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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.198/110/13 -RA/3322

Date of Issue: 01.06.2021

ORDER NO. 229/2021-CX(WZ)/ASRA/MUMBAI DATED 29.06.2021
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 : The Commissioner of CGST, Surat-I.

Respondent : M/s Superfine Syntex Ltd.,
311, Ratan Chambers, Salabatpura,
Surat- 395 002.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. CCEA-SRT-
I/SSP-226&265/2013-14/u/s 85 of Finance Act 1994 read with
Section 35A(3) of Central Excise Act 1944-(Final Order) dated
26.05.2013 passed by the Commissioner (Appeals), Central
Excise & Customs, Surat- I.

ORDER

This Revision Application has been filed by the Commissioner of CGST, Surat-I Commissionerate (hereinafter referred to as "the department") against the Order-in-Appeal No. CCEA-SRT-I/SSP-226&265/2013-14/u/s 85 of Finance Act 1994 read with Section 35A(3) of Central Excise Act 1944-(Final Order) dated 26.05.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Surat- I.

2. Brief facts of the case are that M/s Superfine Syntex Ltd., 311, Ratan Chambers, Salabatpura, Surat- 395 002 (hereinafter referred to as "the respondents") are engaged in manufacture of excisable goods i.e. Polypropylene Yarn falling under Chapter Heading 54 of the Schedule to the Central Excise Tariff Act, 1985. The respondent had filed rebate five (5) rebate claims for total amount of Rs. 2,44,092/- (Rupees Two Lakh Forty Four Thousand Ninety Two Only) on 22.12.2010 in respect of duty paid on goods exported under various ARE-1s. The details are as under: -

Sr. No.	ARE-1 No./Date	Amount of rebate claimed
1	0383/09-10 dated 05.01.2010	45,762/-
2.	404/09-10 dated 19.01.2010	43,663/-
3.	525/2009 dated 03.03.2010	56,497/-
4.	565/09-10 dated 23.03.2010	56,385/-
5.	462/09-10 dated 08.02.2010	41,785/-
	TOTAL	2,44,092/-

On scrutiny of the rebate claims it was observed that the respondents had procured the duty free raw material and used for manufacture of the excisable goods which have been exported under claim of rebate against the Advance Authorization No. 5210021810 dated 10.07.2007 granted to them by

the DGFT, Surat under Notification No. 40/2006-Cus dated 01.05.2006. The rebate sanctioning authority observed that when the export of final product involving duty free raw material under the provisions of Notification No. 40/2006- Cus dated 01.05.2006 or under Rule 19 (2) of Central Excise Rules, 2002 and hence the respondent had violated the condition (v) of the Notification No. 40/2006-Cus dated 01.05.2006, Notification No. 10/2004-Ce dated 02.06.2004 and Boards Circular No. 792/2004 dated 02.06.2004 and availed the dual benefit by adapting such modus operandi and hence the respondent were not entitled for the impugned rebate amount on the goods exported for fulfillment of the export obligation against Advance Authorization. The adjudicating authority vide Order in Original No. SRT I/Div II/376 to 380/12-13/Reb dated 23.10.2012 rejected all the rebate claims filed by the respondents.

3. Aggrieved by the Order in Original, the respondents filed an appeal before the Commissioner of Central Excise (Appeals), Central Excise, Customs & Service Tax, Surat-I. The Appellate Authority vide Order in Appeal No. CCEA-SRT-I/SSP-226 & 265/2013-14/u/s 85 of Finance Act 1994 read with Section 35A(3) of Central Excise Act 1944-(Final Order) dated 26.05.2013 set aside the impugned order in original and allowed the appeal filed by the respondents. The appellate authority while passing the impugned order in appeal observed that :-

3.1 The Notification No. 40/2006-Cus dated 01.05.2006 has been amended by Notification No. 17/2009-Cus dated 19.02.2009 substituting the Condition (v) by following words :-

“(v) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within a period specified in the said authorization or with such extended period as may be granted by Regional Authority by exporting resultant products, manufacture in Authority by exporting the resultant products manufactured in India which are specified in said authorization”.

3.2 By amendment of the condition regarding availment of such facilities is deleted. This implies that there is no restriction on the availment of such facilities as were mentioned in original condition (v).

