submissions and stated that drawback claimed was only customs portion and thus requested to allow rebate on inputs pertaining to Central Excise duties.

6. In the written submissions filed during the personal hearing the applicants' representative reiterated the contents of the Revision Application filed by them.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. The issue in the instant case is regarding the admissibility of rebate of duty paid on inputs used in the manufacture of goods exported when the drawback of the Customs portion only as claimed by the applicant has been availed. Government also observes that the Appellate Authority set aside the impugned Orders-in-Original on the grounds that Para 11(a) of Notification No 110/2014 Customs (NT) dated 17.11.2014 does not differentiate between the Customs portion and the Central Excise/Service Tax portion of the Drawback entitlement/facility to the exporter and simply says that once the exporter avails the facility of Duty Drawback, the exporter is not entitled to rebate of central excise duty paid on material used in the manufacture or processing of such commodity/product under Rule 18 of the Central Excise Rules, 2002. The Appellate Authority also observed that there was a clear violation of the applicants' declaration in ARE-2 to the effect that they would not

claim the benefit of drawback but on the contrary had availed the same at the time of export and also claimed the benefit of rebate, which was not sustainable.

7.1. The applicant, on the other hand, in their Revision Application has claimed to have availed of drawback of the customs portion only as reflected in the shipping bills in question.

7.2. Government notes that in the instant case, based on the dates of the three shipping bills, Notification No 110/2014 Customs (NT) dated 17.11.2014 and Notification No. 98/2013 - Customs (N.T.), New Delhi, dated the 14.09.2013 were in force and the relevant paras are reproduced for clarity in the matter.

7.3. Para 7 of the said Notification no. 110/2014-Customs dated 17.11.2014 (para 6 of Notfn. No 98/2013-Customs dated 14.09.2013) reads as under

> *"(7) The figures shown in the said Schedule under the drawback rate and drawback cap appearing below the column heading "Drawback when Cenvat facility has not been availed" refer to the total drawback (Customs, Central Excise and Service Tax component put together) allowable and those appearing under the column heading "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the Customs component. The difference between the two columns refers to the Central Excise and Service Tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only Customs component and is available irrespective of whether the exporter has availed of Cenvat facility or not."*

7.4. Further para 11 of the Notification No. 110/2014-Customs dated 17.11.2014 (para 9 of Notification No. 98/2013-Customs dated 14.09.2013 reads as under:

> *"The rates and caps of drawback specified in columns (4) and (5) of the said schedule shall not be applicable to export of a commodity or product if such commodity or product is –*

(a) 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;

(b) manufactured or exported in terms of sub-rule (2) of rule 19 of the Central Excise Rules, 2002."

8. Government observes that in instant case, the Drawback Serial number in the shipping bills is suffixed with the alphabet 'B' which refers to availment of drawback when Cenvat facility has been availed. It is also noticed that the rates against 'A' and 'B' in the drawback schedule to the Notification are the same and pertain to the Customs component as extolled in the Para 7 of the said Notification no. 110/2014-Customs dated 17.11.2014 (para 6 of Notification No. 98/2013-Customs dated 14.09.2013) mentioned supra.

8.1. Government notes that the issue regarding the situation in the instant case has been clarified vide Circular No 35/2010 dated 17.09.2010. The relevant paragraphs reads as under

"(vi(d) The earlier Notification No.103/2006-Cus.(NT) dated 29.8.08, as amended provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback on the basis of the above condition although the manufacturers had taken only the rebate Central Excise duties in respect of their inputs / procured the inputs without payment of Central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present Notification No.84/2010-Cus(NT) dated 17.09.2010 provides that 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 Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."

9. Further, Government also notes that in another case of the applicant, the observations of the Revisionary Authority, vide Order No. 551-569/2012-CX dated 11.05.2012, while rejecting the departmental appeal against the Order-in-Appeal No. PKS/518-521/BEL/2010 dated 17.02.2011 also throws light on the issue, on the lines as discussed above and are relevant to the facts of the instant case. The observations are reproduced as under:

> *9. Government observes that the instant rebate claims are governed by Not. No.19/04-CE(NT) dated 6.9.04 wherein conditions and procedure has been prescribed for claiming rebate of duty in terms of Rule 18 of Central Excise Rules, 2002. The said notification nowhere puts any restriction to the effect that rebate of duty paid on exported goods will not be admissible if exporter has availed drawback of Customs portion on the said exported goods. The relevant Customs Notification No.103/08- Cus.(NT) dated 29.08.08 condition 8(e) states that the rates of drawback specified in this schedule shall not be applicable to the export of a commodity or product if such commodity or product is 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 Central Excise Rules, 2002. Similarly para 1.5 of part V of chapter 8 of CBEC Manual of Supplementary instructions as on 1.9.2001 debars the benefit of input stage rebate of duty paid on materials used in the manufacture of exported goods where finished goods are exported under duty drawback. In these cases, respondents have claimed rebate of duty paid on finished exported goods and therefore the above mentioned restrictions are not applicable-here.*
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> *10. Government also notes that CBEC vide Circular No.83/2000-Cus. dated 16th October, 2000' has clarified that "where only Customs portion of duties is 'claimed as per the All Industry Rate of Drawback (erstwhile) rule 57F (14), does not come in the way of admitting refund of unutilized credit of Central Excise / Countervailing duty paid on inputs used in the products exported." This clarification also indicates that there is no restriction on granting rebate of duty paid on exported goods even if the drawback the drawback. Of Customs portion is availed by exporter. This view is already taken by Government in GOI order cited by respondent i.e. in the case of M/s Benny, Impex Pvt. Ltd. 2003)154) ELT 300 and also in the case of William Industries GOI order No.38/09-Cx dated 30.01.2009.*
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> 11. *Further, Government keeping in view that as per the policy of making the Drawback scheme more attractive and beneficial to the exporters has bifurcated the composite rates of drawback into Central Excise portion and that of Customs portion and that too in two types of different situations i.e when Cenvat Credit facility has been availed Notification No.103/08 Cus (NT) dated 29.08.08, condition No.6 envisages as under:-*

"The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat, facility has not been availed" refer, to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."

It is clear from the said condition that drawback of duty can be availed when Cenvat facility has been availed but the rates applicable is lower rate. Further CBEC has clarified in CBEC Circular No.23/01-Cus. dated 18.4.11 (F.No.605/12/2001-Drawback) as under :-

"2. The issue has been examined in the Board. All Industry Rate is based on the concept of averages, wherein the drawback rate itself as well as its customs and excise portions are based on weighted averages of consumption of imported / indigenous inputs of a representative cross section of exporters and the average incidence for duties suffered on such inputs. These rates have no relation to the actual input consumption pattern and actual incidence suffered on inputs of a particular exporter or individual consignments exported by any particular exporter under AIR/DBK claim.

3. Therefore, it is clarified that, as a matter of rule, no evidence of actual duties suffered on imported or indigenous nature of inputs used, even if the All Industry Rate has customs portion, should be insisted upon by the field formations along with declaration Filed by exporters under Rule 12(1)(a)(ii) of the Customs & Central Excise Duties Drawback Rules, 1995".

The CBEC Circular No.19/05-Cus. dated 21.03.2005 has also clarified that concept of All Industry Rate of duty drawback is that the rates are determined taking into account of average duties paid on inputs and in determining rates the average (weighted average) consumption of imported / indigenous inputs of a representative cross section of exporters is taken into account.

12. It may be noted that the CBEC vide Circular No.35/2010 dated 17.09.2010 has clarified this position. The relevant paragraph reads as under:-

"(vi(d) The earlier Notification No.103/2006-Cus.(NT) dated 29.8.08, as amended provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18

of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback on the basis of the above condition although the manufacturers had taken only the rebate Central Excise duties in respect of their inputs / procured the inputs without payment of Central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present Notification No.84/2010-Cus(NT) dated 17.09.2010 provides that 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 Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."

The content of the above said circular envisage that the Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of rule 18 of Central Excise Rules, 2002. This position is made amply clear in the Notification No.84/2010-Cus.(NT) dated 17.09.2010.

13. Government observes that Commissioner (Appeals) has given his detailed findings in order-in-appeal No. 49-53/11 dated 14.6.11 in the case of M/s Aarti Industries. Department in their revision applications has not countered even a single argument and simply stated that double benefit of drawback and rebate of duty cannot be allowed. Government. is in agreement with the findings of Commissioner (Appeals). As such the argument of department that allowing said rebate of duty where drawback of Customs portion is availed will amount to double benefit, does not hold good and is not sustainable.

14. In view of above, Government do not find any infirmity in the impugned orders of Commissioner (Appeals) in all these cases and hence the same are upheld for being perfectly legal and proper. All the Revision Applications herein above are thus rejected being devoid of merits."

10. From the case records, Government thus opines that the applicant has availed only the customs portion of the drawback and are eligible to rebate of duty paid on inputs used in the manufacture of goods exported.

11. In view of the discussion above, Government sets aside the impugned Orders-in-Appeals Nos. PUN-SVTAX-000-APP-001to 003-16-17 dated

01.04.2016 passed by the Commissioner of Service Tax (Appeals), Pune and restores the impugned Orders-in-Original.

12. The Revision Application is disposed of on the above terms.

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

ORDER No 1092-1094 /2022-CX (WZ) /ASRA/Mumbai DATED 21 .11.2022

To,
M/s. Cipla Ltd.
D-22, MIDC Kurkumbh,
Taluka Daund,
District Pune, 413 802

Copy to:

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3. Sr. P.S. to AS (RA), Mumbai.
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