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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. 195/119-121/17-RA /4819 Date of Issue: 26.07.2023

ORDER NO. 328-330/2023-CX (WZ) /ASRA/MUMBAI DATED 25.07.2023 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	:	M/s Unimed Technologies Limited, S.No.22 & 24, Ujeti, Post – Baska, Taluka – Halol, District Panchamahal, Gujarat.
Respondent	:	Commissioner of Central Excise & GST, Vadodara – II Commissionerate.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD- EXCUS -003 – APP - 313-314-315 - 2016 / 2017 dt. 26.08.2016 passed by Commissioner (Appeals - I), Central Excise, Customs and Service Tax, Vadodara.

ORDER

The subject Revision Applications have been filed by M/s Unimed Technologies Limited, (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 26.08.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara. The said Order-in-Appeal disposed of appeals against three Orders-in-Original all passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division – Halol – I, Vadodara – II.

2. Brief facts of the case are that the applicant held Central Excise registration and was engaged in the manufacture and export of P & P medicines falling Chapter 30 of the Central Excise Tariff Act, 1985. They filed rebate claims under Rule 18 of the Central Excise Rules, 2002 claiming rebate of the duty paid on excisable inputs used in the goods which were exported, as provided for by notification no.21/2004-CE(NT) dated 06.09.2004. In cases covered by two of the impugned Orders-in-Original the original authority had confirmed the demands raised to recover the rebate claims sanctioned to them. The original authority vide the third impugned Order-in-Original had rejected the rebate claims filed by the applicant. The original authority in all the three cases, two involving the confirmation of the demands and the one involving rejection of the rebate claims, found that the applicant had availed duty Drawback and in terms of Chapter 8, Part V of the CBEC's Excise Manual of Supplementary Instructions, 2005, rebate of duty involved on the inputs was not allowed to be claimed if the export was under claim for duty Drawback. Aggrieved, the applicant filed appeals against the said three Orders-in-Original before the Commissioner (Appeals). The Commissioner (Appeals) agreed with the findings of the original authority and rejected the appeals filed by the applicant.

3. The applicant, aggrieved by the impugned Order-in-Appeal dated 26.08.2016 have filed the subject Revision Application on the following grounds: -

(a) That the original authority while sanctioning their rebate claims earlier had recorded in the Orders-in-Original that he had checked all the conditions as mentioned in the notification no.21/2004-CE (NT) dated 06.09.2004 and only then were the claims sanctioned; that this indicated that they had acted in accordance with the law and complied with all the conditions of the said notification; they relied upon the decision of the Tribunal in the case of ESPN Software India P. Ltd vs CC (I & G) [2013 (293) ELT 535 (Tri.-Del)] in support of their submission;

(b) That notification no.84/2010-Cus (NT) dated 17.09.2010 which prescribed the All India Rates of Drawback clearly prescribed separate Drawback rates in respect of goods manufactured and exported in terms of sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 and also provided Drawback rate when Cenvat was availed; thus they were permitted to avail Cenvat and also avail drawback to the extent allowed by the said notification;

(c) They placed reliance on CBEC Circular no.35/2010-Cus dated 17.09.2010 and No.1047/35/2016-CX dated 16.09.2016 wherein it was clarified that exporters would be eligible to claim drawback of the Customs Component of the AIR drawback even they have availed rebate of the Central Excise duties paid on the inputs.

(d) They relied on the following decisions in support of their case:-

- Meghdoot Pistons P. Ltd. [2006 (201) ELT 398 (Tri-Del)]
- Mars International [2012(286) ELT 146(GOI)]
- Aarti Industries Limited [2012(285) ELT 461(GOI)]
- Four Star Industries [2014 (307) ELT 200 (GOI)]
- Benny Impex P. Ltd [2003 (154) ELT 300 (GOI)]
- Comm. Vs Ginni International Ltd [2007 (215) ELT A 102 (SC)]
- Rama Phosphate Limited [2014 (313) ELT 838]

In view of the above, the applicant requested for the impugned Order-in-Appeal to be set aside and that the demand for the same should be set

aside; and they should be sanctioned the rebate in the cases where it was denied to them.

4. The applicant made further submissions vide their letter dated 17.01.2023 wherein, apart from reiterating their earlier submissions, they also submitted that the rebate claims filed by them pertained to the excise duties paid on the material used for the exported goods; that they had filed drawback claim for the Customs duties (with availment of Cenvat) paid on the raw material and that both the benefits were different benefits and that they can be availed simultaneously.

5. Personal hearing was granted and Shri Ashok Naval, C.A., appeared online on 17.01.2023 on behalf of the applicant. He submitted that they had claimed drawback of Customs portion, therefore he claimed that rebate was admissible to them. He submitted an additional written submission. He requested to allow their application.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Orders-in-Original and the impugned Order-in-Appeal.

7. Government finds that the claims for rebate of the Central Excise duty paid on the inputs used in the final products which were exported by the applicant have either been rejected or those sanctioned sought to be recovered, by the lower authorities as it was found that they had availed Drawback on the exported goods and were hence ineligible for the rebate claimed. It was held that availment of Drawback and rebate on the same consignment would lead to double benefit and was not permitted by the laws governing the same. Government finds that neither the duty paid nature of the inputs nor the export of the finished goods is in dispute in the present case. Government notes that at this juncture it is pertinent to examine the

facts of the present case vis-à-vis the regulations governing the same and proceeds to do so.

8. Government notes the applicant exported P & P medicines falling under the Chapter 30 of the CETA, 1985 as recorded by the impugned Orders-in-Original. Further, Government finds that the All India Rates of Drawback and the conditions for availing the same were specified by notification no.84/2010-CUS(NT) dated 17.09.2010, effective during the period the exports in question took place. The proforma of the Schedule and para 6 of the 'Notes and Conditions' of the said notification are reproduced below:

SCHEDULE:

			A		B	
Tariff Item	Description of goods	Unit	Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs. (₹)	Drawback Rate	Drawback cap per unit in Rs. (₹)
-	-	-	-	-	-	-

...

Notes & Conditions:

Para 6 of the 'Notes & Conditions' :

> *" (6) 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 finds that it has been clarified, at point no.6 of the notes and conditions part of the said notification, that if there is a difference between the rates specified in the two Columns, the difference refers to the Central Excise and Service Tax component of the Drawback and when the rate of Drawback remains the same in both the Columns it shall mean that the Drawback pertains only to the Customs component. Government has examined notification no. 84/2010-CUS(NT) dated 17.09.2010 and finds that the Drawback rate indicated under the column 'A', i.e. "*Drawback when Cenvat facility has not been availed*" and that under the column 'B', i.e. "*Drawback when Cenvat facility has been availed*" is the same for the entire Chapter 30. Thus, given the fact that there is no difference between the rates in both the columns with respect to the commodity exported by the applicant, Government finds that it is clear that the Drawback availed by the applicant was limited to the Customs component on the final product exported. Further, the said note also explains that such Drawback will be available to the exporter even if they have availed Cenvat facility.

9. In this context, Government finds that Circular no.35/2010-Cus dated 17.09.2010 issued by the CBEC, after the issue of notification no.84/2010-CUS(NT) dated 17.09.2010, had clarified the issue of whether both Drawback and rebate would be allowed on the same export consignment as under:-

> "*(vi)* ***Miscellaneous***
>
> .....
>
> *(d) The earlier Notification No. 103/2008-Cus. (N.T.), dated 29-8-08 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. (N.T.), dated 17-9-2010 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 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."

Government finds that the Board had clarified vide the above referred Circular dated 17.09.2010 that 'Customs component' of AIR Drawback would be available to an exporter even when they have availed rebate on the duty paid on the raw material used in the manufacture of the exported goods, which effectively indicates that the same would be true vice versa too, the only condition being that the exporter should have limited the availment of Drawback to the rate specified at Column 'A' which covers only the 'Customs duty' component and should not have availed the rate of Drawback specified under Column 'B' which includes the 'Central Excise duty and Service Tax' component. Thus, Government finds that in this case the Drawback availed by the applicant being limited to the 'Customs duty component' they would be eligible to the claim the rebate of Central Excise duty paid on the inputs used to manufacture the goods exported.

10. As regards the findings of the lower authorities that the rebate claimed by the applicant could not be sanctioned in terms of notification no.21/2004-CE(NT) dated 06.09.2004 and instructions contained at Chapter 8, Part V of the CBEC's Excise Manual of Supplementary Instruction of 2005, that input stage rebate would not be allowed if the finished goods were exported under claim for duty Drawback appears to be incorrect, as the same seeks to avoid extending double benefit to the exporter wherein they avail duty Drawback of the entire duty component, i.e. Customs and Central Excise and Service Tax and then again seek rebate of the duty/tax paid on the inputs used in the finished goods. In the present case, as found above, the Drawback claimed by the applicant is limited to the 'Customs component' and does not cover the 'Central Excise or Service Tax component'. Thus, the rebate claimed by the applicant in the

present case would not be hit by the restriction put in place by the above-mentioned notification or the Supplementary Instructions. Thus, Government finds that the applicant will be eligible to the rebate of the duty paid on the inputs used in the exported finished goods and holds accordingly.

12. In view of the above, the impugned Order-in-Appeal is set aside, and the subject Revision Applications are allowed with consequential relief.

25/7/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

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ORDER No.330/2023-CX (WZ) /ASRA/Mumbai dated25.07.2023

To,

M/s Unimed Technologies Limited,
S.No.22 & 24, Ujeti, Post – Baska,
Taluka – Halol, District Panchamahal,
Gujarat.

Copy to:

1. The Commissioner of CGST & Central Excise, Vadodara – II Comm'te, Arkee Garba Ground, Nr. Tel.Exchange, Subhanpura, Vadodara 390023.
2. The Commissioner (Appeals), GST & Central Excise, Vadodara, 'GST BHAVAN' 1st floor Annex., Race Course Circle, Vadodara – 390 007.
3. A.B. Nawal & Associates, Cost Accountants, S.No.74-75, 14-17, Suyash Commercial Mall, Above Union Bank, Near Pan Card Club, Baner, Pune – 411 045.
4. Sr. P.S. to AS (RA), Mumbai

S. Guard file