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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.198/112 - 129/WZ/2018-RA/3069 Date of Issue: 30 .11.2022

ORDER NO.\137-1175/2022-CX (WZ)/ASRA/MUMBAI DATED 29.11.2022 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	:	Commissioner, Central GST, Ahmedabad-South, Central GST Bhawan, Ambawadi, Ahmedabad
Respondents	:	Sri Sai Vishwas Polymers, 316, Pratibha Plus Complex, Opposite Narol Gam, Narol-Aslali Highway, Ahmedabad-382405.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. AHM-EXCUS-001-APP-418-435-2017-18 dated 19-03-2018, passed by the Commissioner (Appeals), Central Tax, Ahmedabad.

ORDER

The subject 18 Revision Applications have been filed by the Department (here-in-after referred to as 'the applicant') against the Orders-in- Appeal Nos AHM-EXCUS-001-APP-418-435-2017-18 dated 19-03-2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad in respect of M/s Sri Sai Vishwas Polymers, 316, Pratibha Plus Complex, Opposite Narol Gam, Narol-Aslali Highway, Ahmedabad-382405 (here-in-after referred to as 'the respondent'). The details of the same are as follows:

Sr No	RA file Number	OIA No & Date	OIO No. & Date	Claim Sanctioned (Rs)	Claim Rejected (Rs)
1.	198/112-129/WZ/2018-RA	AHM-EXCUC-001 -APP-418 to 435-2017-18 CE dated 19-03-2018	174/AC/2016 Reb dt 10.10.16	94,41,034/-	-
2.	-do-	-do-	175/AC/2016 Reb dt 10.10.16	1,32,30,812/-	-
3.	-do-	-do-	176/AC/2016 Reb dt 10.10.16	73,86,252/-	-
4.	-do-	-do-	177/AC/2016 Reb dt 10.10.16	87,70,071/-	-
5.	-do-	-do-	236 to 237/AC/2016 Reb dt 20.10.16	1,88,33,302/-	-
6.	-do-	-do-	272/AC/2016 Reb dt 25.10.16	72,99,710/-	-
7.	-do-	-do-	273/AC/2016 Reb dt 25.10.16	1,12,08,601/-	-
8.	-do-	-do-	274-275/AC/2016 Reb dt 25.10.16	1,75,56,198/-	-
9.	-do-	-do-	277-280/AC/2016 Reb dt 07.11.16	2,99,04,461/-	-
10.	-do-	-do-	288-292/2015 dt.16.11.16	4,83,81,376/-	-
11.	-do-	-do-	311-312/AC/2016 Reb dt 30.11.16	1,48,07,477/-	-

12.	-do-	-do-	313-315/AC/2016 Reb dt 30.11.16	2,74,51,551/-	-
13.	-do-	-do-	340-341/AC/2016 Reb dt 30.11.16	1,80,96,967/-	-
14.	-do-	-do-	383-384/AC/2016 Reb dt 22.12.16	1,50,40,581/-	-
15.	-do-	-do-	385-387/AC/2016 Reb dt 22.12.16	2,40,73,696/-	-
16.	-do-	-do-	388-390/AC/2016 Reb dt 22.12.16	1,94,56,921/-	-
17.	-do-	-do-	01-11/AC/2017 Reb dt 04.04.17	-	9,23,71,056/-
18.	-do-	-do-	12-13/AC/2017 Reb dt 04.04.17	-	2,07,90,912/-

2. Brief facts of the case are that the Respondents are engaged in the export of Gold Jewellery on payment of Central Excise Duty @ 12.5% under the claim of Rebate under Rule 18 of Central Excise Rules, 2002. They filed rebate claims totaling to an amount of Rs.29,09,39,010/-. The respondents are also procuring gold duty free under replenishment scheme for manufacture and export of gold jewellery. The applicant adjudicated the cases of rebate claims and vide above mentioned impugned Orders shown at Sr. No. 1 to 16 of the table above, the rebate claims were sanctioned the to the respondents.

3. Subsequently, the Jurisdictional authority received a letter FN DRI/AZU/ENQ-01(INT-01/17)/2017 dated 06.02.2017 from the Additional Director, DRI, AZU, Ahmedabad, wherein it had been, inter alia, submitted that an inquiry had been initiated against the respondent by their office regarding simultaneous availment of double benefits in the form of Rebate of the Central Excise Duty paid (using Cenvat Credit of the duty paid on the raw material ie gold) and Replenishment Scheme for procurement of duty free Gold Bars from the Nominated Agencies against the same export consignments of gold jewellery. Thereafter all the above mentioned impugned orders (Sr. No.1 to 16) where the claims were sanctioned, were reviewed by the Commissioner

Central Excise, Ahmedabad-I. and an appeal was filed by the department with the Commissioner Appeals.