3.3 The department had not considered this retrospective amendment of Notification No. 40/2006-Cus dated 01.05.2006. Since the said amendment allowed availment of such facilities w.e.f. 01.05.2006, itself, the grounds of appeal appeared to be contrary to the provisions of Notification.

4. Being aggrieved with the above Order-in-Appeal, the department has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-

4.1 That the provisions of Section 35A (4) of the Central Excise Act, 1944 stipulates that the order of the Commissioner (Appeals) shall be in writing and shall state points of determination, the decision thereon and the reason for decision. But there are no discussion, no points of determination 86 no reasons have been in for decision in the instant order passed by the Commissioner (Appeals). The Commissioner (Appeals) has not given any findings & has not assigned any reasons/ applications filed by the claimant against the rejection of rebate. Therefore, the impugned order passed by the Commissioner (Appeals) is a non-speaking and is liable to be set aside solely on this ground.

4.2 That Commissioner (Appeals) failed to take note the facts of the case vis-a-vis statutory provisions narrated below-

4.3 The claimant was granted an Advance Authorization No 521S021810 dated 10.07.2007 by the DGFT, Surat under Exemption Notification No.40/2006-Cus dated 01.05,2006 provides exemptions from whole of the duty of customs specified in the first schedule of Customs Tariff Act 1975 and from the whole of Addl. Duty, safeguard duty and anti-dumping duty leviable thereon respectively under sections 3,8 and 9A of the Customs Tariff Act 1975 for import of goods under the advance authorization issued in term of Para

4.4.1 and 4.4.2 of Exim policy and they have procured the duty free raw material which were used for manufacture of the excisable goods and exported for fulfillment of the export obligation against the said Advance Authorization under claim of rebate. However, duty attributable to such exported goods were debited from the accumulated credit lying un-utilized of another inputs which do not pertain to the inputs used for manufacture of the goods, exported against the said advance authorization.

4.3 The Notification 40/2006-Cus dated 01.05.2006 pertains to entitlement of duty free procurement of raw material against advance authorization subject to fulfillment of various conditions mentioned therein, one such condition bearing No (V) is reproduced as under

"that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period a MCIL be granted by the Regional Authority by exporting resultant product, manufactured in India which are specified in the said authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub rule (2) of Rule 19 of Central Excise Rules 2002 or Cenvat credit under CENVAT credit Rules, 2004 in respect of material imported / procured against the said authorization has not been availed and advance intermediate authorization holder shall discharge export obligation by supplying the resultant product to exporter in terms of paragraph 4.13(11) of the policy ."

4.4 "Rule 18 of Central Excise Rules 2002 - Where any goods are exported, the Central government, 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 following Notifications have been issued under the said Rule 18-

- (i) Notification Na. 19/2004-CE(NT) dated 06.09.04 is for "Rebate of duty on export of goods to all the countries other than Nepal and Bhutan"
- (ii) Notification No. 20 /2004-CE(NT) dated 06.09.04 is for "Rebate of duty on export of goods to Nepal"
- (iii) Notification No. 21/2004-CENT) dated 06.09.04 for 'Rebate of duty on excisable "goods used in goods exported to any country except Nepal and Bhutan"

4.5 "Rule 19 of Central Excise Rules 2002 - Export without payment of duty-

- (1) Any excisable goods may be exported without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, as may be approved by the Commissioner.
- (2) Any material may be removed without payment of duty from a factory of the producer or the manufacturer or the warehouse or any other premises, for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner.

4.6 The following Notifications have been issued under the said Rule 19-

- (i) Notification No. 42/2001-CE (NT) dated 26.06.01 for" Export under bond without payment of duty of all excisable goods except to Nepal and Bhutan"
- (ii) Notification No. 43/2001-CE(NT) dated 26.06,01 for "Procurement of excisable goods without payment of duty for use in manufacture of export goods to be exported under bond without payment of duty"

4.7 The claimant's claim of rebate is different to the normal claim. The goods exported by them were manufactured by using the excisable goods procured by them without payment of duty. The Government's intention of not allowing the export of goods on payment of duty under claim of rebate, in case of goods manufactured from the excisable/duty free raw materials is clear from the Notification No. 10/2004-CE(NT) dated 03.06.04. Vide the Notification No. 10/2004- CE(NT) dated 03.06.04, the Notification

No.43/2001-CE (N,T) dated 26.05,2001 has been amended and explanation to the said Notification has been added clarifying that the goods manufactured or processed using materials procured under Notification No. 43/2001 - CE(NT) can only be exported in terms of sub-rule (1) of Rule 19 of Central Excise Rules,2002.

