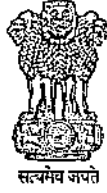


REGISTERED SPEED POST



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, Cuff Parade,  
Mumbai- 400 005

F. NO. 195/280/14-RA/5540

Date of Issue: 27.11.19

ORDER NO. 136/2019/CX (WZ) /ASRA/MUMBAI DATED 30.10.2019  
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE  
ACT, 1944.

Applicant : M/s Parikh Packaging Pvt. Ltd., Ahmedabad.

Respondent : Commissioner of Central Excise, Ahmedabad -II.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-  
002-APP-081-14-15 dated 23.06.2014 passed by the  
Commissioner (Appeals-I) of Central Excise, Ahmedabad.

## ORDER

This revision application has been filed by the applicant M/s Parikh Packaging Pvt. Ltd., Ahmedabad, (hereinafter referred to as 'the applicant') against Order-in-Appeal No. AHM-EXCUS-002-APP-081-14-15 dated 23.06.2014 passed by the Commissioner (Appeals-I) of Central Excise, Ahmedabad

2. Brief facts of the case are that the applicant had exported the final products vide ARE-1 No.125 dated 04-10-2012 and ARE-1 209 dated : 08-02-2013 through Merchant exporter M/s Tit-Bit Foods Pvt. Ltd. Mumbai under the claim for rebate of duty of Excise paid at the time of clearance of goods from the factory premises under Notification No: 19/2004-CE-(NT) dated : 06-09-2004 issued under Rule 18 of the Central Excise Rules 2002. On receipt of export documents duly endorsed by the Custom Authority of Port of Export, from Merchant Exporter, the applicant filed the claim of rebate of Rs. 4,09,086/- (Rs. 85,290/-and Rs. 3,23,796/-) with Competent Authority of Central Excise. On Scrutiny of the claim, query memo was issued to the applicant wherein the discrepancy observed was communicated that:

*"Shipping Bill shows that the drawback has been availed in Scheme –A (without availing Cenvat Credit) however, ARE-1 shows that the assessee is availing Cenvat Credit under Cenvat Credit Rules, 2004".*

The claim was also forwarded to the jurisdictional Range Supdt. for verification-who-reported that:

*"The Merchant exporter M/s Tit-Bit Foods (India) Pvt.Ltd., Mumbai is availing drawback under 'DBK Schedule A i.e. Drawback rate when Cenvat Facility is not availed'. The manufacturer exporter has availed Cenvat Credit of raw materials and input services as declared by them at Sr.No.3 of the declaration in ARE-1s. Therefore, when the Merchant exporter is availing drawback of excise portion also, the manufacturer is not eligible for rebate claim of Central Excise duty."*

3. In view of the above the applicant vide Notice dated 17.10.2013 was called upon to Show cause as to why the rebate claim of Rs. 3,23,796/- and Rs. 85,290/- in respect of ARE-1 209 dated 08-02-2013 and ARE-1 No.125 dated 04-10-2012 respectively, filed by them should not be rejected under the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004 and CBEC's Central Excise Manual of supplementary Instruction, 2005 read with Section 11 B of the Central Excise Act, 1944. Vide Order in Original No. 5697 to 5698/REBATE/2013 DATED 29.10.2013 rejected the rebate claim totally amounting to Rs. 4,09,086/- (Rs. 3,23,796/- and Rs. 85,290/-) filed by the applicant.

4. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioners of Central Excise (Appeals), who vide Order-in-Appeal No. AHM-EXCUS-002-APP-081-14-15 dated 23.06.2014 upheld the Order-in-Original and dismissed the appeal filed by the applicant.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Central Government mainly on the following grounds that :

5.1 the Merchant exporter vide letter dated 29.10.2013 clarified that due to typographical error Scheme A was mentioned in Shipping Bill instead of Scheme B'

5.2. for amendment in Shipping Bill under Section 149 of the Customs Act, 1962, a request to Customs Authorities is made by Merchant exporter on 10.12.2013 which has been considered by the Customs Authorities and they have issued CERTIFICATE OF AMENDMENT dated 17.07.2014; however, Appellate Authority has dismissed the appeal before submission of the above Certificate by them and therefore the same is now submitted before Government of India for kind acceptance,

