F.No. 195/589/12-RA

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, Cuff Parade,
Mumbai- 400 005

F.No.195/589/12-RA/3991 Date of Issue: 26.08.2020

ORDER NO. 304/2020/CX(WZ)/ASRA/MUMBAI DATED 04.03. 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 CENTRAL EXCISE ACT,1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CS/246/DMN/Vapi-I/2011-12 dated 20.03.2012 passed by the Commissioner (Appeals), ~~Central Excise & Customs,~~ Daman.

Applicant : M/s Vertellus Specialty Materials (India) Pvt. Ltd., Vapi.

Respondent : Commissioner, Central Excise, Customs & Service Tax, Vapi

ORDER

This Revision Application is filed by M/s Vertellus Specialty Materials (India) Pvt. Ltd., Vapi. (hereinafter referred to as "the applicant" or VSMPL for sake of brevity) against Order-in-Appeal No CS/246/DMN/Vapi-I/2011-12 dated 20.03.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Daman.

2. The facts of the case in brief are that the applicant was earlier known as M/s Vapi Products Industries Pvt. Ltd. (hereinafter referred to as "VPIPL' for sake of brevity). VPIPL entered into an agreement for sale and transfer of Business with M/s Vapi Products Pvt. Ltd. (hereinafter referred to as "VPPL' for sake of brevity) and accordingly w.e.f 07.01.2011 VPIPL was sold and transferred to VPPL with entire assets and liabilities including entire stock of inputs/work in process/ finished goods/ capital goods/Cenvat balance/PLA balance. Subsequently the name of the company was changed from VPPL to M/s Vertellus Specialty Materials (India) Pvt. Ltd.,i.e VSMPL (the applicant). The applicant had filed 10 rebate claims amounting to Rs.33,64,905/- (Rupees Thirty Three Lakh Sixty Four Thousand Nine Hundred and Five only) which were rejected by the adjudicating authority on the grounds that while transferring the unit, no procedure, stipulated under Rule 10 of Cenvat Credit Rules, 2004 was followed. Hence, the cenvat credit transferred to the new unit and utilized for payment of duty in export was inadmissible. It was further observed by the adjudicating authority that the applicant had claimed drawback and has also claimed rebate of excise duty. There was difference in the assessable value shown on excise invoice and Shipping Bills. It was also observed that the claimant of rebate claim is different than the exporter. Accordingly, adjudicating authority vide Order-in-Original No. Vapi-I/REFUND/267/20100-12 dated 30.11.2011 rejected the said rebate claims filed by the applicant.

3. Being aggrieved, the applicant filed the appeal before the Commissioner, Central Excise & Customs, Daman, who vide Order-in-Appeal No CS/246/DMN/Vapi-I/2011-12 dated 20.03.2012 rejected the appeal filed by the applicant and upheld the order in Original.

4. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed this revision application on the grounds mentioned therein. In their additional written

submissions filed before the then Joint Secretary, Revision Application Unit, New Delhi. on 30.03.2015 the applicant submitted as under :-

4.1 Commissioner (A) has grossly erred in stating that they have not followed the procedure for transferring the CENVAT credit and is hence inadmissible in terms of Rule 10 of CCR, 04.

4.2 During the course of proceedings VPIPL vide letter dated 04-01-2011 (copy annexed herewith) had intimated about proposed transfer of ownership from VPIPL to VPPL. Thereafter, vide letter dated 07-01-2011 (copy annexed) VPIPL again intimated about the sale, details of stock of raw materials, balance of CENVAT credit, PLA transferred etc. to VPPL. VPIPL had applied for surrender of registration and VPPL had applied for registration. Furthermore, VPPL also intimated vide letter date 10-01-2011 (copy annexed herewith) about the transfer of ownership, details of the stock of raw materials, finished goods, WIP, packing materials, amount of CENVAT credit and amount lying in PLA transferred to them from VPIPL. They vide letter dated 09-03-2011 (copy annexed herewith) also intimated the Departmental authorities about the change in name of the company from VPPL to VSMPL Further, the registration was also amended in favor of VSMPL by the jurisdictional Deputy Commissioner on 21-03-2011 (copy annexed herewith). Considering all the documentary evidences submitted to the Departmental authorities intimating the transfer of CENVAT credit it was incumbent upon the Assistant/Deputy Commissioner to verify the same and satisfy himself that the conditions of Rule 10(3) of CCR, 04 have been satisfied or not.

