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**F.No. 198/35/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...6-1-14..

Order No. 11/14-cx dated 03-01-2014 of the Government of India, passed by Shri D. P. Singh, 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, 1944 against the Order-in-Appeal No. BC/280/M-III/11-12 dated 30-01-2013 passed by Commissioner of Central Excise, (Appeals), Mumbai-III.
- Applicant : The Commissioner of Central Excise, Mumbai-III, 4th Floor, Vardaan Sankul, MIDC, Wagle Industrial Estate, Thane (West)- 400604.
- Respondent : M/s. Four Star Industries, Unit NO. 6, & Anand Indl. Estate, Raghunath Nagar, Thane-400604.

ORDER

This revision application is filed by The Commissioner of Central Excise, Thane against the Order-in-Appeal No. BC/280/M-III/11-12 dated 30-01-2013 passed by Commissioner of Central Excise (Appeals), Mumbai-III with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Mumbai-III.

2. Brief facts of the case are that M/s. Four Star Industries had filed a rebate claim of Rs. 93,054/- for the duty paid on export of their goods under Rule 18 of Central Excise Rules, 2002 which were exported vide ARE-1 No. 09/10-11 dt. 09-02-2011 against SB No. 9344324 dt. 08-02-2011. The Assistant Commissioner of Central Excise, Mumbai Division, Mumbai-III vide impugned Order-in-Original dt. 23-08-2011 sanctioned the rebate claim. The department filed appeal before Commissioner (Appeals) on the grounds that the exporter can avail only on benefits, either input credit or drawback claim, however, the assessee had simultaneously claimed both benefits of rebate and drawback which are not admissible to them. Commissioner (Appeals) decided the case in favour of respondent.

3. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

3.1 The claimant has submitted declaration along with rebate claim that "no separate claim for the rebate of duty has been or will be made to Central Excise Authorities under rule 18 of the Central Excise Rules (No. 2) 2001 and no claim for drawback of duty covering excise element has been made or will be made under the Customs and Central Excise Duties Drawback Rules, 1995, with the customs authorities and that the customs and the Central Excise duties wherever leviable has been paid on the raw material used in the manufacture of goods". However, it is noticed that the claimant have filed shipping bill to the Customs Department on which they have claimed drawback, therefore the rebate sanctioned was not proper.

3.2 As per provisions of Customs, Excise & Service Tax Rules, the Drawback is not admissible if Cenvat Credit is availed. Therefore, the assessee has to certify that they have not availed cenvat credit under Rules of Central Excise Act, 1944 and the rules made there under, which is mentioned in the drawback rules. Hence party can avail only one benefit either input credit or drawback claim. Hence, the assessee have simultaneously claimed two benefits which are not admissible to them.

3.3 M/s. Four Star Industries suppressed the fact by giving the undertaking to the effect that "no separate claim for the rebate of duty has been or will be made to Central Excise Authorities under rule 18 of the Central Excise Rules (No. 2) 2001 and no claim for drawback of duty covering excise element (except all industry rate covering customs duties) has been made or will be made under the Customs & Central Excise Duties Drawback Rules, 1995, with the customs authorities and that the customs and the Central Excise duties wherever leviable has been paid on the raw material used in the manufacture of goods".

4. A Show Cause notice was issued to the respondent under section 35EE of Central Excise Act, 1944 to file their counter reply. No counter reply received from respondents.

5. Personal hearing was scheduled in this case on 28-11-2013 was attended by Shri D.P.Singh, Superintendent on behalf of the applicant department who reiterated the grounds of Revision Application. Shri R.K. Sharma, advocate attended hearing on behalf of respondent who stated that Order-in-Appeal being legal and proper may be upheld.

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

7. Government observes that the original adjudicating authority initially sanctioned the rebate claim. The department filed appeal before Commissioner (Appeals) on the ground that both benefit i.e drawback of duty under section 75 of

Customs Act, 1962 and rebate of duty under rule 18 of Central Excise Rules, 2002 and not admissible simultaneously. Commissioner (Appeals) has upheld the impugned Order-in-Original. The applicant's department has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the instant case the respondent has cleared Differential Spider for automobile industry for export on payment of duty of Rs. 93054/- vide ARE-I No. 9/10-11, dt 09-02-2011. The lower authorities have noted that respondent had claimed customs portion of drawback on the said exported goods. Applicant department has contended that since respondent has availed drawback of duty, the rebate claim is not admissible. The drawback rate specified in drawback 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.

9. 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 when 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.

10. 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.103/2008-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 of 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.

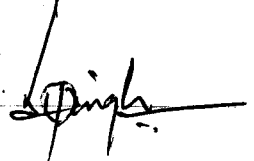
The issue has been examined. The present Notification No.84/2010-Cus. (NT) dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of Central 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. In the instant case custom portion drawback claim is availed and rebate of duty paid on exported goods is claimed. In view of position explained there is no bar is availing such rebate claim when drawback of only customs portion is availed. As such, Government is in agreement with the findings of Commissioner (Appeals) and the contention of the department is not tenable.

11. In view of above, Government do not find any infirmity in the impugned order of Commissioner (Appeals) and hence upholds the same.

12. The Revision Application is thus rejected being devoid of merits.

13. So ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Central Excise,
Mumbai-III, 4th Floor, Vardaan Sankul,
MIDC, Wagle Industrial Estate,
Thane (West)- 400604.

ATTESTED



2/1/2014


(Name of the Officer) (Signature)
CE (Central Excise) (Mumbai-III)
वि. म. नि. नि. (वि. म. नि. नि.)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
व. म. नि. नि. (वि. म. नि. नि.)

Order No. 11/14-Cx dated 03-01-2014

Copy to:

1. The Commissioner of Central Excise (Appeals), Mumbai- III, Mumbai Zone-II, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
2. The Assistant Commissioner of Central Excise, Bhandup Division, Mumbai-III, 1st Floor, Hira Moti Complex, Shivaji Nagar, Thane (West)- 400604.
3. M/s. Four Star Industries, Unit NO. 6, & Anand Indl. Estate, Raghunath Nagar, Thane-400604.
4. M/s. R.K.Sharma and Associates Pvt. Ltd. 157, 1st Floor, DDA Office Complex, C.M Jhandewalan Extension, New Delhi-110055.
5. PS to JS (RA)
6. Guard File.
7. Spare Copy

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3/1/2014

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

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