5.3 the Appellate Authority had concluded that the manufacturer exporter is not eligible for rebate once the drawback has been claimed in scheme 'A'. However, now, as the Customs Authorities has made an amendment in respect of the above Shipping Bill in terms of

provisions of the Section 149 of the Customs Act, 1962, they pray for consequential relief,

5.4 they have neither contravened any of the conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 nor have they violated any of the explanations provided under para 8.3 and 8.4 of Chapter 8 of CBEC Central Excise Manuals and therefore, rebate cannot be rejected,

5.5. in the present case the department has not disputed the Export of goods and receipt of export realization and therefore whatsoever duty debited by the manufacturer is admissible as rebate'

6. A Personal hearing in this case was held on 30.08.2019. Shri Vinay B. Karnik, duly authorised by the applicant appeared for the hearing and reiterated the submission filed through Revision Application. Also filed written submissions on the date of hearing wherein it was submitted that their rebate claims were rejected by the Adjudicating authority and later on by Lower authority on the only ground that Merchant exporter has claimed drawback under DBK Schedule "A" i.e. Drawback rate when cenvat facility is not availed, instead of it was to claim under DBK Schedule "B". It was further submitted that Certificate of Amendment in F.No. S/6-ARSB-609/2014-15/P CON(X) dated 17-07-2014 in respect of Shipping Bill No. 2050869 dtd.05-10-2012 and Shipping Bill No. 4001450 dated 15-02-2013, has been issued by the Custom Authority under Section 149 of Customs Act, 1962, which shows amendment "From DBK SR.No. 39209937 A to DBK SR.NO 39209937 B". Accordingly, it was pleaded to set aside the impugned order on merits as well as on the ground discussed in the grounds of appeal with consequential relief and whatsoever duty debited by them was admissible as rebate.

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

8. Government notes that the impugned claims of rebate in the above cases were rejected on the same single ground that the merchant exporter had claimed

drawback under category "A" of relevant entry Drawback schedule of All Industry Rate. Category "A" of said schedule allows drawback when cenvat facility has not been availed. But in the relevant ARE-1s it had been declared by the manufacturer exporter (the applicant) that they had availed Cenvat of raw material and input service used in the manufacture of exported goods. Further, the declaration of goods under 'A' Category of DBK schedule were got verified from the concerned Range office. It was found that the applicant were very much availing Cenvat Credit facility. Therefore, the lower authorities have rejected the above rebate claims. It is further noted that, the Merchant Exporter vide letter dated 29.10.2013 addressed to the original authority stated that mentioning scheme "A" for the purpose of All India Industry Rates in the relevant Shipping Bills was typographical error and Merchant exporter had requested/applied to Customs Authorities on 10.12.2013 for amendment of their Shipping Bills. Government further observes that the applicant could not produce amended Shipping Bills at the time of personal hearing before Commissioner (Appeals) which propelled him to hold that manufacturer exporter (applicant) is not eligible for rebate once the drawback has been claimed by the Merchant exporter under Scheme A.

9. Government notes that the applicant has now produced CERTIFICATE OF AMENDMENT dated 17-07-2014 (Annexure I to Revision Application) issued by the Assistant Commissioner of Customs, Export, JNCH, Nhava Sheva on the request of M/s Tit Bit Foods (India) Pvt. Ltd.(Merchant Exporter) which is showing amongst others, Shipping Bill No. 2050869 dtd.05-10-2012 and Shipping Bill No. 4001450 dated 15-02-2013 vide which the impugned goods were exported in the instant case, to have been amended from to DBK SR NO. 39209937 A to DBK SR NO. 39209937 B. Government observes that this amendment in the shipping bill is covered under the provision of Section 149 of Customs Act, 1962, which is reproduced below :-

*Save as otherwise provided in Sections 30 and 41, the proper officer may, in his discretion, authorize any document, after it has been presented in the Custom House to be amended :*

*Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.*

From the reading of the Section 149 of Customs Act, 1962, it can be seen that the amendment of shipping bill is permitted in case such amendment is on the basis of documentary evidence which is in existence at the time of export of the goods. In the present case, there is no dispute about nature of the goods, the value of the goods and other information, as it was appearing in the documents such as ARE-1, shipping bill and other related documents. On the basis of such documents the goods have been allowed to be exported.