4.3 Drawback has been claimed only for the customs portion in accordance with Notification No. 84/2010-Cus(NT) dated September 17, 2010 and Circular No. 35/2010- Customs dated September 19, 2010. VSMPL has cleared all the said finished goods by way of export. VSMPL filed rebate claims under Rule 18 of the CE Rules on the finished goods cleared by way of export. Besides, VSMPL also claimed the Drawback of the customs duty component on the inputs in terms of all Industry Drawback rate as provided under Notification No. 84/2010-Customs (NT) dated September 17, 2010 and Notification No. 68/2011-Customs NT) dated September 22, 2011. In this regard, it would be pertinent to note the Notification No. 84/2010-Customs (NT) dated September 17, 2010. In the instant case VSMPL has claimed the drawback of the customs duty component on the inputs. Upon perusal of the notification it is further clarified 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. In the instant case, the rate pertaining to said finished goods is same in both the columns and as a result the same would be allowable irrespective of anything. Further, clause 15 of the said notification also states that in case no CENVAT facility is availed the

assessee shall establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product.

Furthermore, the position in relation to same was clarified vide Circular 35/2010-Customs dated September 19, 2010 (Relevant clause vi-(d) of the said Circular)

Upon perusal of the said Circular, it is clear that the AIR drawback of the customs duty component is available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the CE Rules, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the CE Rules. VSMPL in the instant case has claimed the rebate of duty paid on finished goods exported which is in any case allowable. Therefore, the claim of rebate of duty on finished goods and claim of drawback of customs duty component can be claimed simultaneously.

In view of the above legal scenario background, it is submitted that the drawback can be claimed on the customs duty portion while claiming rebate in terms of Rule 18 of CE Rules. Therefore, the allegations in the order passed by Commissioner (A) to this extent is uncalled for as the same is eligible to VSMPL.

4.4 It is the finding of DC in the Order-in-Original that the assessable value shown in the excise invoice is less than the value shown in the Shipping Bill. In this regard, it is submitted that VSMPL is exporting goods on the basis of Door Delivery Duty Unpaid (hereinafter referred as DDU'). Accordingly, freight and other expenses up to the door of the customer are included in VSMPL's account. Therefore, in the commercial invoice, VSMPL have mentioned the total amount realized on each consignment based on DDU basis which includes the actual freight and insurance incurred by VSMPL. However, in case of excise invoice, excise duty is to be calculated on FOB basis. VSMPL has not included the freight and insurance up to the customer's door in the excise invoice value. The calculation of the assessable value for the purpose of excise invoices is done by deducting the actual freight and insurance cost from the commercial invoice value which is in accordance with the DDU terms. Further, it may be noted that the Customs authorities computes the freight and insurance differently on an adhoc basis which is then converted into INR based on exchange rate prevalent for that month. Accordingly the freight and insurance value as per shipping bill is different and this is the reason for difference in FOB value as per shipping bill, invoice value and the assessable value as per the invoice. VSMPL would like to humbly submit that the tax is calculated on

the assessable value which is calculated after deducting the actual freight and insurance incurred by VSMPL.

It is also submitted that the once the value of excise invoice and ARE-I tallies there is no need to verify the transaction value in respect to CIF /FOB value. It has been held time and again that duty paid on exports on transaction value, which includes freight and insurance is to be rebated. Reliance in this regard may be placed on the case of In Re: Unique Laboratories (supra) wherein relying upon the decision rendered in the cases of Sterlite Industries India Ltd. in GOI order No. 1685/2010-CX dated November 3, 2010 and SPL Industries in GOI order No. 1805/2010 dated December 24, 2012 similar views have been accepted.

It is also submitted that similar issues have been decided in favor of the applicant for the future periods by Commissioner (A) after going through the records on each and every case.

4.5 It is submitted that DC while issuing the impugned Order-in-Original in the instant case did not provide the applicant an opportunity of being heard and directly passed the order, thereby, denying the rebate claim to the tune of Rs. 33,64,905/-. Passing of Order-in-Original without providing an opportunity of being heard is violating the principles of natural justice in the instant case. The Order-in-Original should be quashed on the grounds of natural justice itself.