4.8 The goods manufactured from the duty free raw material should have been exported under Sub-rule (1) of Rule 19 of Central Excise Rules 2002. In this regard, the Board issued a Circular No. 792/25/2004-CX dated 02,06.2004 issued from F.No.209/7/2003-CX-6 states that doubts have been raised by field formations that whether goods manufactured using materials obtained without payment of duty for use in manufacture of exported goods under Notification No.43/2001-C.E.(N.T.) dated 26th June, 2001 as amended, can be exported under claim of rebate of duty under rule 18 of Central Excise Rules., 2002 or the goods so manufactured should be exported only under Bond without payment of duty under rule 19 of Central Excise Rules, 2002 and hence clarified that Rule 19(1) provides for export of any excisable goods without payment of duty. As an additional facility, sub-rule (2) of Rule 19 provides removal of any material without payment of duty for use in the manufacture or processing of goods, which are subsequently exported. Sub-rule (3) of Rule 19 specifies conditions, safeguards and procedures for export under sub-rule (1) or sub-rule (2) of rule 19. Therefore, sub-rule (2) is an integral part of the scheme prescribed under Rule 19. Notification No.43/2001-C.E.(N.T.) dated 26th June, 2001, as amended, has been issued under Rule 19 (export without payment of duty) of Central Excise Rules, 2002. Therefore, the goods manufactured using the materials received without payment of duty -under notification No.43/2001-C.E.(N.T.) dated 26th June, 2001, as amended, issued under Rule 19(3) read with Rule 19(2) are required to be exported under Rule 19(1) by observing the conditions, Safeguards and procedures specified under rule 19(3) of Central Excise Rules, 2002.

4.9 Further a clarificatory amendment has been issued vide Notification No. 10/2004-CE (NT) dated 02.06.2004 by adding an explanation to Notification No. 43/2001 – CE(NT) dated 26.06.2001 clarifying that goods manufactured or processed using materials procured under notification No.43/2001-C.E.(N.T.) can only be exported in terms of sub-rule (1) of Rule 19 of Central Excise Rules, 2002, read with notification No.42/2001- C.E.(N.T) dated 26.06.2001, as amended. This amendment is clarificatory in nature. Explanation of the Notification No.10/2004 says for the removal of doubts it is clarified that the goods manufactured or processed using the excisable goods so procured without payment of duty under this Notification shall be exported in terms of sub rule (1) of Rule 19 of Central Excise Rules 2002".

4.10 The claimant procured duty free materials, used them for manufacture of their finished goods i.e Polypropylene and exported the said goods on payment of duty by debiting the duty from their accumulated and unutilized Cenvat Credit Account which was availed by them on their other inputs/raw materials which were not used in the manufacture of so exported finished goods.

4.11 In the light of the above facts, the final product involving duty free raw material procured under the provision of Notification No.40/2006-Cus dated 01.05,2006 or under rule 19 (2) of Central Excise Rules 2002 should have been exported under Bond as per Rule 19 of Central Excise Rules 2002 and hence the claimant have violated the condition No.(V) of the Notification No.40/2006-Cus dated 01.05.2006, Notification 10/2004-CE(NT) dated 02.06.2004 and Board's Circular No. 792/25/2004-CX dated 02.06.2004 hence the claimant is not entitled for benefit of the above rebate claims on the goods exported for fulfillment of the export obligation against the Advance Authorization No. 5210021810 dated 10.07,2007 issued by the DGFT Surat under Notification No.4012006-Cus dated 01.05.2006.

