F. No. 195/22/WZ/2019-RA

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GOVERNMENT OF INDIA
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Mumbai- 400 005

F.No. 195/22/WZ/2019-RA 1662 **Date of Issue:** २१ **.03.2023**

ORDER NO. 137/2023-CX (WZ) /ASRA/MUMBAI DATED 17 .03.2023 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s Asarwa Mills (A Div. of Bengal Tea & Fabrics Ltd), Asarwa Road, Ahmedabad.

Respondent: The Commissioner, CGST, Ahmedabad-North

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-002-APP-114-18-19 dated 02.11.2018 [Date of issue: 12.11.2018] passed by Commissioner (Appeals) CGST, Appeal Commissionerate, Ahmedabad.

ORDER

The Revision Application is filed by M/s Asarwa Mills (A Div. of Bengal Tea & Fabrics Ltd), Asarwa Road, Ahmedabad (hereinafter referred to as the 'Applicant') against the Order-In-Appeal No. AHM-EXCUS-002-APP-114-18-19 dated 02.11.2018 [Date of issue: 12.11.2018] passed by Commissioner (Appeals) CGST, Appeal Commissionerate, Ahmedabad.

2. The Applicant is a manufacturer of goods falling under Chapter 52 of CETA, 1985 and had filed 3 rebate claims amounting to Rs. 7,67,490/- in respect of Central Excise duty paid on goods falling under Chapter 52 of the CETA, 1985, under the provisions of Rule 18 of the Central Excise Rules, 2002, read with Notification No. 19/2004-CE(NT) dated 06.09.2004 and exported under Drawback schemes by a merchant exporter. Scrutiny of documents submitted with the rebate claims revealed that the merchant exporter had also claimed duty drawback under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, at higher rate of drawback. The higher rate of drawback is applicable when Cenvat facility has not been availed, whereas, Applicant had availed the facility of Cenvat credit.

3. The rebate claims were rejected by the Original Adjudicating Authority i.e Assistant Commissioner, GST, Div-II, Naroda Road, Ahmedabad North vide Order-in-Original No. MP/06/REB/AC/2018/KDB dated 07.05.2018 on the grounds that the Applicant had availed double benefit on the same exported goods by their merchant exporter claiming drawback at higher rate and the Applicant claiming rebate of duty paid on the same goods

4. Aggrieved by the impugned Order-in-Original, the Applicant filed an appeal before the Appellate Authority i.e Commissioner (Appeals) CGST, Appeal Commissionerate, Ahmedabad, who vide Order-in-Appeal No.AHM-EXCUS-002-APP-114-18-19 dated 02.11.2018 [Date of issue: 12.11.2018] rejected the Appeal, relying on the judgement of the Hon'ble High Court of Bombay in the case of CCE, Nagpur vs. Indorama Textiles Ltd [2006(200)E.L.T 3 (BOM)] and the decision of the Hon'ble Madras High Court in the case of Raghav Industries Ltd vs. UOI [2016(334) E.L.T 584(Mad)].

5. Aggrieved by the order of the Appellate Authority, the Applicant has filed the Revision Application on the grounds that they had not claimed duty drawback and it was the Merchant exporter who had claimed the duty drawback and that nowhere in the judgements of Hon'ble High Courts of Bombay and Madras, relied by the Appellate Authority, has it been held that manufacturer exporting goods through Merchant supporters cannot claim rebate where Merchant Exporters have claimed duty draw back and that they were only manufacturers and not exporters and the said judgments of Hon'ble Bombay High Court & Madras High Court were not applicable to the instant case.

6. Personal Hearing in the case was scheduled for 14.12.2022 or 11.01.2023. Shri Rajkumar Bohra, Vice President (Finance) of the Applicant appeared for the personal hearing on 14.12.2022 and gave a written submission in the matter. He further submitted that they had taken credit of only capital goods and used the same for clearing duty paid goods for export and requested to allow the claim.

7. In the written submissions, the Applicant has reiterated the submissions and has stated that the AA has not dealt with the decisions relied upon by them especially order bearing reference [2007(217) E.L.T. 298(GOI)] and [2013(291) E.L.T. 189(Mad)] which they stated are specifically applicable to the case.

8. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8.1. Government notes that the Applicant who is a manufacturer, had filed rebate claim amounting to Rs. 7,67,490/- for duty paid through Cenvat credit available on capital goods and the merchant exporter had claimed duty drawback of the in respect of input duty fixed under Drawback Rules. The rebate claim was rejected on the grounds that double benefit was availed on the same exported goods with the merchant exporter claiming duty drawback at the higher rate and the Applicant claiming rebate of duty paid on the same goods under Rule 18 of Central Excise Rules, 2002 which were cleared by them on payment of Central Excise Duty debited through Cenvat Credit availed on Capital Goods.

8.2. The issue to be decided in this case is that whether the Applicant is eligible for rebate of duty paid from the accumulated Cenvat credit account of Capital goods on

the export goods when the merchant exporter claimed drawback at higher rate thereon. Department rejected the rebate claim on the ground that rebate is not allowed when drawback is claimed on inputs.

9. Government observes that Applicant has claimed that they have not taken Cenvat credit on the inputs utilized in the manufacture of their finished goods which is exported by them on payment of Central Excise Duty. However, in this case the finished goods are exported by the Applicant by paying duty from accumulated Cenvat credit on capital goods in order to avail benefit of rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004.

