REGISTERED SPEED POST

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.195/544(I & II)/2016-RA 1412 Date of Issue:- 15.03.2023

ORDER NO. 113-114/2023-CEX (WZ) /ASRA/MUMBAI DATED 14.3.2023 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. Sibon Food Industries,
247/248, G.I.D.C.,
Kuvadva industrial Estate,
Rajkot.

Respondent :- Pr. Commissioner, CGST & Central Excise, Rajkot.

Subject :- Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RAJ-EXCUS-000-APP- 054 to 055-16-17 dated 08.09.2016 passed by the Commissioner(Appeals-III) Central Excise, Rajkot.

ORDER

This Revision Application has been filed by M/s. Sibon Food Industries, 247/248, G.I.D.C., Kuvadva Industrial Estate, Rajkot (hereinafter referred to as "the applicant") against Orders-in-Appeal No. RAJ-EXCUS-000-APP- 054 to 055-16-17 dated 08.09.2016 passed by the Commissioner(Appeals-III) Central Excise, Rajkot which decided an appeal filed against the Orders-in-Original No. 03/D/AC/2015-16 & 04/D/AC/2015-16 both dated 31.08.2015 passed by the original Adjudicating Authority which decided rebate claims filed by the applicant.

2. The brief facts of the case are that M/s. Sibon Food Industries, are engaged in manufacturing of "Sugar Confectionery" falling under Chapter 17049090 of CETA are availing rebate of duty paid on materials used in manufacture of exported goods under Rule 18 of the Central Excise Rules 2002. Applicant has exported finished goods "Sugar Confectionery" as manufacturer through merchant exporter M/s. Amber Exporters. During the course of scrutiny of the Shipping Bill it was observed that the merchant exporter in his shipping bill has claimed drawback for "not availing facilities of Cenvat"; whereas the ARE duly attested by the manufacturer and merchant exporter contains declaration "availing facility of Cenvat credit under Rule, 2004". On the basis of declaration filed by the exporter at the time of export of the goods before Customs, the Customs authorities sanctioned and paid the drawback of central excise duty in light of Rule 3(1)(c) of the Central Excise Duties and Service Tax Drawback Rules, 1995. The merchant exporter returned the drawback after a period of 5 to 7 months. Adjudicating authority observed that exports made on form ARE-1, no rebate is permissible because the merchant exporter has availed the benefit of Central Excise portion in the drawback. Accordingly, after following the due process the adjudicating authority rejected the rebate claims vide Orders-in-Original No. 03/D/AC/2015-16 & 04/D/AC/2015-16 both dated 31.08.2015.

3. Being aggrieved, the applicants filed appeal against the rejection of their rebate claim. The Commissioner (Appeals) vide Orders-in-Appeal No. RAJ-EXCUS-000-APP- 054 to 055-16-17 dated 08.09.2016 rejected the appeals.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed this revision application mainly on the following grounds:

4.1 The applicant has fulfilled all the conditions and limitations stipulated under Notification No. 19/2004-CE (NT) dated 06.09.2004 (as amended) issued under Rule 18 of the CCR for claiming rebate. The rejection of the rebate claims cannot be sustained in law since all the terms and conditions of the notification were met by the applicant. The CBEC's Excise Manual of Supplementary Instructions, 2005 contains detailed procedure and departmental instructions for the export of goods under claim of rebate to any country other than Nepal and Bhutan, and it is not a case of the department that any of the procedures or conditions were not observed by the applicant. The procedure for sanction of claim of rebate by Central Excise is prescribed in Para 8 of Chapter 8 of the CBEC Manual, which states that it is essential for the exporter to indicate the office and its complete address with which they intend to file the claim or rebate on the A.R.E. 1 at the time of removal of export goods. The applicant had paid the appropriate amount of central excise duty on the export goods and had declared in both the ARE-Is that rebate shall be claimed from the Assistant Commissioner Division-I Central Excise, Rajkot.