5. The respondents have filed their written submission dated 25.03.2021. The respondents have submitted that :-

5.1 They have claimed the rebate of duty paid on their finished goods exported and not on the raw materials.

5.2 They had availed Cenvat credit on input procured indigenously and while exporting the goods, the duty had been paid from accumulated Cenvat Credit availed on locally procured input.

5.3 In terms of para (v) of the Notification No. 40/2006-Cus dated 01.05.2006, only the rebate of the duty paid on the materials used in the manufacture of resultant products should not be claimed and also CENVAT Credit in respect of materials imported / procured against the authorization should not be availed. In the instant case, the respondents had imported duty free inputs and had not taken credit on it. Export were made using accumulated Cenvat Credit balance on inputs procured in the normal course of business. There is no prohibition against using ordinary accumulated Cenvat credit balance on duty paid inputs for DFIA exports, in the Cenvat Credit scheme or under Rule 18 or in the Notification No. 40/2006-Cus dated 01.05.2006.

5.4 The Notification No. 17/2009-Cus dated 19.02.2009 amended the Notification No. 40/2006- Cus dated 01.05.2006 whereby w.e.f. 19.02.2009 availment of CENVAT Credit in respect of material imported/ procured does not debar the assessee from claiming rebate of duty paid on export of finished goods under DFIA scheme.

5.5. They have fulfilled all the conditions under DFIA schemes. The respondents have relied upon following case laws :-

- a) TTP Technologies Pvt. Ltd. Vs. CCE, Bangalore –II 2009 (240) ELT 724 (Tri. Bang.)
- b) Mega Fine Pharma P. Ltd. Vs. CCE, Vapi 2009 (247) ELT 733 (Tri. Ahmd.)
- c) Aptar Beauty & Home India Pvt. Ltd. 2011 (267) ELT 401 (GOI)

5.6 Boar Circular No. 792/25/2004-CX dated 02.06.2004 is not applicable in respect of locally manufactured and procured goods.

5.7 They had exported good by paying the duty from the pool of the amount of accumulated Cenvat Credit on locally procured input. The utilization of accumulated Cenvat Credit for the payment of exported goods is legal.

5.8 Export of goods is not in dispute.

5.9 Rebate claim should be sanctioned with interest under Section 11BB.

6. A Personal hearing in this case was fixed on 20.04.2021. Shri Mukund Chauhan, Advocate attended the same online and reiterated his earlier submissions. He stated that fulfillment of export obligation against duty free import under Advance License can be done by exporting duty paid goods utilizing accumulated cenvat credit. No one appeared for the personal hearing on behalf of the department.

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

8. On perusal of records, Government observes that the rebate sanctioning authority has disallowed the rebate claims on the ground that the goods exported by the respondents were manufactured by procuring input without payment of excise duty under provision of Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001 as amended which were required to be exported under Bond or Letter of Undertaking in terms of sub-rule (1) of Rule 19 of the Central Excise Rules, 2002. It is alleged that the respondents have discharged the duty in contravention of said Rules and claimed the rebate of the same. The Govt. observes that the question to be decided in the instant case is whether rebate under Rule 18 of the Central Excise Rules, 2002 is admissible to the respondent if they have exported the goods under Advance Authorisation Scheme while procuring the inputs without payment of duty.

9.1 The Government, in the instant case, finds that, the Show Cause Notices issued to the respondents and the Order in Original passed by the adjudicating authority thereof had referred to the letter bearing F. No. AR-IV/Superfine/Exp/08-09 dated 18.11.210 of the Superintendent, Range-IV, Division-II, Surat-I Commissionerate wherein it was intimated that the respondents had exported the impugned goods under Advance Licence and without availing facility of Cenvat Credit under Cenvat Credit Rules, 2004 and without availing facility of Notification No. 43/2001-CE(NT) dated 26.06.2001.

9.2 Contrary to the report from Range Superintendent as above, it is observed that the department has filed the instant Revision Application on the fundamental ground that the respondents had manufactured the goods using the materials received without payment of duty -under notification No.43/2001-C.E.(N.T.) dated 26th June, 2001, as amended, issued under Rule 19(3) read with Rule 19(2) are required to be exported under Rule 19(1) by observing the conditions, Safeguards and procedures specified under rule 19(3) of Central Excise Rules, 2002. The Government also observes that the respondent had claimed to have imported duty free inputs and had not taken Cenvat credit on the same.