4.6 It is submitted that rebate claims were subsequently continued to be filed for the future period. In relation to the rebate claims for the period beginning February, 2011 up to December, 2011 the DC proceeded to decide the admissibility of the said claims by denying the rebate claim. Rebate claims amounting to Rs. 74,69,483/- for the period February, 2011 to June, 2011 were denied vide Order-in-Original bearing No. Vapi/Rebate/412/2011-12 dated March 15, 2012 and rebate claims amounting to Rs. 83,12,372/- for the period July, 2011 to December, 2011 were denied vide Order-in-Original bearing No. Vapi-I/Rebate/07/2012-13 dated April 10, 2012 on similar grounds. A copy of the said orders is annexed herewith. Being aggrieved by the same the applicant filed Appeal before the Commissioner (A) who after giving an opportunity of hearing to the applicant, set aside the order passed by the DC and remanded the matter for verification by adjudicating authority vide **Order-in-Appeal bearing No. SRP/86-87/DMNNapi-1/2012-13 dated August 21, 2012.** A copy of the said order is annexed herewith .

Commissioner (A) in para 24 of the said order set aside the order passed by DC and issued directions that the adjudicating authority should verify the nature of drawback claims and decide upon the issue in terms of Notification No. 84/2010- Cus(NT) dated September 17, 2010, Notification No. 68/2011-Cus(NT) dated September 22, 2011 and Circular No. 35/2010-Customs dated

September 19, 2010. The matter was remanded back to the adjudicating authority with the directions that the details relating to transfer of CENVAT credit be checked and verified along with the declarations made by the applicant. The valuation of goods may be verified and rebate shall be restricted to the amount of appropriate duty payable on said export goods. The nature of drawback claims shall be verified by the adjudicating authority in terms of the relevant rules and notifications. In case any amount is found to be inadmissible, the same shall be adjusted with the rebate amount.

4.7 Pursuant to the order passed by the Commissioner (A), AC took up the matter for fresh adjudication as per the directions of the Commissioner. AC after verification of the details required, passed Order-in-Original bearing No. Vapi-I/Refund/01/2013-14 dated April 1, 2013 wherein it was held that the drawback claims are in accordance with Notification No.84/2010-Customs dated September 17, 2010, Notification No. 68/2011-Customs dated September 22, 2011 and Circular No. 35/2010-Customs dated September 19, 2010. It was also held that the applicant had claimed the drawback of the customs portion only. The valuation of goods exported was verified and rebate has been restricted to FOB value only. A copy of the said order passed by AC is annexed herewith. However, the AC disallowed the transfer of CENVAT credit and held that the same is not in accordance with Rule 10 of CCR, 04.

Against the said disallowance of Rs. 5,89,703/- pertaining to irregular transfer of CENVAT credit in terms of Rule 10 of CCR, 04, the applicant filed an Appeal before Commissioner (A). During the course of hearing, Commissioner (A) requisitioned for the documentary evidences substantiating the transfer of CENVAT credit and its eligibility. The applicant vide letter dated August 8, 2013 submitted all the documentary evidences in the form of letter dated January 10, 2011, RG 23A Part-I & II, RG 23C Part-I & II, Service Tax credit register of both VPPL and VPIPL, sample invoices for inputs transferred, invoices for service tax credit, invoices for capital goods and other supporting documents showing that they had rightly taken the credit from VPIPL. A copy of the said letter is annexed herewith. After due verification of the details submitted by the applicant, Commissioner vide **Order-in-Appeal bearing No. DMN-EXCUS-000-APP-171-13-14 dated September 12, 2013** allowed the transfer of CENVAT credit. In this regard, it is submitted that Commissioner (A) while passing the aforementioned Order-in-Appeal has duly verified the details and the documents pertaining to the transfer of CENVAT credit in terms of Rule 10 of CCR, 04. It may also be noted that the CENVAT credit so allowed vide the Order-in-Appeal has been received by the applicant.