4. Subsequently the respondents, have filed 11 rebate aims in the month of December-2016 for the total amount of Rs.9,23,71,0567 and 2 rebate claims in the month of February 2017 for the total amount of Rs.2,07,90,912/- under Rule 18 of Central Excise Rules 2002. The above rebate claims were rejected by the adjudicating authority vide the Orders shown at Sr. No.17 &18 of the Table above. Aggrieved by the said 2 Orders the respondent filed appeal with the Commissioner Appeal.

5. Commissioner Appeal vide his OIA No.AHM-EXCUS-001-APP-418-435-2017-18 dated 19-03-2018 rejected the department's appeal as devoid of merit and allowed the Respondent's appeal with consequential relief.

6. Aggrieved by the said Order, the department filed the Instant Revision Applications on the following grounds:

(a) The Respondent was engaged in trading of Gold Bullions, manufacturing of 'Gold Bars' from 'Gold Dore Bars' & 'Gold Jewellery' from 'Gold Bars and export of the 'Gold Jewellery' so manufactured to Dubai, UAE. They had hatched a well-planned conspiracy to defraud Government exchequer and avail dual benefit on the same export consignments in systematic phased manner in the form of (i) claim of Rebate of the Central Excise Duty paid on exported goods i.e, Gold jewellery (Central Excise Duty has been paid using CENVAT credit of the duty paid on the input i.e. Gold) as well as (ii) procurement of credit availed on their inputs and partly through PLA and after realization of overseas remittances they claimed the Rebate of the Central Excise Duty paid on their exported finished goods under Rule 18 of the Central Excise Rules, 2002 before the jurisdictional Central Excise Authority. It is clearly apparent that the respondent had first availed the benefit of CENVAT Credit and Rebate of Central Excise duty or Additional duty of Customs (CVD) suffered on the goods manufactured and exported and thus rendering the input i.e. gold utilized for manufacture of export product i.e. gold jewellery duty free.

(b) Further, despite having already claimed the Rebate of the Central Excise Duty paid on their exported finished goods the respondent had claimed replenishment of Gold against the same exported articles i.e. gold jewellery in terms of FTP 2015-2020 and Notification No. 57/2000-Cus. dated 08/05/2000 and sold them in the DTA as

such instead of using duty free procured gold under Replenishment Scheme for manufacture of export product (as mandated in Para 4.31 of Chapter 4 of FTP under the heading "Schemes For Exporters Of Gems And Jewellery which includes Replenishment Scheme) ie. gold jewellery and without paying applicable central excise duty while clearing them in DTA as per inherent policy provision of Chapter 4 of FTP 2015-2020.

(c) The respondent had totally exported the 12,87.955 KG of 'Gold Jewellery having total FOB value of Rs. 3,23,28,07,844/- during the period from 02/08/2016 to 29/12/2016 by availing both the benefits of rebate of Central Excise duty paid on their exported finished goods under Rule 18 of the Central Excise Rules and claim of Replenishment of Gold ('Export Against Supply by Nominated Agencies). They had claimed totally 1195 Kg of Gold under Replenishment of Gold from the nominated agency ie. M/s. Diamond India Limited, Mumbai. The nominated agency had released the Gold of 1037 KG of Gold to the respondent against their claim under Replenishment Scheme before 02/01/2017 ie. before initiation of instant inquiry and the respondents had sold the same to various customers without manufacturing export product (as mandated in Para 4.31 of Chapter 4 of FTP under the heading "Schemes For Exporters Of Gems And Jewellery" which includes Replenishment Scheme) and without paying applicable central excise duty while clearing them in DTA as per inherent policy provision of Chapter 4 of FTP 2015-2020.

(d) In terms of Chapter 4 of the Foreign Trade Policy (FTP)-2015-2020 Schemes under Chapter 4 enable Duty free import of inputs for export production, including replenishment of input or duty remission. The Scheme under Chapter 4 consist of

(a) The Duty Exemption schemes

(i) Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement)

(ii) Duty Free Import Authorisation (DFIA).