10. Further, it is observed that Duty Free Import Authorisation Scheme (DFIA) is governed by Foreign Trade Policy (2004-2009) and Customs Notification No. 40/2006-Cus., dated 1-5-2006 was issued to give effect to these provisions of FTP. One of the condition stipulated in para 4.4.7 of the Chapter 4 of FTP 2004-09 was that no Cenvat credit facility shall be available on inputs either imported or procured indigenously against the Authorization. The Condition (v) of the corresponding Customs Notification No. 40/2006-Cus., dated 1-5-2006 issued to implement the DFIA scheme accordingly provided that the Export obligation would be discharged by exporting resultant products manufactured in India which were specified in the said authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant products) or sub-rule (2) of Rule 19 of Central Excise Rules, 2002 or Cenvat credit under Cenvat

credit Rules, 2004 in respect of material imported/procured against said authorization has not been availed (hereinafter referred to as such facilities). From the reading of these provisions of Foreign Trade Policy and Customs notification it become clear that the Cenvat credit will not be allowed if the material is procured against the Authorization.

11. In the above context it is pertinent to know the relevant provisions under Notification No. 40/2006-Cus., dated 1-5-2006. The Condition No. (v) of the notification reads as under :-

(v) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation and in respect of which facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule 2 of rule 19 of the Central Excise Rules, 2002 or CENVAT credit under CENVAT credit rules, 2004 in respect of materials imported/procured against the said authorisation has not been availed :

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to the exporter in terms of paragraph 4.1.3 (ii) of the Policy;”

11.1 It is found that the impugned notification has been amended by Notification No. 17/2009-Cus., dated 19-2-2009 substituting the Condition (v) by following words :-

“(v) that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within a period specified in the said authorization or with such extended period as may be granted by Regional Authority by exporting resultant products, manufactured in India which are specified in said authorization”

Thus, by said amendment the condition regarding availment of such facilities is deleted. This implies that there is no restriction even on the

availment of such facilities as were mentioned in original condition (v) for procurement of duty free import under the said DFIA Scheme.

12.2 Further, Para V of the Customs Notification No. 40/2006-Cus., dated 1-5-2006 debars the exporter to claim the rebate of duty paid on materials used in the manufacture of resultant product under Rule 18 of the Central Excise Rules, 2002 against materials imported/procured against the said authorization. The respondents are claiming rebate on the finished goods exported and have not procured the indigenous material against the said authorization, as endorsed in SCN as well as orders passed by the lower authorities. Also, the respondents have exported the goods under rebate under Rule 18 and complied with all the conditions of the notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, as held by the Commissioner (Appeals) in the impugned order-in-appeal. Govt. finds no infirmity in the said impugned order-in-appeal, hence reject the revision application being devoid of merit"

12. The rebate claim in the instant case is of the duty paid on final product exported under DFIA Scheme. It is admitted fact that goods were exported on payment of duty in terms of Rule 18, by following the procedure laid down in Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. There is no allegation, other than the main ground discussed in the foregoing paras, that respondents have violated any of the provision of said notification.

13. In view of the above discussions, Government holds that rebate of duty paid on finished products is admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 alongwith consequential relief arising thereof. Therefore, Government find no infirmity in the impugned orders-in-appeal and upholds the same.

14. The revision applications are rejected being devoid of merit.

Shrawan
29/06/21
(SHRAWAN KUMAR)

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

ORDER No.229/2021-CX(WZ) /ASRA/Mumbai DATED29.06.2021

To,
The Commissioner of CGST,
Surat-I Commissionerate,
New Central Excise Building,
Opp. Gandhi Baug,
Chowk Bazar, Surat - 395001.

Copy to:

1. M/s Superfine Syntex Ltd., 311, Ratan Chambers, Salabatpura, Surat- 395002.
2. The Commissioner of GST & CX, Surat Appeals, 3rd floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat- 395 017.
3. M/s MKC Legal, Advocates & Solicitors, 731, Ajanta Shopping Centre, Ring Road, Surat - 395 002.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard file.~~
6. Spare Copy.