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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, Cuff Parade,
Mumbai- 400 005

F. NO. 371/19/DBK/2012-RA / 267 Date of Issue: 12/02/20

ORDER NO. 166 /2020-CX (WZ) /ASRA/Mumbai DATED 03.02.2020 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 Kwality Polymers Pvt. Ltd., Thane.

Respondent : Commissioner of Central Excise, Mumbai-III.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/31/M-III/2012-13 dated 30.04.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

ORDER

This revision application has been filed by the applicant M/s Kwality Polymers Pvt. Ltd., Thane, (hereinafter referred to as 'the applicant') against Order-in-Appeal No. BC/31/M-III/2012-13 dated 30.04.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai-III.

2. Brief facts of the case are that the applicant had filed a rebate claim of Rs.1,72,541/-(Rupees One Lakh Seventy Two Thousand Five Hundred Forty One only) for the duty paid on export of their goods viz. Rubber Compund sheet under Rule 18 of Central Excise Rules, 2002. The Deputy Commissioner, Central Excise, Wagale-I Division, Mumbai-III vide Order in Original No.120/11-12 dated 19.12.2011 sanctioned the rebate claim on merits as the same was found in order.

3. In exercise of the powers conferred under sub- section (2) of Section 35 E of Central Excise Act, 1944, Commissioner of Central Excise, Mumbai-III reviewed the Order in Original No.120/11-12 dated 19.12.2011 and directed the Deputy Commissioner, Central Excise, Wagle-I Division, Mumbai-III to file an appeal before Commissioner of Central Excise (Appeals), Mumbai-III, mainly on the grounds that the applicant claimed rebate of duty paid on the exported goods when they had also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995 with an intent to avail undue benefits which are not legally admissible to them.

4. Commissioners of Central Excise (Appeals), Mumbai-III, vide Order-in-Appeal No. BC/31/M-III/2012-13 dated 30.04.2012 while allowing the appeal filed by the Deputy Commissioner, Central Excise, Wagale-I Division, Mumbai-III observed as under:-

> *5. I have gone through the facts of the case and records available in the file. The issue to be decided here is whether the appellants could avail the drawback portion of customs duty component along with the rebate of Excise duty paid in terms of provisions of Rule 18 of Central Excise Rules, 2002.*
>
> *6. In this regard I find that the Government has fixed the drawback rates vide Notification No 84/2010-Cus (N.T) dated 17.09.2010. In the schedule annexed thereto, drawback rates have been given differentiating between the rate of drawback where Cenvat credit was availed and where Cenvat credit was not availed.*

7. To verify the authenticity of the respondents claim, the respondents along-with their submissions have submitted Shipping Bill No. 9316599 dated 01.02.2011 but did not submit the concerned ARE 1. Hence, the respondents claim cannot be verified. Hon'ble Apex Court in the case of Shri Vivekanand Mills Ltd. reported at 1999(109)ELT 32(SC) held that , " the burden is on appellants (party) to affirmatively establish the facts claimed are true and in case, burden having not discharged, the contentions or arguments have-to be rejected".

5. Being aggrieved by the said Order in Appeal the applicant has filed present Revision Application mainly on the following grounds:-

5.1 In para 7 of the order-in-Appeal in question it is stated that as per Hon'ble Apex Court "the burden is on appellants (party) to affirmatively establish the facts claimed are true and in case, burden having not discharged, the contentions or arguments have to be rejected".

5.2 As per the above stated observation of the Hon'ble Apex Court it was the responsibility of the Deputy Commissioner of Central Excise, Wagle-I Dn., Mumbai - III to submit all the relevant documents & statements to support their contentions but they have not submitted them. In spite of this, the Commissioner of Central Excise (Appeals) has upheld the appeal in question stating that the respondents, have failed to submit copy of ARE-1.

5.3 Further as per circular No. 8/2003 CUS dtd. 17.02.2003 ARE-1 is required to confirm that CENVAT has not been availed by exporter when he claims duty drawback as applicable in case of non availment of CENVAT facility. We claimed duty drawback as applicable when CENVAT facility has been availed i.e. only custom portion of duty drawback rate. This can be confirmed from the last page of the shipping bill. Also custom portion of duty drawback rate is independent of CENVAT facility. Therefore in their case the submission of copy of ARE-1 Form by us was not at all necessary. The above mentioned facts clearly show that the Order-in Appeal in question was wrongly upheld in favour of the Revenue.

5.4 As per Rule 18 of Central Excise Rules 2002 when any excisable goods are exported the Excise duty paid at the time of clearance of such goods or excise duty paid on raw materials used in manufacture of such goods is refunded.

5.5 As per sub-rule 2 of rule 3 of CUSTOMS, CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 1995 in determining amount of rate of drawback the below mentioned factors are taken into account.

a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of the goods;
d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:
Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;
e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
(ea) the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.]
f) any other information which the Central Government may consider, relevant or useful for the purpose.

