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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue 09/1/13

ORDER NO. 17 /13-Cx DATED 08-01-2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed, Under Section 35 EE of The Central Excise Act, 1944 against The Order-In-Appeal No. 142 (CB) CE/JPR-II/2011 dt. 07-07-2011 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur-II

APPLICANT : M/s Iscon Surgicals, Jodhpur.

RESPONDENT : The Commissioner of Central Excise, Jaipur-II.

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ORDER

This Revision Application has been filed by M/s Iscon Surgicals, Jodhpur against the Order-in-Appeal 142 (CB) CE/JPR-II/2011 dt. 07-07-2011 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-II, in respect of Order-in-Original the Deputy Commissioner, Central Excise, Division-Jodhpur.

2. Brief facts of the case are that the Applicant is manufacturer and exporter of Pricon disposable Surgical products falling under Chapter 90 of the Central Excise Tariff Act, 1985. The applicant filed claims of rebate of duty paid on the finished goods exported under Rule 18 of the Central Excise Rules, 2002. The adjudicating authority rejected rebate claims on the ground that since applicant also availed the benefit of duty drawback (Customs as well as Central Excise) therefore, rebate under Rule 18 of the Central Excise Rules, 2002 was not admissible.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government mainly on following grounds :

4.1 The provision of Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004 and Notification No. 21/2004-C.E. (N.T.) dated 06.09.2004 makes it ample clear that there are two types of rebates allowed by the Government, both being separate and distinct, one being input stage and other being finished goods stage. The applicant have filed the rebate claim of duty paid on finished goods under the provisions of Notification No. 19/2004-C.E.(N.T.) dated 06.09.2004. Further, the definition of drawback given

in the Customs Central Excise Duties and Service Tax Drawback rules, 1995 makes it clear that the drawback is allowed only in respect of duty paid on any imported materials or excisable materials used in manufacture of export goods. On comparison of the provisions of rebate claim and drawback, it is ample clear that the drawback is allowed only on the input stage duties whereas rebate is allowed both on the input stage duties as well as finished goods stage duties. The applicant has claimed the drawback for "input stage duties" and rebate of duty paid on export goods in respect of "Finished goods stage duties".

4.2 Drawback is allowed under Rule 12(a)(ii) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This Rule is produced as follows:-

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

The analysis of this Rule makes it clear that the declaration to be given is regarding "the duty paid on containers, packing material and other material used in manufacture of export goods". In other words, the declaration to be given while claiming drawback, is regarding the input stage rebate, it does not says finished goods stage rebate. As such, the drawback is not allowed to be claimed alongwith rebate of inputs used in manufacture of export goods.

The language of Rule 12(1)(a)(ii) of Drawback Rules as produced here above, is plain and unambiguous. It is specifically stated therein that the rebate of input stage duties is not allowed alongwith drawback. Thus, denial of rebate claim of duty paid on export goods by suo moto including the finished goods stage duty in the provision which is simply meant for input stage duties, is not justified.

4.3 The simultaneous availment of input stage rebate and drawback is not allowed as further clarified in Circular No. 89/2003-Cus., dated 06.10.2003. This circular is regarding fixation of brand rates for drawback. It has been clarified therein that the drawback will not be allowed if an exporter avails the rebate facility in respect of the inputs/materials used in manufacture of the export goods. There is embargo on simultaneous availment of drawback & rebate of inputs/materials used in manufacture of export goods. This is not the case here. The applicant have not availed the rebate of input stage duties alongwith drawback. They have availed the rebate of "duty paid on finished goods" and there is no restriction on the same, there is only restriction on availment of rebate of duty paid on material used in the manufacture of export goods as also clarified in the above circular.

