

SPEED POST



F.No. 198/59/2018-R.A.  
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... 28/5/21..

Order No. 116/2021-CX dated 27-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/241/2018-19 dated 02.08.2018 passed by the Commissioner (Appeals), CGST, Meerut.

Applicants : The Commissioner of CGST, Ghaziabad.

Respondent : M/s. Green Dot Electric Ltd., Ghaziabad.

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**ORDER**

A revision application no. 198/59/2018-RA dated 05.11.2018 has been filed by the Commissioner of CGST, Ghaziabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. GZB/EXCUS/000/APPL-MRT/241/2018-19 dated 02.08.2018 passed by the Commissioner (Appeals), CGST, Meerut whereby the appeal filed by M/s. Green Dot Electric Ltd., Ghaziabad (hereinafter referred to as the Respondent) against the Order-in-Original No. 56/REF/AC/GZB-III/16-17 dated 17.05.2017 has been allowed.

2. Briefly stated, the respondent filed rebate claim, under Rule 18 of the Central Excise Rules, 2002, in respect of the Excise Duty amounting to Rs. 4,09,274/- paid on the export of excisable goods, vide ARE-1 No. 02/2014-15 dated 05.08.2014. The goods were exported under claim of drawback vide Shipping Bill No. 4379835 dated 12.08.2014. The rebate claim was rejected by the original authority vide Order-in-Original dated 28.11.2014 on the grounds that the respondent had availed double benefit of input duty by availing CENVAT credit as well as by taking drawback at higher rate. Upon appeal filed by the Respondent herein, the Commissioner (Appeals) vide Order-in-Appeal No. 03.11.2015 set aside the Order-in-Original dated 28.11.2014 as it was passed in the violation of principles of natural justice and remitted the matter to the original authority for de-novo consideration in accordance with the principles of natural justice. Pursuant thereto, the aforesaid Order-in-Original dated 17.05.2017 came to be passed wherein the rebate claim was rejected on the grounds of double benefit. In appeal filed by the respondent, the Commissioner (Appeals) observed that the subject claim for rebate was not for input stage rebate of wherein it is specifically provided that the exporter cannot claim input stage rebate if exporter chooses to avail duty drawback or input CENVAT credit. Commissioner (Appeals) also observed that the respondent had, vide letter dated 20.03.2015, specifically requested Customs Authority not to sanction the drawback.

In this light, the appeal filed by the respondent has been allowed with consequential relief.

3. The revision application has been filed mainly on the grounds that the respondents had availed CENVAT credit on the inputs and were therefore eligible to claim lower rate of drawback i.e. @ 1.7% of the FOB value whereas they have claimed higher rate i.e. @ 4.7%; and that the availment of drawback at higher rate and the rebate of duty cannot be sanctioned simultaneously as it leads to double benefit to the exporter.

4. Personal hearings in the matter were fixed on 09.04.2021, 26.04.2021, 10.05.2021 & 27.05.2021. No one appeared for the applicant as well as for the respondent. No request for adjournment has also been received. Since sufficient opportunities have been granted, the matter is taken up for decision based on records.

5.1 The Government has carefully examined the matter. It is observed that the issue involved is squarely covered by the judgment of the Hon'ble High Court of Madras, in the case of M/s. Raghav Industries {2016 (334) ELT 584 (Mad.)}, where it has been held that:

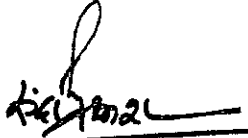
*"While sanctioning rebate, the export goods, being one and the same, the benefits availed by the applicant on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the applicant had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit."*

5.2 The judgment in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s. Kadri Mills (CBE) Ltd. {2016 (334) ELT 642 (Mad.)}.

5.3 The Government has also consistently held that allowing drawback on both Customs and Central Excise portion and rebate of duty on final product will lead to double benefit. Orders issued in the case of Sabre International Ltd. {2012 (280) ELT 575 (GOI)}, Order No. 4394-97/2018-CX dated 13.07.2018 in the case of M/s. Anshupati Textiles, Order No. 69-96/2019-CX dated 09.10.2019 in the case of M/s. Maharaja Shree Umaid Mills Ltd. & Order No. 05-17/2021-CX dated 28.01.2021 in the case of sister entities of M/s. Vardhman Textiles Ltd. refer.

5.4 The Commissioner (Appeals) has heavily relied upon the letter dated 20.03.2015 of the Respondent addressed to the Customs Authorities requesting that the drawback may not be sanctioned, to hold that sanction of drawback erroneously cannot be a basis for rejecting the rebate claim. However, the Government observes that, in the instant case, the rebate claim first came to be rejected by the original authority, vide Order dated 28.11.2014 on the grounds of double benefit. Though this order dated 28.11.2014, subsequently, came to be set aside for adjudication afresh after following the principles of natural justice, the respondent was very well aware of the grounds of rejection. It is also noted that, in terms of Section 75A of the Customs Act, 1962, a claim for drawback has to be sanctioned within 01 month, failing which interest is required to be paid. It is, thus, apparent that the Respondents writing to the Customs authority on 20.03.2015, much after the exports took place under the claim of drawback, with a request to not sanction the drawback was nothing but an afterthought to support their claim for rebate of excise duty paid on the exported goods. As such, the Commissioner (Appeals) erred in relying upon this letter dated 20.03.2015 to hold in favour of the Respondent.

6. In view of the above, the impugned Order-in-Appeal is set aside and the revision application is allowed.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST,  
C.G.O. Complex-II, Kamla Nehru Nagar,  
Ghaziabad- 201 002.

G.O.I. Order No. 116 /21-CX dated 27-5-2021

Copy to: -

1. M/s. Green Dot Electric Ltd., 59/1/7, Site-IV, Industrial Area, Sahibabad, Ghaziabad- 201 010.
2. Commissioner (Appeals), CGST, Meerut.
3. P.S. to A.S. (Revision Application).
4. Guard File.

5. Spare Copy

ATTESTED



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