4.8 Furthermore, in relation to the other two issues i.e. drawback claim on the customs portion and difference in assessable values, it is submitted that Commissioner Central Excise, Customs & Service Tax, Daman

Commissionerate exercised the powers vested in him under Section 35E (2) of CE Act reviewed Order-in-Original No. Vapi-I/Refund/01/2013-14 dated April 1, 2013. Commissioner (A) set aside the Appeal petition filed by DC vide **Order-in-Appeal No. DMN-EXCUS-000-APP-259-13-14 DT dated December 30, 2013** thereby allowing the matter in their favour. A copy of the said order is annexed herewith.

4.9 In view of the aforesaid proceedings, all the issues that were raised in the Order-in-Original bearing No. Vapi-I/Refund/267/2011-12 dated November 30, 2011 passed by DC, which includes irregular availment of transfer of CENVAT credit in terms of Rule 10 of CCR, 04, difference in assessable values mentioned by the applicant on ARE-1 and simultaneously claiming drawback and rebate claim, are now in their favor. In this regard, it may be noted that since the issues involved in the present Revision application has been factually verified by the lower authorities for a later period with same facts the said case may be allowed. As evident from the above mentioned facts, it is clear that they have received favorable orders for all the issues from lower authorities after due verification by the adjudicating authority for the period February, 2011 to December, 2011 under similar facts and circumstances. Therefore, the present demand of Rs. 33,64,905/- which is denied on the same grounds and having the same factual background shall be allowed to the applicant as the facts in both the periods are similar.

5. A Personal Hearing in this matter was held on 04.10.2019, Mr. Zaid Kadiwal and Mr. Rahul Baldi, Chartered Accountants appeared for the hearing on behalf of the applicant. They reiterated grounds of revision application and earlier written submissions filed on 30.03.2015. They also pleaded that rebate claims subsequently filed by them, relief was granted by Commissioner (Appeals) which was not challenged by the department. They also placed reliance on GOI order Re: Benny Impex Pvt. Ltd. [2003(154)E.L.T. 300 (G.O.I.)

6. Government has carefully gone through the relevant case records & written submissions and the impugned Order -in-Original and Order-in-Appeal and also the Orders -in-Original and Orders-in-Appeal passed in respect of subsequent rebate claims filed by them.

7. Government observes that in the instant case the rebate claims of the applicant were rejected mainly on the following grounds :

1. While transferring the unit, procedure stipulated under Rule 10 of Cenvat Credit Rules, 2004 was not followed. Hence, the cenvat credit

transferred to the new unit and utilized for payment of duty in export was inadmissible

2. The applicant claimed drawback of excise portion and also claimed rebate of duty;

3. There was difference in the assessable value shown on excise invoice and Shipping Bills; and

4. The name of the exporter as per details of Shipping Bills as mentioned was VPPL and there was no declaration for the purpose of claiming rebate under Rule 18 from them in the name of rebate claimant i.e. VSMPL to lodge the claims under reference and that VPPL shall not claim any legal right in future to file rebate under Rule 18 for claims under reference without such specified "declaration".

8. Government now proceeds to discuss the rival contentions, issue wise:

8.1 **As regards non following of procedure prescribed under Rule 10 of Cenvat Credit Rules, 2004,** Government observes that pursuant to the **Order-in-Appeal bearing No. SRP/86-87/DMNNapi-1/2012-13 dated August 21, 2012** (referred at para 4.6 supra) passed by the Commissioner (Appeals) , Adjudicating authority took up the matter for fresh adjudication as per the directions of the Commissioner(Appeals). After verification of the details required the adjudicating authority disallowed the transfer of CENVAT credit of Rs.5,89,703/- and held that the same is not in accordance with Rule 10 of Cenvat Credit Rules, 2004. Against the said disallowance of Rs. 5,89,703/- pertaining to irregular transfer of CENVAT credit in terms of Rule 10, ibid, the applicant filed Appeal before Commissioner (Appeals). During the course of hearing, Commissioner (Appeals) requisitioned the documentary evidences substantiating the transfer of CENVAT credit and its eligibility. The applicant submitted all the documentary evidences in the form of letter dated January 10, 2011, RG 23A Part-I & II, RG 23C Part-I & II, Service Tax credit register of both VPPL and VPIPL, sample invoices for inputs transferred, invoices for service tax credit, invoices for capital goods and other supporting documents showing that they had rightly taken the credit from VPIPL. Commissioner (Appeals) vide **Order-in-Appeal**