5.6 Duty drawback rates as per. Note No. 6 of custom notification No. 68/2011 Customs (NT) dtd. 22.09.2011 consists of two components. The said note is re-produced here below.

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.

5.7 The above mentioned note No. 6 and Sl. No. b) & (c) above, imply that in determining custom component under duty drawback rate the average quantity, value of imported materials & amount of duties paid on it are taken into account. Therefore claiming rebate of Excise Duty paid while clearing the finished goods for export as the claiming the custom component of duty drawback , rate does not amount to double benefit.

5.8 On this issue it is pertinent to place on record that in similar cases of their claim for both Drawback and Rebate the 0/0 of The Deputy Commissioner Central Excise, Wagle Div.I, Mumbai III has set aside his own Show Cause Notice vide SCN No.V/Rebate/18-260/11-12 dt.25.04.2012 after we put forth our arguments in the Personal Hearing on 15.05.2012 and informed

that Drawback claimed is for customs component. Further the claim for Rebate is towards excise duty paid on finished goods cleared for export and not for rebate of duties paid on inputs. Availing CENVAT of central excise duties paid on inputs does not amount to double benefit. Pursuant to the foregoing arguments their claim for Rebate has been cleared for payment.

5.9 The Commissioner of Central Excise (Appeals) Mumbai-III had in their earlier cases ruled in our favour in similar cases involving the same issue of duty drawback and rebate, although we had not submitted the Form ARE-1 pertaining to the export shipments. Copies of such Orders in Appeal are enclosed.

6. A personal hearing held on 17.10.2019 was attended by Shri H.G. Dharmadhikari, Advocate on behalf of the applicant. He reiterated the grounds of Revision Application and pleaded to set aside the Order in Appeal and to uphold Order in Original. The Shri H.G. Dharmadhikari, Advocate, also filed written submissions dated 28.10.2019 in the matter reiterating the grounds of Revision Application.

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

8. Government observes that the Commissioners of Central Excise (Appeals), Mumbai-III has allowed the appeal filed by the department against Order in Original No.120/11-12 dated 19.12.2011 sanctioning the rebate claim of Rs.1,72,541/-(Rupees One Lakh Seventy Two Thousand Five Hundred Forty One only) as the applicant M/s Kwality Polymers Pvt. Ltd. [respondent before Commissioner (Appeals)] failed to submit copy of concerned ARE-1 due to which their claim could not be verified.

9. Government observes that condition No. 6 of Notification No. 84/2010 - Customs (N.T.) dated 17.09.2010 which determined All Industry Rates of Duty Drawback, for the year 2010-11 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".*

Government further notes that the Original authority at para 6 of Order in Original No. R/20/2011-12 dated 19.12.2011 has given detailed observations that *"from the ARE-1, corresponding Shipping Bill, export invoices etc., the goods exported vis-à-vis the drawback claimed on the same, that the applicant had availed Drawback to the tune of 1% of the FOB Value and this rate of 1% drawback is in respect of only the duty of customs component as per para No. 6 of Notification No. 84/2010 - Customs (N.T.) dated 17.09.2010, therefore rebate of excise duty paid on such goods exported will not amount to double benefit"*. On perusal of Shipping bill vis-a-vis rates of drawback as specified in the Schedule annexed to Notification No. 84/2010 - Customs (N.T.) dated 17.09.2010, Government is in agreement with the findings of Original authority that the applicant have availed duty drawback of Customs portion only. As such the argument of department that allowing said rebate of duty when drawback of duty is availed will amount to double benefit, does not hold good and is not sustainable.

10. In view of above, Government does not find any infirmity in the Order in Original No. R/20/2011-12 dated 19.12.2011 passed by the Original authority and upholds the same and sets aside Order-in-Appeal No. BC/31/M-III/2012-13 dated 30.04.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

11. The revision application thus succeeds in the above terms.

12. So, ordered.

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

ORDER No. 166 /2020-CX (WZ) /ASRA/Mumbai Dated 03.02.2020

To,

M/s Kwality Polymers Pvt. Ltd..
Plot No. A -471, Road No. 28,
Wagle Industrial Estate,
Thane- 400604.

Copy to:

1. Commissioner of Central Goods & Service Tax, Thane,.Navprabhat Chambers, 4th Floor, Ranade Road, Dadar, Mumbai 400 028
2. The Commissioner of Central Goods & Service Tax (Appeals), 12th Floor, Lotus Info Centre, Near Parel Station (East), Mumbai 400 012.
3. The Deputy / Assistant Commissioner, of Central Goods & Service Tax, Division-VI, 2 nd Floor, New Central Excise Building, Wagle Industrial Estate, Thane(W)-400604 Tel: 022-25820235
4. Sr.P.S. to AS (RA),Mumbai.
5. Guard file.
6. Spare Copy.