10. For better appreciation of the dispute, the relevant rules of the Customs and Central Excise Duties and Service Tax Drawback Rules,1995 are reproduced below

Drawback has been defined in Rule 2 (a) of the said Rules 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".*

10.1. The said definition makes it clear that drawback is rebate of duty chargeable on inputs used in the manufacture of exported goods. The 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. The Applicant is now claiming rebate of duty paid on exported goods after the merchant exporter having availed benefit of duty drawback of Customs and Central Excise portion in respect said exported goods.

10.2. The Government also finds that the provisions of Rule 18 of Central Excise Rules, 2002 are interpreted by Hon'ble High Court of Bombay at Nagpur Bench in the case of CCE, Nagpur Vs. Indorama Textiles Ltd., [2006 (200) ELT 3 (Bom.)] wherein it was held that rebate provided under Rule 18 of Central Excise Rules, 2002 is only on duty paid at one of the stages i.e. either on excisable goods or on materials used in

manufacture or processing of such goods. Consequently, the exporter is not entitled to claim duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage. The tenets of said judgement would be guiding principle while processing rebate claim under Rule 18 of Central Excise Rules, 2002.

10.3. In the instant case, the Applicant has claimed rebate of duty paid on exported goods after the benefit of duty drawback of central excise in respect of the said exported goods was availed by the merchant exporter. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and therefore allowing rebate of duty on exported goods will amount to allowing both types of rebates of duty at input stage as well as finished goods stage which will be contrary to the said judgement and provisions of Rule 18 of the Central Excise Rules, 2002. Since the merchant exporter has already availed the central excise portion of duty drawback, the rebate of duty paid on finished goods cannot be held admissible. There is no bar on availing rebate of duty on goods exported, if the duty is paid through Cenvat credit, provided double benefit in form of higher rate of duty drawback and rebate has not been availed

11.1. Government notes that the Applicant has also violated the conditions of Rule 12(1) (a) (ii) of the Drawback Rules, 1995 by availing of cenvat credit on the inputs, drawback of both the excise and customs portion and also rebate of goods exported. Rule 12 (1) (a) (ii) of the said Rules states as under:

"(ii) *in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities:"*

11.2. Since the Applicant has already availed said duty drawback in violation of said condition, allowing rebate of duty paid on exported goods will amount to double benefit, which is not permissible under the scheme of duty Drawback as well as rebate of duty. CBEC has also clarified in its Circular No. 83/2000-Cus dated 16.10.2000 that there is no double benefit available to manufacturer when only Customs portion

of All Industry Rate of drawback is claimed. The harmonious and combined reading of statutory provisions of Drawback and rebate scheme envisage that double benefit is not permissible. Since input stage rebate of duty in the form of duty drawback of excise portion has already been availed by them and extending another benefit of rebate of duty paid on exported goods will amount to double benefit. Also in view of the position that drawback of excise portion has already been availed, the rebate is not admissible in light of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which state that no separate claim for rebate of duty under Central Excise Rules 2002 will be made in such a situation.

11.3. Government also notes that condition 7 of the Notification No. 131/2016(Customs) (N.T.) dated 30.11.2016 (applicable notification for rates of drawback in the instant case) reads as follows:

'(6) The figures shown in the said Schedule in columns (4) and (5) refer to the total drawback (Customs, Central Excise and Service Tax component put together) allowable and those appearing in columns (6) and (7) refer to the drawback allowable under the Customs component. The difference between the columns (4) and (6) refers to the Central Excise and Service Tax component of drawback. If the rate indicated is the same in columns (4) and (6), 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.'

In the instant case, it is evident that drawback has been claimed at the rates prescribed under Col. No 4 of the Schedule, as is apparent from the relevant Shipping bills

11.4. Government also notes that though the Applicant has stated that no cenvat credit of input has been availed by them, it is an undisputed fact that the Applicant has paid the duty on the goods exported by debit to the cenvat credit availed on capital goods. Thus, as the merchant exporter has availed total drawback (customs, central excise and service tax component put together) and the Applicant has also paid duty through cenvat credit availed on capital goods, the Applicant has availed of double benefit and allowing rebate claimed would amount to violation of Rule 18 of the Central Excise Rules. Government opines that the Applicant at best would be eligible

only for the drawback allowable under the customs component. However, in this case, the Applicant has availed input stage rebate of duty in the form of higher duty drawback comprising of Customs, Central Excise and Service Tax portion, and also cenvat credit on inputs, another benefit of rebate of duty paid on exported goods will definitely amount to double benefit.

12. In view of above circumstances, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same to the extent that the rebate claim of duty paid on exported goods is not admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004, when the Applicant has already availed duty drawback of both the Customs and Excise portion in respect of exported goods. Government also observes that the amount debited in Cenvat Credit of Capital Goods being a voluntary deposit is allowed to be re-credited in their Cenvat credit account. The impugned Order-in-Appeal No.AHM-EXCUS-002-APP-114-18-19 dated 02.11.2018 [Date of issue: 12.11.2018] passed by Commissioner (Appeals) CGST, Appeal Commissionerate, Ahmedabad is modified to the extent.

13. The Revision application is disposed of on the above terms.

Shrawan 7/3/23

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

ORDER NO. 137/2023-CX (WZ) /ASRA/MUMBAI DATED 17 .03.2023

To,

M/s Asarwa Mills (A Div. of Bengal Tea & Fabrics Ltd),
Asarwa Road, Ahmedabad

Copy to:

1. The Commissioner of Central Goods & Service Tax, Ahmedabad North Commissionerate, Custom House, 1st Floor, Narangpura, Ahmedabad – 380 009.
2. The Commissioner of CGST, Appeals Commissionerate, Ahmedabad
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
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