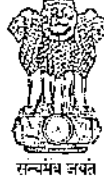


SPEED POST
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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.195/128/WZ/2018-RA/7463

Date of Issue: 12.12.2022

ORDER NO. 1189/2022-CX (WZ) /ASRA/MUMBAI DATED 08.12.2022 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 : M/s General Mills India Pvt. Limited,
Plot No.F-11, MIDC, Malegaon, Sinnar,
Nashik.
- Respondent : Commissioner of Central Excise, Customs & Service Tax,
Nashik Commissionerate.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
bearing No. NSK-EXCUS-000-APPL-365-17-18 dated
19.03.2018, passed by the Commissioner (Appeals), CGST
& Central Excise, Nashik.

ORDER

The subject Revision Application has been filed by M/s General Mills India Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 19.03.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Nashik. The said Order-in-Appeal disposed of an appeal filed by the applicant against the Order-in-Original dated 16.02.2016 passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Sinnar Division, Nashik - II, which in turn partly rejected the rebate claims filed by the applicant.

2. Brief facts of the case are that the applicant held Central Excise registration and was engaged in the manufacture and export of products falling under Chapter 19 of the Central Excise Tariff Act, 1985 (CETA). They filed rebate claims for exports covered by six ARE-1s totaling to Rs.3,80,122/-. A Show Cause Notice dated 15.10.2015 was issued to them seeking to reject claims pertaining to two ARE-1s involving an amount of Rs.1,72,065/-, as it was found that the applicant had simultaneously availed duty Drawback at the higher rate and also availed Cenvat credit which was utilized to pay Central Excise duty on the finished goods, of which they had claimed rebate. The said Show Cause Notice was adjudicated by the original authority vide Order-in-Original dated 16.02.2016 wherein the rebate claims pertaining to the said two ARE-1s were rejected. Apart from this, the original authority also rejected an additional amount of Rs.7,086/- for the reason that Shipping Bills filed them indicated that they had claimed refund of Service Tax of the same amount and no declaration was filed by them to the effect that they had not availed Cenvat credit of such Service Tax. Thus, the original authority totally rejected an amount of Rs.1,79,151/- from the amount of rebate claimed and sanctioned the rest. Aggrieved, the applicant filed appeal with the Commissioner (Appeals) who vide the impugned Order-in-Appeal upheld the Order of the original authority.

3. Aggrieved, the applicant has filed the subject Revision Application against the impugned Order-in-Appeal dated 19.03.2018. The grounds on which the same have been preferred are as under:-

(a) It was submitted that they had been availing the CENVAT credit facility and accepted that their Custom House Agent had inadvertently claimed Drawback at 1% of the FOB value instead of 0.30%, assuming that the export consisted exclusively of flour (Atta); that they had no intention of claiming duty drawback at 1% of the FOB value; that they are a regular exporter and had been availing duty drawback on Customs duty component at rate prescribed under column "B" of the notification no.98/2013-Customs (NT) for all other similar exports for which the rebate claims have been filed;

(b) They were more benefited by claiming rebate on the Excise Component separately under Rule 18 of Central Excise Rules, 2002 rather than claiming duty drawback on excise component;

(c) The Commissioner (Appeals) had incorrectly referred to the duty drawback rate when CENVAT facility has been availed under column "B" of the said notification as 0.15% of the FOB value; that the corresponding rate under column "B" of the said notification for the period under which the relevant Shipping Bills were filed was 0.30% of the FOB value under the prevailing Notification No.98 of 2013-Customs (NT);

(d) That they proved their bonafide intention by offering reversal of excess duty drawback received along with interest; and that they were in the process of amending the relevant Shipping Bills; that they had no intention of availing simultaneous benefit under column 'A' of the duty drawback schedule and rebate under Rule 18 of Central Excise Rules, 2002;

(e) That they may not be denied the benefit which is more beneficial to them, since it was for them to claim the rebate or the drawback; thus, there can be no legal bar on them claiming a benefit beneficial to them; and that they are more

benefited by claiming rebate on excise component separately under Rule 18 of Central Excise Rules, 2002 rather than claiming the notified duty drawback on excise plus Customs component, they prefer to file a rebate claim; they relied upon the decision of the Hon'ble Supreme Court of India in the case of CCE vs. Indian Petro Chemicals [1997 (92) ELT 13 (SC)] & others, in support of their claim; and that in view of the bonafide mistake they should be allowed to reverse the excess drawback claimed along with interest and the rebate claim should be allowed in toto;

(f) That the AC had incorrectly gone beyond the allegations made in the Show Cause Notice and denied the benefit of refund on the ground that they had claimed refund of service tax without filing a declaration of non-availment of CENVAT credit of service tax on the refund claimed; that the service tax refund is required to be allowed on this ground alone; that the AC had reversed the refund of service tax by a corresponding denial of the rebate of excise duty of the same value; that such reversal by offsetting two separate claims was without any legal backing; they relied upon the decision of the Hon'ble Supreme Court in the case of Caprihans India Ltd. vs. CCE [2015 (325) ELT 632 (SC)] wherein it was held that an order beyond or contrary to Show Cause Notice issued was not sustainable; they also relied upon the decision of the Gujarat High Court in the case of Commissioner vs. Apex Fluidomatics Limited [2015 (320) ELT A356 (Guj.)] wherein it was held that a show cause notice cannot be bridged by the orders of the adjudicating authority and the first appellate authority; that such orders, if beyond the facts contained in the show cause notice, are not sustainable; that in view of the above judicial precedents it was clear that the amount of refund of service tax denied is beyond the scope of the Show Cause Notice and the refund should therefore be allowed.