4.2 Applicant submitted that on harmonious reading of the above instructions of the CBEC Manual read with Rule 18 of the C.C.R. and Notification No. 19/2004-CE (NT) it is evident that rebate sanctioning authority, before sanctioning rebate, is required to ensure that the goods cleared under ARE-1 were actually exported and that duty paid character of the said goods was certified by the Range Superintendent. It further submits

that provision of sanctioning rebate claim in part or full comes into picture only in a case where amount of duty paid is less than the claim of rebate or any other dispute relating to quantum of such rebate. It may kindly be appreciated that neither the notification nor Rule 18 speaks of any of the conditions or procedure for rejection of rebate claim in case of claim of the Drawback and also rebate of duty. Therefore, if assessee had cleared the goods on payment of duty for export under ARE-1 and had also adhered to the conditions, limitations and procedure prescribed under Notification No. 19/2004-CE (NT) read with instructions contained in Chapter 8 of the CBEC Manual, designated authority is bound to sanction the rebate claim and it cannot be rejected under provisions of the Drawback Rules. This would also mean that if there is violation of any of the condition or procedure of the Drawback Rules, appropriate action can be taken under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 only. This is more so because the C.C.R. and the Drawback Rules are framed under two different statutes.

4.3 Applicant further submitted that merchant exporter M/s. Amber was entitled to claim drawback proportionate to customs portion but through oversight they had claimed drawback at full rate. It submits that Sugar Confectionery falling under tariff item no. 1704 of the Central Excise Tariff Act, 1985 is covered under the Drawback Schedule. Rate of drawback, at the material time, was 1% of FOB value if Cenvat facility was not availed by exporter and 0.30% / 0.15% of FOB value if Cenvat facility was availed. No drawback cap was fixed for this product in the Drawback Schedule. In other words, M/s. Amber was legally entitled to claim drawback at the rate of 0.30% /0.15% of the FOB value of the exported goods for customs portion but sanctioned drawback erroneously, there is no need for recipient to repay the same if no notice is issued by the Customs for its recovery. Applicant submits that such an interpretation of law itself is illegitimate and illogical. It submits that there is no bar in the Drawback Rules for making voluntary repayment of erroneously sanctioned claim. On the contrary, it is policy of the government to welcome voluntary repayment of any duty, refund,

drawback etc. with a view to minimize the litigations and for ease of doing business.

4.4 The applicant further submitted that merchant exporter M/s. Amber, vide their two separate letters dated 17.10.2016 had also inter alia informed the Assistant Commissioner of Customs, Mundra Port, Mundra that they had exported goods under shipping bills no. 4399042/ 13.08.2014 and 5265191/ 29.09.2014; that through oversight they had filed shipping bill under "Cenvat facilities has not been availed" instead of "Availed"; that they had returned portion of Cenvat facility of duty drawback amount of excise duty along with interest; and that relevant shipping bills may please be amended accordingly. Subsequently, accepting the said request, merchant exporter was informed by the Mundra Customs vide two separate letters dated 29.11.2016 that the shipping bills were amended.

5. Respondent department made additional submissions vide letter F. No.: V/2-393/010 /RRA/2015 dated 14-03-2017 wherein they stated-

5.1 The issue of admissibility of rebate claims is to be decided taking into account the harmonious and combined reading of statutory provision relating to rebate as well as duty drawback scheme. 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.

5.2 The provisions of Rule 18 of the Central Excise Rules, 2002 are Interpreted by Hon'ble High Court of Bombay, 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, applicant 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 has claimed 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 judgment of Hon'ble Bombay High Court and provisions of Rule 18 of Central Excise Rules, 2002.

5.3 In the present case, the Let Export Order was granted on 29-09-2014 and the merchant exporter returned the drawback amount on 16-03-2015, after a period of five and a half months. There is no provision for the exporter to deposit the drawback amount at a later stage at their will for availing Central Excise rebate claim facilities if they find that the rebate amount is greater than the drawback they had earned. The applicant has submitted that the merchant exporter, M/s. Amber, had informed the Assistant Commissioner of Customs, Mundra Port, that they had exported goods under Shipping Bill No. 4399042/13-08-2014 and 5265191/29-09-2014 through oversight they had filed the shipping bill under "Cenvat facilities has not been availed" instead of "Availed". They had returned a

portion of Cenvat facility of duty drawback amount of excise duty along with interest, and the relevant shipping bills were amended accordingly. The applicant got the relevant shipping bills amended only after the issue of the Impugned Order-in-Appeal dated 09-09-2016 by the Commissioner (Appeals), Rajkot. This act on the part of the merchant exporter and the applicant clearly shows their afterthought action to avail benefit of rebate.

5.4 The rebate claim and drawback claim are governed by separate statutes - Central Excise Rules and Central Excise Duties and Service Tax Drawback Rules, respectively. These two provisions offer different export benefits to manufacturers and exporters based on different circumstances. Once the option is exercised, it cannot be reverted back. The applicant opted to clear goods under claim of drawback, which means they chose to export goods under drawback and could not pay duty and claim rebate afterwards. Thus, the payment of duty cannot be considered as duty but only a voluntary deposit with the government.

5.5 In view of the above, the instant rebate claims of duty paid on exported goods are not admissible under Rules 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06-09-2004 when the exporter has failed to prove that they have availed duty drawback of Customs portion only in respect of exported goods. As such, no legal infirmity in the impugned Order-in-Appeal is found and hence the same is requires to be uphold and the Revision Applicable being devoid of merits is liable to be rejected.

6. Personal hearing in this case was scheduled held on 11.11.2022. Ms. Drishti Sejpal, Advocate appeared online and submitted that merchant exporter has paid back drawback therefore, rebate claim be sanctioned. She requested to allow the rebate claim.

7. Government has carefully gone through the relevant case records available in the case files, the written submission and also perused the said Orders-in-Original and the impugned Orders-in-Appeal.

8. Government notes that the issue involved in the instant case is whether applicant is eligible for the rebate of the duty when the merchant exporter has repaid the drawback with interest received earlier. Government notes that it is not in dispute that the goods in question have been exported, thus, the only issue for decision is whether the repayment of drawback at a later date can be accepted for sanction of rebate of such duty. Government finds that the applicant has paid the drawback in cash along with interest, hence there is no loss to the Government exchequer. Government notes that the respondent department has requested to reject the subject claims of the applicant on the grounds that once they have availed the option of getting drawback under Central Excise Duties and Service Tax Drawback Rules is exercised, it attains finality and cannot be reverted back subsequently. Hence, they have exercised the option to export goods under drawback and in no way it was further open for them to pay repay duty and claim rebate thereupon. The respondent department has also contended that the applicant has paid duty after a delay of more than five and half months, which is an afterthought action to avail benefit of rebate. Government finds these views to be a narrow one and notes that the same is not in consonance with the laid down principle that as far as exports are concerned, substantial benefit should not be denied on the basis of procedural lapses. Government finds that in the present case the drawback amount was paid by the applicant, albeit belatedly, along with appropriate interest on the goods which have been exported. In such situation, rejecting the rebate claim of the applicant would amount to the Government holding on to the duty paid by the applicant without the authority of law, which is incorrect and not permissible. In view of the above, Government holds that the applicant is eligible to the rebate claimed vide the said claims.

9. Thus, Government sets aside the Orders-in-Appeal No. RAJ-EXCUS-000-APP- 054 to 055-16-17 dated 08.09.2016 and allows the revision application.

10. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the applicant with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The applicant is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the applicant to present their case.

14/3/23

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

ORDER No. 113-114/2023-CEX (WZ) /ASRA/Mumbai Dated 14.3.2023

To,

M/s. Sibon Food Industries,
247/248, G.I.D.C.,
Kuvadva industrial Estate,
Rajkot.

Copy to:

1. Pr. Commissioner, CGST & Central Excise, Rajkot.
2. Commissioner(Appeals-III) CGST & Central Excise, Rajkot.
3. P. R. Associates, 901-B, The Imperial Heights, 150 Feet Ring Road, Rajkot-360 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Notice Board.