4.4 The Commissioner (Appeals) refers to the case of Commissioner of Central Excise, Nagpur Vs. Indorama Textiles Ltd. – 2006(200) ELT 3(Bom.) while denying the rebate claim. This decision pertains to rebate claims filed under Rule 18 of the Central Excise Rules, 2002 and in that cases the assessee had filed the rebate claims of both inputs used in the manufacture of the export goods as well as of the duty paid on export of these goods. At the outset, this is not the case of applicant here. They have not claimed the both type of rebates. Rather they have claimed drawback for input stage benefit and the rebate of duty paid on finished goods.

4.5 The applicant has also cited some case laws in favour of their contention

5. Personal hearing scheduled in this case on 07.12.2012. Nobody attended the hearing. Authorized representative of the applicant company vide letter dated 01-12-2012 requested to decide the case on merit. Nobody attended hearing on behalf of respondent department.

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

7. Government notes that the applicant in this case exported the goods under duty Drawback scheme and filed claims for rebate of duty paid on final export product. Original authority rejected rebate claims on the ground that the duty drawback of Customs and Central Excise portion was already claimed by the applicant and hence, rebate under Rule 18 of the Central Excise Rules, 2002 is not available. Commissioner (Appeals) upheld impugned Order-in-Original. Now, applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that applicant has claimed that they have not taken Cenvat Credit for such exports and exported goods under drawback scheme. On the other hand finished goods are exported by paying duty from accumulated Cenvat Credit in order to avail benefit of rebate claim under Rule 18 of Central Excise Rule 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. They have already availed duty drawback (Customs as well as Central Excise portion) in respect of said exports. Applicant has contended that as per conditions No. 7(e) & 7(f) of Notification No. 68/2007-Cus(NT) dated 16.07.2007, drawback will not be admissible if input rebate is claimed under Rule 18 of Central Excise Rule 2002 or duty free inputs are procured under Rule 19(2) ibid and in this case rebate of duty paid on finished exported goods is claimed and same is not barred under the said provisions. In this regard, Government finds that the said conditions do not put any restriction on availment of rebate of duty paid on finished exported goods. It only restrict the availment of input stage rebate if drawback of Central Excise portions is already availed. Similarly the condition 12(1)(a)(ii) also stipulates that while claiming drawback no separate claim for inputs rebate will be made before Central Excise authorities. But admissibility of the instant rebate claim has to be determined taking into account

the harmonious and combined reading of statutory provisions relating to rebate as well as drawback scheme.

9. Government notes that the term Drawback has been defined in Rule 2(a) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (as amended) 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".

The said definition makes it clear that drawback is rebate of duty chargeable in inputs used in the manufacture of exported goods. The Rule 18 of Central Excise Rule 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 provisions of Rule 18 of Central Excise Rule 2002 ibid 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 in Rule 18 of Central Excise Rule 2002 is only on duty paid on one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Hence, assessee is not entitled to claim rebate of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage. The principles laid down in said judgement are to be followed while considering rebate claim under Rule 18 of Central Excise Rules 2002 ibid. Applicant is now claiming rebate of duty paid on exported goods while he has already availed benefit of duty drawback of Central Excise portion in respect of said exported goods. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and therefore allowing rebate of duty paid on exported goods will amount to allowing both

types of rebates of duty at inputs stage as well as finished goods stage which will be contrary to the above said judgement of Hon'ble Bombay High Court and provisions of rule 18 of Central Excise Rules 2002. Since applicant has already availed Central Excise portion duty drawback, the rebate of duty paid on finished exported goods can not be held admissible.