In view of the above submissions, it was prayed that their Revision Application be allowed and the impugned Order-in-Appeal be revised to the extent claimed by them and the rebate claimed be granted to them.

4. Personal hearing in the above case was held on 14.10.2022. Shri Arnab Roy, Advocate and Ms Vanshika Jain, Advocate appeared online on behalf of the applicant and submitted that the applicant had erroneously availed Drawback at higher rate, though they wanted to claim rebate of the Central Excise portion. They requested to allow rebate. They also submitted that they would be making additional submissions within two weeks.

5. Thereafter, Ms Vanshika Jain, Advocate vide email dated 01.11.2022 informed that the applicant had made payment towards reversal of the excess duty Drawback along with interest and forwarded a copy of letter dated 01.11.2022 of the applicant informing that they had paid the excess drawback availed amounting to Rs.21,844.90 along with interest of Rs.31,810.78. They forwarded copies of the Challans evidencing such payment and requested that their prayer be acceded to.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Order-in-Original and the impugned Order-in-Appeal.

7. Government finds that the applicant was denied rebate of the Central Excise duty paid by them as they had availed Drawback at the higher rate, which included the Central Excise duty component on the exported goods and was not limited to only the Customs duty component. Government finds that the applicant has admitted that they had erroneously claimed the same. Government notes that the applicant had submitted before the lower authorities that the disputed rebate claim be sanctioned, as they were ready to pay back the excess Drawback availed, however, the applicant having failed to do so, lead to the Commissioner (Appeals) upholding the Order of the original authority rejecting their rebate claims. Government notes that the applicant, during the course of these proceedings, has paid back the excess Drawback claimed by them along with interest and has also provided copies of the Challans, both dated 01.11.2022, vide which such payments were made.

8. Government finds that since the applicant has now paid back the excess Drawback along with appropriate interest, the grounds on which the rebate was denied to them in the first place ceases to exist. Government notes that it is a settled principle that an assessee has the liberty to opt for a scheme that is more beneficial to them, a view endorsed by the Hon'ble Supreme Court in the case of CCE, Baroda vs M/s Indian Petro Chemicals [1997 (92) ELT 13 (SC)]. Government also finds that in this case the applicant has chosen to avail rebate of Central Excise duty paid by them as against the option of availing a higher rate of Drawback. Given the above facts, Government finds that the applicant will now be eligible to the rebate claimed by them, subject to verification of the quantum of Drawback and the interest paid by them and accordingly holds so.

9. As regards, the issue of the original authority rejecting an additional amount of Rs.7,086/-, Government finds that the Show Cause Notice dated 15.10.2015 was limited to seeking rejection of the above discussed amount of Rs.1,72,065/- and apart from this charge, no other deficiency was pointed out by the said Show Cause Notice. Government finds that the Commissioner (Appeals) has erred in holding that the entire rebate claim was under challenge and hence the original authority was correct in rejecting an amount of Rs.7,086/- in addition to the amount sought to be rejected by the Show Cause Notice. Government finds that it is a well settled principle that an adjudicating authority cannot traverse beyond the Show Cause Notice. It has been consistently held that the Show Cause Notice is the foundation on which charges are framed and any order passed beyond the Show Cause Notice is not legally sustainable. Government finds support in the decision of the Hon'ble Supreme Court in the case of CCE, Surat vs M/s Sun Pharmaceuticals Industries Limited [2007 (213) ELT 487 (SC)] wherein, in a similar case, the Hon'ble Court had ruled in favor of the assessee. Thus, Government finds the decision of the Commissioner (Appeals) to uphold the order of the original authority rejecting the additional amount of Rs.7,086/- to be incorrect and sets the same aside.

10. In view of the above, Government remands the case back to the original authority for sanctioning the rebate claimed by the applicant, subject to verification of the quantum of Drawback and interest paid by them. The applicant will also be eligible to the rebate of Rs.7,086/- which was incorrectly rejected by the original authority. Sufficient opportunity should be provided to the applicant to submit the necessary documents.

11. The Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 1129/2022-CX (WZ) /ASRA/Mumbai dated 02.12.2022

To,

M/s General Mills India Pvt. Limited,
Plot No.F-11, MIDC, Malegaon, Sinnar,
Nashik.

Copy to:

1. Commissioner of CGST & Central Excise, Nashik Commissionerate, GST Bhawan, Plot No.155, P-34, NH Jaishtha & Vaishaka, Trimurti Chowk, CIDCO, Nashik - 422008.
2. Commissioner (Appeals), CGST & Central Excise, Nashik, GST Bhawan, Plot No.155, P-34, NH Jaishtha & Vaishaka, Trimurti Chowk, CIDCO, Nashik - 422008.
3. M/s Vaish Associates Advocates, 106, Peninsula Centre (Behind Piramal Chambers - Income Tax Office) Dr. S.S. Rao Road, Parel, Mumbai 400 012.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board