bearing No. DMN-EXCUS-000-APP-171-13-14 dated September 12, 2013 allowed the transfer of the said CENVAT credit holding that the applicant cannot be penalized merely because the department failed to carry out the verification at the relevant time, especially when the applicant are able to justify their eligibility to credit in terms of Rule 10 of Cenvat Credit Rules, 2004 on the strength of the aforesaid documents. Commissioner (Appeals) after going through the documents submitted by the applicant held that the applicant has complied with the provisions of Rule 10(1) and Rule 10(3) of Cenvat Credit Rules, 2004 and was therefore eligible to the said transfer of CENVAT credit. Therefore, the said amount of Rs. 5,89,703/- that was disallowed to the applicant at the time of sanctioning the rebate claim was allowed. The applicant submitted that the CENVAT credit so allowed vide the Order-in-Appeal had been received by them. Government further observes that the department filed appeal against the said Commissioner (Appeals) order dated 12.09.2013 before CESTAT West Zonal bench, Ahmedabad vide Excise Appeal No. 14170 of 2013. Hon'ble CESTAT vide its Final Order dated 06.09.2019 dismissed the appeal filed by the department on monetary grounds. Moreover, issue of transfer of Cenvat Credit under Rule 10 of Cenvat Credit Rules, 2004 does not fall within the jurisdiction of this authority. The revision application to this extent is thus not maintainable before this authority for want of jurisdiction in terms of Section 35EE read with 35(B)(1) proviso of Central Excise Act, 1944 and hence, the original authority may consider CESTAT West Zonal bench, Ahmedabad's Final Order dated 06.09.2019 in the CENVAT issue, which has now attained finality. while deciding the disputed rebate claims.

8.2 As regards the rejection of rebate claims on account of claiming of drawback of excise portion and also rebate of duty by the applicant; the applicant have contended that they have not claimed drawback of excise duty paid on inputs and in respect of every invoice under which the goods in question have been exported, the applicant have given a declaration that they are not claiming duty drawback of excise duty paid on inputs used in the manufacture of finished goods exported under claim of rebate.

Regarding the issue of admissibility of rebate on finished goods exported under Rule 18 of Central Excise Rules, 2002 and simultaneous availment of drawback of customs duty component on inputs, Government relies on GOI Order No. 36-38/2016-

CX dated 22.02.2016 in RE: M/s Blackstone overseas Pvt. Ltd. Kolkata; wherein following observations have been made:-

9. Government observes that the instant rebate claims for refund of duty paid at time of clearance of goods for export are governed by Notification No. 19/2004-CE(NT) dated 06.09.2004, wherein conditions and procedures have been prescribed for claiming rebate of duty in terms of Rule 18 ibid. The said Notification nowhere puts any restriction to the effect that rebate of duty paid on exported goods will not be admissible if exporter avails of drawback of customs portion on the said exported goods. The relevant Customs Notification No. 84/2010-Cus(NT) dated 17.09.2010 condition 8(e) states that rates of drawback specified in drawback schedule shall not be applicable to the export of a commodity or product if such commodity or product is manufactured or exported by availing the rebate of duty paid on materials used in the manufacture or processing of such commodity or product in terms of Rule 18 of Central Excise Rules, 2002. Similarly Para 1.5 of Part V of Chapter 8 of C.B.E. & C. Manual of Supplementary instructions debars the benefit of input stage rebate of duty paid on materials used in the manufacture of exported goods where finished goods are exported under duty drawback. In these cases, applicants have claimed rebate of duty paid on finished exported goods and therefore the above mentioned restrictions are not applicable here.

