

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, Cuffe Parade,
Mumbai- 400 005

F.No. 195/232/17-RA

4479

Date of Issue:

05.07.2023

ORDER NO. 301 /2023-CX (WZ)/ASRA/MUMBAI DATED 30.6.23 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.

Subject :- Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against Order-in-Appeal No. AHM-
Excus-002-App-081-16-17 dated 30.01.2017 passed by the
Commissioner (Appeals-II) Central Excise -Ahmedabad.

Applicant :- M/s. Reform Packaging Pvt. Ltd.

Respondent: Pr. Commissioner of CGST & CX, Ahmedabad South.

ORDER

The Revision application is filed by M/s. Reform Packaging Pvt. Ltd.(hereinafter referred to as 'applicant') against the Order-in-Appeal No. AHM-Excus-002-App-081-16-17 dated 30.01.2017 passed by the Commissioner (Appeals-II)Central Excise -Ahmedabad.

2. Briefly stated the facts of the case are that Applicant, a merchant exporter, had exported the goods under Drawback scheme from the premises of manufacturer M/s. Stree Ghantalama Enterprise and had filed a rebate claim amounting to Rs. 16,90,888/-. The goods viz PP bags have been cleared for export under various ARE -1s covered under the shipping Bills, it appeared that goods have been cleared for export availing facility of CENVAT Credit under Cenvat Credit Rules 2002. The manufacture has used Cenvat Credit of raw materials and input services as declared by them at Sr. No.3 of the declaration in ARE-1s. Applicant has availed the drawback on excise portion also. Therefore, when the merchant exporter is availing drawback of excise portion, then they are not eligible for rebate claim of Central Excise duty. In view of the above, a Show Cause Notice was issued and the same was decided by the Adjudicating Authority and rebate claim was rejected. Being aggrieved by the Order in Original, the Applicant filed appeal before the Commissioner (Appeals-II) Central Excise -Ahmedabad., who vide Order-in-Appeal No. AHM-Excus-002-App-081-16-17 dated 30.01.2017 disallowed the Appeal and upheld the Order-in-original.

3. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following main grounds:

- i. Rule 18 provides that where any goods are exported, the 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. Accordingly, under Not. No.19/2004- CE(NT) dated 6-9-2004 as amended stipulated that there shall be granted rebate of whole of the duty paid on excisable goods falling under the First Schedule to Central Excise Tariff Act, 1985, exported to any country other than Nepal and Bhutan. Notification stipulates that rebate claim shall be granted subject to the conditions specified in paragraph 2 and procedures specified in paragraph 3 of the notification. They have satisfied the conditions and limitations as laid down under paragraph 2 of the said notification.

- ii. They have availed input cenvat credit and also claimed drawback and thus availed double benefit on the exported goods. How availing cenvat credit under the provisions of *cenvat credit Rules and claiming drawback* would debar an exporter from claiming rebate claim under the provisions of Rule 18 of CER.
- iii. if drawback claim is wrong or is claimed at higher side it is to be restricted/ or governed by relevant provisions relating for drawback and not by rejecting entire rebate claim governed by its own relevant rules and provisions i.e. Rule 18 of CER and Notification thereto in fact which is actually fulfilled by the them in its all manners.
- iv. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal.

4. Personal hearing in this case was scheduled on 04.10.2022,18.10.2022, 07.12.2022, 21.12.2022, 16.01.2023 and 25.01.2023. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

6. Government observes that the Applicant had filed rebate claim, claiming rebate of Central Excise duty paid on exported goods in terms of Rule 18 of Central Excise Rules 2002 read with Section 11 B of the Central Excise Act, 1944. The original authority rejected the rebate claim on the ground that Applicant had already claimed the drawback of excise portion which would lead to the double benefit if the rebate is granted. Government notes that issue to be decided in the instant case is whether the rejection of the rebate is proper or otherwise.

7. Government notes that the fact that Applicant has availed the drawback of excise portion against the goods exported is not in dispute. The main contention of the Applicant is that "if drawback claim is wrong or is claimed at higher side it is to be restricted/ or governed by relevant provisions relating for drawback and not by rejecting entire rebate claim governed by its own relevant rules and provisions i.e.

Rule 18 of CER and Notification thereto in fact which is actually fulfilled by the them in its all manners". Government notes that this argument put forward by the Applicant is not proper and is flawed for the reasons that:

- i. Applicant had declared in shipping bills that the drawback has been availed in scheme A (without availing cenvat credit), however ARE-1 shows that the manufacturer had availed the cenvat credit on same. Had this fact been declared correctly in the shipping bills, drawback of excise portion would not be allowed to the Applicant in the first place.
- ii. Now when the Department is aware of the fact that drawback has already been availed on the excise portion by the Applicant, they cannot overlook it by granting the rebate which would lead to the double benefit to the Applicant.

Therefore, the entire edifice on which the present case stands is flawed. Furthermore, Government finds that it has been discussed elaborately in para 5 to para 7 of the impugned OIA before coming to the conclusion that when the drawback of excise portion has already been availed, the Applicant is not eligible for rebate of duty.

8. In view of above position, the Government holds that rebate claims are not admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9. In view of the above, Government finds no infirmity in the Order-in-Appeal No. AHM-Excus-002-App-081-16-17 dated 30.01.2017 passed by the Commissioner (Appeals-II) Central Excise -Ahmedabad.

10. Revision Application is rejected in above terms.

Shrawan
30/6/23
(SHRAWAN KUMAR)

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

ORDER No. 301 /2023-CX (WZ) /ASRA/Mumbai Dated 30.6.23

To,

1. M/s. Reform Packaging Pvt. Ltd., 1st Floor, Tulip Complex, Pakwand Dining Hall, Ellisbridge, Ahmedabad- 380006.
2. The Pr. Commissioner of CGST & CX, Ahmedabad South, 7th Floor CGST Bhavan, Rajasva Marg, Ambavadi, Ahmedabad-380015

Copy to:

1. The Commissioner (Appeals), Central Tax, 7th Floor, GST Bldg., New Polytechnic Ambevadi, Ahmedabad-380015.
2. M/s. Reform Packaging Pvt. Ltd., C/o, Shri Ghantakarna Enterprise, Plot No. 12&13, Sanand Land Development Estate, Ularia, Sanand, Ahmedabad.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.