10. In view of the Certificate of Amendment produced by the applicant it is proved that the Merchant Exporter had been availing their drawback claims under relevant All Industry Rate Drawback schedule entry of category 'B' i.e. under column "Drawback when Cenvat Facility has been availed" and therefore, the Merchant Exporter is eligible only for the Customs portion of duty drawback.

11. Moreover, Government observes that in terms of condition No. 6 of Notification No. 92 / 2012 - Customs (N.T.) dated the 4th October, 2012 which determined the rates of drawback as specified in the Schedule annexed thereto, reads as under:

*The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not.*

A cursory glance at Duty Drawback schedule for the year 2012-13 (relevant year) reveals as under :

## SCHEDULE

Tariff Item	Description of goods	Unit	A		B	
			Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback Rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
<b>CHAPTER – 39</b>						
<b>PLASTICS AND ARTICLES THEREOF</b>						
39209937	Printed flexible packaging material of one layer or printed or unprinted adhesive laminated /extrusion laminated flexible packaging material of multilayers of relevant substrate with or without hotmel in the form of rolls/ strips/ sheets/ labels/wrappers or in pouch form	Kg	4.4%	10.6	4.4%	10.6

As the rate indicated at column No. 4 and 6 of the Drawback Schedule in respect of the goods exported (column No.2 above) by the Merchant exporter being same at 4.4% the same pertains to only Customs component and is available irrespective of whether the exporter has availed of Cenvat or not.

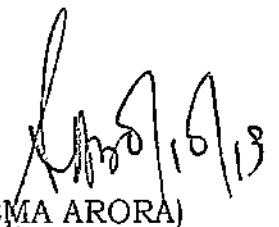
12. In view of the foregoing discussion, Government holds that the Merchant Exporter is availing Drawback under Scheme 'B', in respect of Shipping Bill No. 2050869 dtd. 05-10-2012 and Shipping Bill No. 4001450 dated 15-02-2013 against Chapter Sub-heading 39209937, as confirmed by the Assistant

Commissioner of Customs, Export, JNCH, Nhava Sheva vide 'Certificate of Amendment' issued under F.No. S/6-ARSB-609/2014-15/P CON(X) dated 17-07-2014, thus making him eligible only for the Customs portion of duty drawback and as a result, the applicant, i.e. manufacturer exporter is eligible for the rebate of Central Excise duty paid on goods viz. "Printed Laminated Packaging Film in Roll/ Pouch Form" cleared for export under Drawback scheme.

13. In view of above facts and circumstances, Government sets aside the order of lower authorities and remands the matter back to the original authority for sanctioning rebate to the applicant, if the claims are otherwise in order.

14. Revision application is disposed of in the above terms.

15. So ordered.

  
 (SEEMA ARORA)  
 Principal Commissioner & Ex-Officio  
 Additional Secretary to Government of India

ORDER No. 136 /2019-CX (WZ) /ASRA/Mumbai Dated 30.10.2019

To,

M/s Parikh Packaging Pvt. Ltd.,  
 Sarkhej Bavla Highway, Vill: Moraiya,  
 Tal : Sanand, Ahmedabad-382213  
 Gujarat.

Copy to: \_\_\_\_\_

1. The Commissioner of CGST, Ahmedabad North, Custom House, 1<sup>st</sup> Floor, Navrangpura, Ahmedabad-380 009.
2. The Commissioner of CGST, (Appeals) Central Exise Bhavan, Ambawadi, Ahmedabad-380015.
3. Assistant Commissioner, Sanand Division, 2<sup>nd</sup> Floor, Gokuldham Arcade, Sarkhej Sanand Road, Ahmedabad-382210.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.