10. Government also observes that CBEC vide Circular No.83/2000-Cus., dated 16th October, 2000 has clarified that "where only Customs portion of duties is claimed as per the All Industry Rate of Drawback (erstwhile) Rule 57F(14), does not come in the way of admitting refund of unutilized credit of Central Excise/Countervailing duty paid on inputs used in the products exported." This clarification also indicates that, there is no restriction on granting rebate of duty paid on exported goods when the drawback of Customs portion is availed by exporter. This view is already taken by Government in Government of India Order cited in the impugned Order-in-Appeal i.e. in the case of M/s. Benny Impex Pvt. Ltd. - 2003 (154) E.T. 300. This position was thereafter taken in GOI order. No. 551-569/2012-CX dated 11.05.2012 wherein it was held that allowing rebate when drawback of customs portion is availed will not amount to double benefit.

11. Government notes that the composite rates of drawback have been bifurcated into Central Excise portion & Customs portion and that too in two types of different situations i.e when Cenvat Credit facility has been availed and when no Cenvat credit facility is availed. Notification No. 103/2008-Cus(NT) dated 29.08.2008 condition no. 6 envisages as under:-

> *" The figures shown under drawback rate and drawback cap appealing below the columns "Drawback when Cenvat facility has not been availed "refer to the total drawback (Customs, Central Excise, & Service Tax component put together) allowable & those appearing under the Colum " Drawback when cenvat facility has been availed"*

refer to the drawback allowable under the customs component. The difference between the two column refers to the Central Excise & Service Tax components & drawback. If the rate indicated is the same in both the column, it shall mean that the same pertains to only customs component & is available respective of whether exporter has availed Cenvat or not"

12. It may be noted that CBE&C vide circular No. 35/2010 dated 17.09.2010 has further clarified the position as under :-

"vi(d) The earlier Notification No. 103/2008-Cus. (NT), dated 29-8-2008 as amended provided that the rates of drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. References have been received that exporters are being denied 1% of drawback, which is the customs component of the AIR drawback, on the basis of the above condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR drawback route.

The issue has been examined. The present Notification No. 84/2010-Cus, (ND, dated 17.09.2010 provides that customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002."

The content of the above said circular envisage that the Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rules, 2002. This position is made amply clear in the Notification No. 84/2010-Cus. (NT) dated 17.09.2010.

13. Government notes that it has from time to time in a catena of its decisions decided the issue of admissibility of rebate on finished goods exported under Rule 18 and simultaneous availment of drawback of customs duty component on inputs in a number of Revision orders as in the case of namely, M/s. Four Star Industries, Government of India Order No. 11/2014-Cx dated 03.01.2014, M/s. Aarti Industries Ltd, Government of India Orders No. 551-569/2012-Cx dated 11.05.2012, Mis. Mars International, Government of India Orders No. 540-542/2012-Cx dated 07.05.2012 and held such rebate to be admissible.

In the instant case a cursory glance at Duty Drawback schedule for the year 2010-11 (relevant year) reveals that the rate indicated at column No. 4 and 6 of the

Drawback Schedule in respect of the Tariff item 2901 being the same at 1%, the same pertains to only Customs component and is available irrespective of whether the exporter has availed of Cenvat or not. While drawback is equivalent to element of duty paid on inputs and input services used in the manufacture of export goods, rebate claim is for the actual payment of excise duty paid by the exporter on the finished goods cleared for export. In the instant case, the claim is for rebate of duty paid from CENVAT credit account or PLA on the finished export goods, which was exported by the applicant. Therefore, even if the applicant had taken credit on the raw materials and input services in relation to the finished export goods, the claimed rebate cannot be rejected even if the drawback of custom portion of duty paid on raw materials/input has been claimed. In a case where the credit of CENVAT is availed and the drawback of excise duty portion is claimed in respect of the same raw materials then it will be a case of double benefit and the revenue has the right to recover one of them but if rebate is claimed for the duty paid on finished goods, the same cannot be denied even if the drawback of input duty is availed.

The adjudicating authority in the instant case has not discussed the issue of drawback but merely denied the rebate holding that the applicant have claimed drawback of excise portion for all industry drawback rate". Hence, it appears that the order in original, relating to the aspect of availment of drawback, is passed without appreciation of facts of the matter and requires proper evaluation of the evidence on record and the adjudicating authority should verify the nature of drawback claims and decide upon the issue taking into account the Government's observations supra.