10. Government also notes that applicant had paid duty on exported goods from Cenvat Credit account. Therefore he can not claim that no Cenvat facility has been availed for goods under exports and as such he has not violated condition No.12(ii) of Notification No. 68/2007-Cus(NT) dated 16.07.2007. Since he had availed Cenvat facility in respect of exported goods the duty drawback was admissible at the rate of Customs portion only. He was not eligible for duty drawback of Central Excise portion. Since the applicant has already availed said duty drawback is violation of said condition No. 12(ii), allowing rebate of duty paid on exported goods will definitely amounts to double benefit which is not permissible under the scheme of duty Drawback as well as rebate of duty. This authority had held in its order in the case of M/s Swatantra Bharat Mill Vs. CCE reported as 1993 (968) ELT 504 (GOI) that such claim of rebate is allowable if drawback availed is refunded back to the department. CBEC has also clarified on its Circular No. 83/2000-Cus dated 16.10.2000 (F.No. 609/116/2000-DBK) 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 reveal that double benefit is not permissible as a general rule. The contention of the applicant is that for violation of drawback notification, the drawback should be denied and rebate claim which is in accordance with provision of Notification No. 19/2004-CE(NT) dated 06.09.2004, may be allowed, is not acceptable since he has already availed input stage rebate of duty (excise portion) in the form of duty drawback and extending another benefit of rebate of duty paid on exported goods will definitely amount to double benefit. Applicant's claim could have been

accepted if he would have repaid the duty drawback of Central Excise portion. In view of this position the rebate of duty paid on exported goods is not admissible in these cases.

11. Applicant has cited number of case laws in support of his submission. But none of the case law allow rebate of duty paid on exported goods when duty drawback of Central Excise portion is already availed. As such, ratio of said judgment can not be made applicable to these cases.

12. As regards citing of individual interpretations/applicability of above mentioned Notifications/Case laws, Government observes that Hon'ble Supreme Court in the case of Amit paper Vs. Commissioner of Central Excise Ludhiana reported on 2006 (200) ELT 365 (SC) has held that primacy to a notification can not be given over rules as such interpretation will render statutory provisions in rules nugatory and in the case of Commissioner of Trade Tax UP Vs. Kajaria Ceramics Ltd. reported as 2005 (191) ELT 20 (SC) has held on the issue of interpretation of statutes that context and parameters of statutory provisions under which a notification is issued, are to be read into it and when a notification is issued under one statutory provisions for same purpose as a chain of progress without overlapping, the ambiguity of contents of such notification can be resolved by referring not only to statutory provisions but also to previous and subsequent notification. Government, therefore going by the observations of Hon'ble Supreme Court in Case (i) ITC Ltd. Vs. CCE [2004 (171) ELT -433(SC)] and (ii) Paper Products Ltd. Vs. C.C. [1999(112) ELT -765(SC)] that the plain and simple wordings of the (clarified/stipulated) statute are to be strictly adhered to, is of the considered opinion that the claimed rebate of duty paid on exported goods is not admissible in this case.

13. Government of India decided the identical issue involved in earlier revision application filed by the applicant vide Government of India Order No.828-861/12-

Cx dated 25.07.2012dt. ____ in favour of department. Ratio of said revision order in squarely applicable to this case also.

14. In view of above circumstances, Government holds that the instant rebate claims of duty paid on exported goods is not admissible under Rule 18 of Central Excise Rule 2002 read Notification No. 19/2004-CE(NT) dated 06.09.2004 when exporter has already availed duty drawback of Excise portion in respect of exported goods. Government finds no legal infirmity in the impugned Order-in-Appeal and therefore upholds the same.

15. The revision application is thus rejected being devoid of merit.

16. So, ordered.

(D.P. Singh)
(Joint Secretary to the Government of India)

M/s Iscon Surgicals,
B-70, MIA, Basni, Phase-II,
Jodhpur, Rajasthan.

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

Order No. 17 /13-Cx dated 08-01-2013

Copy to:-

1. The Commissioner of Central Excise, Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals-II), Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur – 302 005.
3. The Deputy Commissioner, Central Excise Division, 4, Narpat Niwas, Near Air Force Officer Mess, Jodhpur (Rajasthan)
4. Shri Pradeep Jain (F.C.A.), "Sugyan", H-29, Shastri Nagar, Jodhpur.
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

(Bhagwat P. Sharma)
OSD (Revision Application)