(b) Duty Remission Scheme Duty Drawback (DBK) Scheme, administered by Department of Revenue.

e) All export promotion schemes (including Replenishment Scheme) covered under Chapter 4 of FTP are one or other form of Advance Authorisation (AA) scheme or Duty Free Import Authorisation (DFIA) or Duty Remission Scheme. Since Replenishment Scheme pertains to the replenishment of input, it is aptly covered either under the

inherent policy provisions of Advance Authorisation (AA) scheme or Duty Free Import Authorisation (DFIA). As per Para 4.41 gold can be imported only by Nominated Agencies and Banks authorized as Nominated Agencies by RBI on payment of duty and without 'Actual User condition for sale in DTA or a duty free under Notification No. 57/2000-Cus dated 08/05/2000 for jewellery export purpose only. Other than Nominated Agencies and Authorized Banks no individual (As per Notification No. 12/2012-Cus Dated 17.03.2012, as amended, and Circular No. 06/2014-Customs dated 6 March, 2014, the gold in any form of bars and ornaments are allowed to be imported by eligible passengers up to permissible quantity (one Kg. per passenger) upon payment of appropriate Customs Duty in freely convertible foreign currency and by following other conditions of the said Circular) or firm is allowed to import gold except under Advance Authorization for Precious Metals scheme under Para 4.37 of the FTP 2015-2020 subject to condition that Advance Authorization shall be granted on pre-import basis with 'Actual User' condition for duty free import of gold for jewellery export purpose. From this it is absolutely clear that Replenishment Scheme was devised for facilitation of those kind of jewellery exporters who exported jewellery first and who could not import gold/input against their exported consignment of jewellery like exporters of other commodities under Post-Export Advance Authorization or DFIA due to policy provisions regarding gold import. Further as per para 4.40 of the FTP 2015-2020, the Duty Free Import Authorisation scheme was not available for Gems and Jewellery sector. From this it is very clear that Replenishment Scheme was governed by the inherent policy provisions of Advance Authorisation (AA) scheme only. Replenishment Scheme was nothing but a Post-Export Advance Authorisation (AA) scheme devised as a trade facilitation/export promotion measures for jewellery exporters,

f) Para 4.16 of FTP clearly elaborates the usage of goods imported/procured under advance Authorisation and as per Para 4.16 Advance Authorisation and/or materials imported under Advance Authorisation would be subject to 'Actual User' condition. The same would not be transferable even after completion of export obligation. However, Authorisation holder would have option to dispose of product manufactured out of duty free input once export obligation is completed.

g) Further as per Para 4.37 of the FIP 2015-2020 the Advance Authorisation for Precious Metals scheme was available to the Gem & Jewellery Sector subject to condition that Advance Authorisation shall be granted on pre-import basis with

'Actual User' condition for duty free import of Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above.

h) From these policy provisions it is very clear that all Schemes for Exporters of Gems and Jewellery (including Replenishment Scheme) under Chapter 4 of FTP are "Actual User" based Schemes otherwise FTP would not have disallowed. Duty Free Import Authorisation Scheme (which is transferable and does not entail "Actual User condition). In the instant case the exporter M/s. SSVP had not availed the said available option to import their input only with the well thought criminal intent to defraud the Government Exchequer fraudulently.

i) Further, as per Para 4.31 of FTP the exporters of Gems and Jewellery were allowed to import / procure duty free input for "manufacture of export product. From the said policy provision it is very clear that the exporters of Gems and Jewellery were allowed to import / procure duty free input subject to condition that the said input should be used in "manufacture" of export product.

j) Further, as per Para 4.34 the Exporter of gold/ silver / platinum jewellery and articles thereof including mountings and findings may obtain gold/ silver/platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified. In the said replenishment scheme, the exporter may apply to Nominated Agency / Status Holder having Nominated Agency Certificate for booking of precious metal gold/silver/ platinum equivalent to precious metal content in the export product and admissible wastage on same rate that they may have booked with buyer. The Nominated agencies shall purchase precious metal on behalf of exporter at the rate so fixed.

k) Further, the respondents while obtaining one time registration Certificate from the jurisdictional Customs Authority i.e. the Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad had given an UNDERTAKING dated 18 July, 2016, wherein they undertook to re-export Gold/Silver jewellery or articles, equivalent to the quantity issued by the nominated agency within 90 days from the date of issue of Gold/Silver by nominated agency and according to terms and conditions as prescribed under Notification No. 57/2000-Cus. dated 08-May-2000, Circular No. 27/2016 dated 10/06/2016 or any Public Notice, Circular, Instructions and

Notification issued by the Customs/RBI/DGFT authority from time to time in this regard. It had also been undertook that total quantity of Gold/Silver issued by nominated agency would be utilized only for discharge of export obligation in terms of Notification No: 57/2000 Cus dated 08 May 2000 and Circular No. 27/2016 dated 10/06/2016 and no part thereof shall be sold, loaned, transferred or otherwise used or disposed off. It was also undertaken that the imported gold should be used for the purpose for which they had been imported and would not be sold, gifted, exchanged, loaned or otherwise parted in India without the prior approval of the Department of Revenue, Ministry of Finance. However, M/s. SSVP had sold the duty free procured gold under Replenishment Scheme in the DTA as such instead of using the said gold for manufacture of export product as undertaken by them vide said UNDERTAKING dated 18 July, 2016. Further, they had not disclosed the fact in the said UNDERTAKING dated 18/07/2016 executed before jurisdictional Customs Authority that they would clear the duty free procured gold under Replenishment Scheme in the DTA as such without carrying out any manufacturing.

l) Further, Replenishment Scheme was not the Scheme under export Incentive scheme of Chapter 3 of the FTP, which provides rewards to exporters to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which were produced/ manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness. Such Incentive rewards were granted on and above to the benefits provided under schemes under various chapters other than Chapter 3 of the FTP equivalent to certain percentage of free foreign exchange earned in a year, subject to fulfillment of objective and conditions as mentioned in the said provisions. Therefore, the claim of exporter that they were eligible for dual benefit under Scheme under Chapter 4 of the FTP does not appear to be having any merit.

m) In view of the policy provisions, evidences and facts, it is evident that the respondent had planned intentionally to defraud the Government Exchequer, that they could have procured Gold Bars in advance and could have fulfilled export obligation from the goods made out of Gold procured in advance as provided under Chapter 4 of FTP and under Customs Notification No. 57/2000 as amended; they also had the option to manufacture the Gold Jewellery out of Gold procured under Replenishment Scheme and export the same to the overseas buyers,; they also had the option to import duty free gold under Advance Authorization for Precious Metals,

as provided under Para 4.37 of FTP. The fact that they did not opt for Advance Authorization for Precious Metals; that they did not procure Gold Bars in advance and fulfilled export obligation from the goods made out of Gold procured in advance; that they did not utilize duty free gold procured under Replenishment Scheme for manufacture and export of jewellery or clear manufactured jewellery in DTA on payment of applicable excise duty but cleared the duty free gold procured under Replenishment Scheme as such in the local market, clearly establish their well-planned conspiracy to defraud the Government Exchequer and avail the undue double benefit by resorting to their modus operandi as brought out hereinabove. As evident from above Paras they opted for Replenishment Scheme with sole intent to sell the duty free gold procured under Replenishment Scheme as such in the DTA and defraud the Government Exchequer,

n) Further, as per Section 50 of the Customs Act, 1962 the exporter of any goods shall make entry thereof by presenting (electronically] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form. Before any goods is exported and kept with the custodians the exporters have to comply with prescribed customs clearance formalities. Essentially, these involve presentation of certain documents along with a prescribed application (normally termed Shipping Bills, which gives essential particulars in relation to exported goods, self-assessment of the duties/cess, if leviable, propriety of export incentives where claimed under different schemes like duty drawback or duty free exemption schemes etc. In the instant case the respondent while filing Shipping Bills for export of the said gold jewellery had categorically mentioned therein that the export is against Replenishment basis as per Para 4.31 to 4.34 of FTP 2015-20 and Para 4.52 of HBP 2015-20 to be taken from M/s. Diamond India Limited'. Therefore, it was clear that the said export of 'Gold Jewellery was in discharge of their export obligation towards the quantity of gold bars to be procured duty free under Replenishment Scheme. Whereas in the ARE-1 Application filed before Jurisdictional Central Excise Authorities, the respondent had not declared that the export was in discharge of the export obligation under a Quantity based Advance Licence/Under-Claim of Duty Drawback-under Customs & Central Excise Duties Drawback Rules, 1995. It is pertinent to mention that the respondent had not been Issued the Quantity based Advance Licence directly from the issuing Authority ie. Directorate General of Foreign Trade (DGFT), however the respondent was procuring the Gold under replenishment Scheme and the

conditions prescribed for procurement of Gold under Replenishment were strictly in line with Advance Licences and subject to the same conditions as discussed above. From the facts that they themselves have declared in customs documents at the time of export that "the export is against Replenishment basis as per Para 4.31 to 4.34." it is very clear that they were fully aware about provision of Para 4.31 of FTP which provides that "Exporters of gems and Jewellery can import/procure duty free input for "manufacture" of export product'. From this it is evident that despite knowing that gold procured duty free under Replenishment Scheme can only be utilized for 'manufacture of export product ie. gold jewellery in this case, they sold the duty free gold as such in the local market to make undue profit and defraud the Government Exchequer.

o) Further, it is also evident that certain provisions/objectives are inbuilt/salient part of Foreign Trade policy which cannot be interpreted in different manner, by individual importer/exporters for their benefit. Therefore, it is also evident from the objective of the Para 4.00 of the FTP that the dual benefit was not available to the exporters for export of same consignment. Even the DGFT considering the misuse had subsequently clarified vide Notification No. 40/2015 2020 dated 23/02/2017 that the exporters could avail the CENVAT credit facility on the precious metal i,e. Gold/Silver/Platinum as input and could export products manufactured out of Duty paid inputs under claim of rebate as well as could also claim the benefit of replenishment scheme on the same exported goods subject to the provision that such inputs procured duty free should be used in the manufacture of dutiable goods in the factory/unit and sale/transfer of such duty free Precious metal inputs should not be allowed.

p) In view of foregoing paras the appellate authority in his findings at para 11.1 & 11.3 has erred in interpreting the Policy provisions in as much as that the main objective of the Schemes under Chapter 4 of the FTP 2015-2020 was to enable duty free import of inputs for export production, including replenishment of input or duty remission. As per Para 4.31 of FTP the exporters of Gems and Jewellery were allowed to import / procure duty free input for "manufacture" of export product. From the said policy provision it was very clear that the exporters of Gems and Jewellery were allowed to import/procure duty free input subject to condition that the said input should be used in "manufacture of export product and not to clear in the domestic market. However, as per Para 4.16 Advance Authorisation and/or materials imported

under Advance Authorisation would be subject to 'Actual User condition. The same would not be transferable even after completion of export obligation. However, the Authorisation holder would have option to dispose of product manufactured out of duty free input once export obligation is completed. In the instant case the respondent had sold the duty free procured gold under Replenishment Scheme in the DTA as such instead of using the said gold for manufacture of export product and without paying applicable central excise duty:

q) In view of foregoing paras the appellate authority in his findings at para 11.2, 11.4, 11.7 and 11.8 has erred to appreciate the facts and intentions narrated in the mentioned Notifications and Circulars, which the Central Govt. issued time and again to restrict the exporters/importers to mis-use the FTP and wrong availment of benefits available. Similarly, in the instant case also the Ministry of Commerce & Industry, Directorate General of Foreign Trade vide Notification No. 40/2015-2020 dated 23/02/2017 had further clarified this inherent policy provision of Chapter 4 of FTP by amending the Para 4.34 (1) of Chapter 4 of Foreign Trade Policy 2015-2020. Vide the said Notification the DGFT had clarified that the exporters could avail the CENVAT credit facility on the precious metal ie. Gold/Silver/Platinum as input and could export products manufactured out of Duty paid inputs under claim of rebate as well as could also claim the benefit of Replenishment scheme on the same exported goods subject to the provision that such inputs procured duty free should be used in the manufacture of dutiable goods in the factory/unit and sale/transfer of such duty free Precious metal inputs should not be allowed.

r) In view of the above, the impugned Revision Application has been filed requesting to hold that the impugned Order-in-Appeal AHM-EXCUS-001-APP-418 to 435-2017-18 dated 19.03.2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad is not proper and legal and may like to pass any other order on merits, as deemed fit in the case.

7. Personal hearing dates were given to the applicant as well as the respondent on 26-10-2021, 02-11-2021, 18-11-2021, 25-11-2021 and 16-12-2021. However, no one appeared for personal hearing on any of the appointed dates. The respondent has not filed any written submissions against the department's appeal. Since sufficient opportunity for personal hearing has

been given in the matter, the case is taken up for decision on the basis of the available records.

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

9. Government observes that the Order in Originals mentioned at Sr no.1 to 16 in the table above had sanctioned rebate claims on the grounds that the respondent had exported the goods as mentioned in the ARE-1 and Central Excise duty has been paid. The OIOs mentioned at Sr. No. 17 to 18 had rejected the rebate claim on the grounds that claimant was claiming the Gold under the Replenishment Scheme as per Para 4.31 to 4.34 of FTP 2015-20, against the exported Gold jewellery plus admissible wastage/manufacturing loss, thus availing dual benefit for the same exported goods. This fact was not declared to rebate sanctioning authority while first 16 claims were being processed. Appellate Authority while allowing appeal of claimant has concluded that there is no dual benefits.

10. The issue to be decided in this case is whether the respondents are eligible for the rebate claim when they are availing the benefit of Gold Replenishment Scheme as specified in the FTP 2015-20 or the same would amount to availing double benefit.

11. The department's main contention is that the respondent had first availed the benefit of CENVAT Credit and Rebate of Central Excise duty or Additional duty of Customs (CVD) suffered on the goods manufactured and exported and thus rendering the input i.e. gold utilized for manufacture of export product i.e. gold jewellery duty free. Further, despite having already claimed the Rebate of the Central Excise Duty paid on their exported finished goods, the respondent had claimed replenishment of Gold against the same exported articles ie gold jewellery in terms of FTP 2015-2020 and Notification No. 57/2000-Cus. dated 08/05/2000 and sold them in the DTA as such instead of using duty free procured gold under Replenishment Scheme for

manufacture of export product as mandated in Para 4.31 of Chapter 4 of FTP under the heading "Schemes For Exporters Of Gems And Jewellery which includes Replenishment Scheme" ie. gold jewellery and without paying applicable central excise duty while clearing them in DTA as per inherent policy provision of Chapter 4 of FTP 2015-2020. Thus the applicant department has contended that they are getting double benefit.

12. The relevant paras under Chapter 4 of the Foreign Trade Policy 2015-20, at the relevant period are being reproduced as follows:

"4.00 Objective

Schemes under this Chapter enable duty free import of inputs ***for export production, including replenishment of input or duty remission.***

.....

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

4.31 Import of Input

Exporters of gems and Jewellery can import / procure duty free input for manufacture of export product.

4.32 Items of Export

Following items, if exported, would be eligible:

(i) Gold jewellery, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above;

(ii) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

(iii) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

4.33 Schemes

The schemes are as follows:

i) Advance Procurement / Replenishment of Precious Metals from Nominated Agencies;

(ii) Replenishment Authorisation for Gems;

(iii) Replenishment Authorisation for Consumables;

(iv) Advance Authorisation for Precious Metals.

4.34 Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies

(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold / silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf.

(ii) The export would be subject to wastage norms and minimum value addition as prescribed in paragraph 4.60 and 4.61 respectively in the Handbook of Procedures. ...."

13. Government finds that the above scheme is to **import duty free inputs for export production, including replenishment of input** or duty remission. Government finds that the Commissioner Appeals in his Order has held that prior to the amendment vide Notification No. 40/2015-2020 dated 23-02-2017, there was no restriction regarding the end-use of the goods procured under the replenishment scheme. This finding is incorrect and contrary to the provisions of Chapter 4 (Para 4.31) of the FTP 2015-2020. The provision of para 4.31 clearly stipulates that Exporters of Gems and Jewellery are allowed to import/procure duty free inputs only if the input is used in the manufacture of the goods to be exported viz in this case Gold jewellery, and the same is exported or cleared for home consumption on payment of applicable duties. In the instant case, gold supplied under the Replenishment Scheme against the same export where rebate was claimed, has been sold in domestic market as such.

13.1 Government observes that Commissioner Appeal has relied on Gujarat HC judgement of Intas Pharma Ltd.2016(332)ELT680(Guj) and S.C judgement in case of Parmeshawari Subramani reported in 2009(242)ELT162(SC) wherein the way for interpretation of statutes are dealt with and held that that in a taxing statute there is no scope of any intendment and the same has to be construed in terms of the language employed in the statute and that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the rules and the notification. Government finds that the same has been applied in this case as it is seen from the objective given above at Para 4.00 and 4.31 of the FTP 2015-20 that **Exporters**

of gems and Jewellery can import / procure duty free input for manufacture of export product. The language in this case is very clear and to the point that the exporters who procure duty free input is for the manufacture of the product to be exported.

13.2 In fact the issue before Hon'ble High Court in the case of Intas Pharma supra was whether Rebate to a SEZ unit on imported goods can be allowed. Applicant has gone to High Court against a communication by Jurisdictional authorities to the effect that rebate in such cases is not admissible. Hon'ble High Court after considering rival submissions, concluded that applicant petitioner is not entitled to any declaration to the effect that it is eligible for getting the rebate claim as sought for in the petition. This case, in fact, supports the stand of the applicant department

14. Government finds that vide the amendment made by the Notification No 40/2015-2020, it was clarified that even where CENVAT credit facility on Precious metal (Gold, Silver and Platinum) as input has been availed and Gems and Jewellery products are exported availing rebate, then replenishment of Precious metal would be allowed only if such inputs procured duty free are used in the manufacture of dutiable goods in the factory/unit, where exported Gems and Jewellery products were manufactured and the Sale/transfer of such duty free Precious metal would not be allowed. Thus the amendment confirmed that inputs procured duty free to be used in the manufacture of the dutiable goods in the unit where exported jewellery products are manufactured and not to be sold as such in DTA.

15. Further Government observes that the applicant department in their submissions has stated that the respondent had given an undertaking dated 18 July, 2016 to the Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad, wherein they undertook to re-export Gold/Silver jewellery or articles, equivalent to the quantity issued by the nominated agency within 90 days from the date of issue of Gold/Silver by nominated agency and according to terms and conditions as prescribed under Notification No. 57/2000-Cus.

dated 08-May-2000, Circular No. 27/2016 dated 10/06/2016 or any Public Notice, Circular, Instructions and Notification issued by the Customs/RBI/DGFT authority from time to time in this regard and have failed to do so. The respondent had also declared that the total quantity of Gold/Silver issued by nominated agency would be utilized only for discharge of export obligation in terms of Notification No: 57/2000 Cus dated 08 May 2000 and Circular No. 27/2016 dated 10/06/2016 and no part thereof shall be sold, loaned, transferred or otherwise used or disposed off. It was also undertaken that the imported gold should be used for the purpose for which they had been imported and would not be sold, gifted, exchanged, loaned or otherwise parted in India without the prior approval of the Department. Even after submitting such a declaration, the respondent cleared the duty free procured gold under Replenishment Scheme as such in DTA instead of using the said gold for manufacture. Further, this fact of procuring duty free gold under above scheme was never disclosed to the Jurisdictional Central Excise officers who initially sanctioned rebate. The Government also finds that in their appeal made with Commissioner Appeals, respondent have not contested the fact that they have not used the replenished gold for the manufacture of the exported goods and sold the same in DTA as such. They have merely argued that they have imported the inputs under post export replenishment scheme and not under advance procurement and are hence not bound by any export obligation.

16. Government observes that Commissioner Appeal in his Order has held that the SC Judgement relied by the Adjudicating authority in the case of M/s Mewar Polytech Ltd is on different facts from the present case. However the relevant paras are reproduced below

"Cenvat/Modvat - Inputs, indigenous inputs used in manufacture of exports made under advance licence - AR-4 declaration that credit not availed but same subsequently taken on very same indigenous goods - Inputs further imported under advance licence, CVD paid on such replenished inputs and goods exported under Drawback - Whether double benefit availed - Revenue's claim that credit relates to same inputs, hence same not

admissible - Question whether two separate duties arose for credit or entire process a single cycle - Declarations filed under AR4s entitled assessee to import inputs on payment of CVD which subsequently drawn back - Modvat credit availed on indigenous inputs and CVD on imported goods drawn back which amounts to double benefit - Subsequent claim of credit after declaring in AR-4 not reflect well on intention of assessee - Credit undermined by provisions of Rule 57A of erstwhile Central Excise Rules, 1944 stating that same available only if excise duty incident upon final product - No question of separate duties - ***Allowing credit would tantamount to giving benefit twice for same process beginning with manufacture and culminating in export*** *- No action be taken under Drawback Rules as same taken legitimately, but credit enjoyed without justifiable basis to be reversed - Rules 57A and 57-I ibid. -* ***The assessee cannot be held to be not entitled to claiming Modvat credit on finished goods where duty is not incident. Any attempt to avail it subsequently, casts serious aspersions on the bona fide intention of the assessee. [paras 15, 16, 17]"***

*.....**16.** Subsequently, it is to be seen whether the claiming of Modvat credit after filing the declarations in Form AR4 would entitle the assessee to Modvat credit on the indigenous inputs. The declarations filed under AR4s entitled the assessee to import inputs on payment of the CVD, which subsequently was permitted to be drawn back. Therefore, the assessee had utilized the specified mechanism to avail of a benefit on the imported inputs, while availing of Modvat credit on the indigenous raw material used in the manufacture of the same, exported goods. In effect, the assessee has not only availed of Modvat credit on the indigenous input, but also drew back countervailing duty paid on imported inputs that were mere stock replenishments, which amounts to a double benefit. That the Modvat credit was technically claimed only subsequent to the filing of AR4 declarations, although the indigenous goods were used in the manufacturing process apriori does not also reflect well on the intention of the assessee. The assessee has merely resorted to the technicality of claiming Modvat credit subsequent to the AR4 declarations, thereby entitling it to drawback. Subsequently, the Modvat credit has been availed on the very same indigenous goods, which shows that the claim of the assessee to be legitimately entitled to two separate duties is but a facade.*

17. There can be no question of separate duties arising in this case since the issue concerns the manufacture and export of one and the same goods. The imported inputs were primarily stock replenishments that were used in the execution of other orders, and allowing the assessee to claim Modvat credit on the indigenous input would tantamount to giving a benefit twice for the same process that began with the manufacture and culminated in the export of the specified goods. *The assessee cannot be held to be not entitled to claiming Modvat credit on finished goods where duty is not incident. Any attempt to*

avail it subsequently, casts serious aspersions on the bona fide intention of the assessee. The argument of the assessee that action had to be taken under the Duties Drawback Rules, 1971 and not through reversal of credit does not bear merit. The reversal of credit is meant to deny the assessee of a benefit that they would have otherwise enjoyed without justification. The drawback equivalent to CVD is legitimately permissible vide the process of AR4 declarations and thus, it is the benefit that is enjoyed without justifiable basis that has to be reversed.

18. *In light of the aforesaid facts and circumstances, we find that the contentions of the assessee are without merit. We dismiss the appeal filed by the assessee, but leave the parties to bear their own costs."*

Government observes that the said judgement clearly holds that it is against the law and spirit of any scheme/policy to avail dual benefit for the same action. Hence the said judgement covers the impugned case in as much as the respondent are getting dual benefit for the same export shipment i.e. rebate on the cenvat duty paid on the locally procured inputs as well as replenishment of gold as input used in the same export.

17. In the present case the respondent had procured gold from the nominated agencies only after the export. The provisions under Para 4.31 and 4.34 of FTP 2015-20 for availing the replenishment scheme, prevailing at that relevant time stipulated the exporter to use the replenished gold from the nominated agencies in the manufacture of the goods to be exported. Government thus finds that the respondent has availed undue benefit viz (i) availed the benefit of Cenvat credit of the duty paid inputs (Gold bar) and utilized the same for payment of the exported goods, then claimed the rebate of the duty paid on their exported goods and (ii) Claimed replenishment against the same exported goods and sold them in DTA (without paying Central excise duty) instead of using the procured inputs for manufacture of the goods to be exported or cleared on payment of duty.

18. Government finds that in the instant case respondent company attempted to use double benefit going against the policy provisions, against the undertaking submitted, and against the Judgements of the Courts in this regard. The respondent has attempted to misuse the two schemes of export promotion of Government of India against same export.

19. In view of the above, Government sets aside Order No AHM-EXCUS-001-APP-418-435-2017-18 dated 19-03-2018 passed by the Commissioner (Appeals), Central Tax, Ahmedabad.

20. The Revision Application filed by the department is allowed.

29/11/22

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

ORDER No. 1157-1175/2022-CX (WZ) /ASRA/Mumbai dated 29.11.2022

To

The Commissioner,
CGST, Ahmedabad-South,
Central GST Bhawan,
Ambawadi, Ahmedabad-380015.

Copy to:

1. M/s Sai Vishwas Polymers, 316, Pratibha Plus Complex, Opposite Narol Gam, Narol-Asiali Highway, Ahmedabad-382405.
2. The Commissioner (Appeals), Central Tax, Ahmedabad, 7th Floor, Central GST Bhavan, Ambawadi, Ahmedabad-380015.
3. The Assistant Commissioner, Central Tax, Ahmedabad-South, 5th Floor, Central GST Bhawan, Ambawadi, Ahmedabad-380015
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board