8.3 As regards rejection of rebate claims on account of non-assessing of correct assessable value of the said exports by virtue of difference in the assessable value shown on excise invoice and Shipping Bills, Government relies on para 4.1 of Part-I of Chapter 8 of C.B.E. & C. Excise Manual on Supplementary Instructions which is reproduced as under :-

"4. Sealing of goods and examination at place of dispatch

4.1 The exporter is required to prepare five copies of application in the Form ARE-1, as per format specified in the Annexure-14 to Notification No. 19/2004-Central Excise (N.T.), dated 6-9-2004 (See Part 7). The goods shall be assessed to duty in the same manner as the goods for home consumption. The classification and rate of duty should be in terms of Central Excise Tariff Act, 1985 read with any exemption notification and/or Central Excise Rules, 2002. The value shall be

the "transaction value" and should conform to Section 4 or section 4A, as the case may be, of the Central Excise Act, 1944. It is clarified that this value may be less than, equal to or more than the FOB value indicated by the exporter on the Shipping Bill."

Government notes that value of exported goods should confirm to transaction value' as envisaged in the Section (4) of the Central Excise Act 1944. In catena of its judgements, GOI while discussing provision of Section (4) of the said Act ibid, has held that where place of removal is port of export, the transaction value should be FOB value. The GOI Order No. 271/2005, dated 25-7-2005 in the case of *CCE, Nagpur* v. *M/s. Bhagirth Textiles Ltd.* reported in 2006 (202) E.L.T. 147 (GOI) has also held as under :-

"the exporter is not liable to pay Central Excise duty on the CIF value of the goods but the Central Excise duty is to be paid on the transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944". It is clear from the order that in any case duty is not to be paid on the CIF value.

It has been stipulated in the Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 and the CBEC Circular No. 510/06/2000-CX, dated 3-2-2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provisions of Central Excise Act. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty.

Moreover, the applicant has in this revision application contended that the less value reflected in ARE-1 is on account of abatement of freight and insurance charges which cannot form a part of transaction value for payment of duty under ARE-1.

Government holds that it is not justifiable to deny the entire amount of duty claimed as rebate on account of difference in assessable value shown on excise invoice and shipping bill etc. and the admissible amount of rebate is required to be calculated / sanctioned taking into account the transaction value under Section 4/4A of the Central Excise Act,1944, as discussed supra.

8.4 As regards the name of the exporter as per details of Shipping Bills is M/s Vapi Products Private Limited (VPPL), Plot No. 287/1 & 2A, Phase-II, GIDC Vapi and the claimant is M/s Vertellus Specialty Materials (India) Pvt. Ltd.(VSMPL) Plot No. 287/1 & 2A, Phase-II, GIDC Vapi claimant , Government observes that exporter (VPPL) is the same company whose name was changed to VSMPL as per amended Central Excise Registration Certificate issued by the Deputy Commissioner, Central Excise &

Customs, Division-I Vapi on 21.03.2011. As all the Shipping Bills in the instant rebate claims were prior to 21.03.2011, they are showing the name of VPPL whereas the said claims were filed on 18.04.2011 when VPPL name was changed to VSMPL and therefore it cannot be said that the export was made by different company and rebate was claimed by another company. As both these companies are same the rebate claims are not liable to be rejected for want of declaration / disclaimer certificate.

9. In view of the above discussion, Government sets aside Order-in-Appeal No CS/246/DMN/Vapi-I/2011-12 dated 20.03.2012 passed by the Commissioner (Appeals), Central Excise & Customs, Daman and remands the case back to original authority to decide the same afresh in view of above observations.

10. The Revision Application is disposed off in the above terms.

11. So, ordered.

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

ORDER No.304/2020-CX (WZ) /ASRA/Mumbai 04.03.2020

To,

M/s Vertellus Specialty Materials (India) Pvt. Ltd.
287/1 & 2A, 2nd Phase-II, GIDC,
Vapi - 396195

1. Commissioner of CGST & CX, Surat, Chowk Bazaar, Surat-395 001
2. Commissioner CGST & CX (Appeals), 3rd Floor, Magnus Building Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395007.
3. Assistant Commissioner, CGST & Central Excise Div.- Vapi-III, 1st floor, Morarji Desai Shopping Centre, Near Vapi Nagar Palika, Fire Station, Desaiwad Road, Vapi – 396191.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Principal Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai