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. 195/225/13-RA / 5699 Date of Issue:

ORDER NO. 3MH/2019CX (WZ) /ASRA/MUMBAI DATED 10.12.2019 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Star Extrusion, Umbergaon, Gujarat.

Respondent : Commissioner of Central Excise, Vapi.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SRP/144/VAPI/2012-13 dated 16.11.2012 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vapi.

ORDER

This revision application has been filed by the applicant Star Extrusion, Umbergaon, Gujarat (hereinafter referred to as 'the applicant') against Order-in-Appeal No. SRP/144/VAPI/2012-13 dated 16.11.2012 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vapi.

2. Brief facts of the case are that the applicant had filed 19 Rebate claims of the duty paid on export of excisable goods viz. "Tinned Copper Terminal Ends" under Drawback Scheme. Original authority observed that as the applicant had already availed the drawback (input stage rebate), they are not entitled for rebate of duty on final goods exported under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004 dated 06.09.2004. Accordingly, vide Orders in Original No. 2437 to 2455/AC/REB/Div-Vapi/2011-12 dated 31.01.2012, the Original authority rejected the 19 Rebate claims of Rs. 35,34,392/-(Rupees Thirty Five Lakh Thirty Four Thousand Three Hundred Ninety Two only) filed by the applicant.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioners (Appeals), who vide Order-in-Appeal No. SRP/144/VAPI/2012-13 dated 16.11.2012 upheld the Orders-in-Original and dismissed the appeal filed by the applicant.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the following grounds mentioned therein.

5. A Personal hearing in this case was held on 11.09.2019. Shri Vinay S. Sejpal, Advocate appeared for the hearing and reiterated the submission filed through Revision Application and also made additional submissions on the date of hearing. In its additional written submissions filed on 11.09.2019, the applicant mainly contended as under:

5.1 Since single common order was passed by the Assistant Commissioner, they had preferred single common appeal under the provisions of Section 35 read with Section 35A of Central Excise Act,1944 for all the nineteen (19) rebate claims amounting to Rs. 35,34,392/- which was registered as Appeal No. V.2(74) 108/Vapi/2012. The said appeal has been decided vide OIA No. SRP/144/Vapi/2012-13 dtd 16/11/2012 upholding the rejection of the rebate claims on the ground that simultaneous benefit of duty drawback for excise and custom element and claim of rebate of duty on the finished goods is not permitted as it amounts to double benefit under the law.

5.2 In the present appeal there is no dispute as regards to the following; ➢ The goods exported has been cleared on payment of duty and the said duty has been claimed as rebate under Rule 18 of Central Excise Rules,2002.

(a) The inputs required for manufacturing of the said export goods were separately purchased for which separate records were maintained and no Cenvat Credit is availed on the said inputs. The copies of the said invoices on which Cenvat is not availed was produced for verification before the Commissioner (Appeals) and the same was acknowledged in Order in Appeal.

(b) Since the inputs used in the manufacture of the export goods were not subjected to availment of Cenvat Credit, we had claimed higher rate of common duty drawback i.e. rate applicable for excise + customs and the fact of non availment of Cenvat Credit was referred in the ARE-1 and the same was verified at the time of export. The said fact is also observed at Para-3.2 and Para-6 of the OIO.

(c) The only issue / dispute in the present proceedings as observed by the Commissioner (Appeals) at Para-5 of the OIA is,

"The issue to be decided is whether the appellant is eligible for rebate claim when they have paid duty from the Cenvat Credit account on the export goods while simultaneously claiming drawback thereon".

5.3 Any manufacturer exporter purchasing goods from the domestic market or imports goods [without any benefit of advance license or advance authorization of any other import license] is eligible to claim three benefits with reference to his procurement of inputs and input services and on export of his finished goods. The manufacturer exporter is eligible for the benefit of the excise duty and customs duty element involved in his inputs and input services and also eligible for the benefit on the duty involved on the finished goods, as the cardinal principles for exports is that only goods should be exported and not the tax involved on the goods.

5.4 Accordingly the manufacturer exporter has option to claim the following benefits with reference to procurement of it's inputs and input services for use in the manufacture of export goods and also eligible for the benefits of the duty involved on the finished goods so exported by them. The benefits eligible under the various provisions [other than benefit of advance license or advance authorization of any other import license] are enumerated as under;

(A) For procurement of inputs and input services, the manufacturer exporter can claim the benefits of;

i. Cenvat Credit benefit as visualized under the provisions of Cenvat Credit Rules, 2004,

ii. Duty drawback as visualized under the provisions of Customs, Central Excise Duties And Service Tax Duty Drawback Rules, 1995,

iii. Rebate of the duty involved on the inputs used in the manufacture of goods exported as per Rule 18 of Central Excise Rules,2002 read with Notification issued thereunder,

iv. [Manufacturer exporter can procured inputs without payment of excise duty locally under Rule 19(2) read with Notification issued thereunder, but the same is not referred / enumerated in the present reply as the same has no applicability].

v. [Manufacturer exporter can claim the benefit of importing goods against various types of advance licenses or advance authorization or other import licenses, but the same is not referred / enumerated in the present reply as the same has no applicability.]

(B) For removal of goods for exports, the manufacturer exporter can claim the benefit of;

i. Removal of finished goods under Bond / LUT without payment of any excise duty as per the provisions of Rule 19(1) of Central Excise Rules, 2002, OR

ii. Removal of finished goods on payment of excise duty and to claim the refund/ rebate of the same as per Rule 18 of Central Excise Rules, 2002.

5.5 The manufacturer exporter has the option to choose any of the benefits or combination of the above benefits to his choice to get /avail the three duty benefits i.e. (a) Excise duty / Service Tax element involved on the inputs and input services ; (b) Customs duty involved on the inputs; and (c.) Excise duty element involved on the finished goods exports.

The manufacturer exporter is at liberty to choose any combination of the benefits, so that he can avail the above three benefits on the inputs / input services and the finished goods because no taxes on the goods are permitted to be exported. However the choice of the benefit should be such that there should not be any double benefit to the exporter with reference to above three elements of taxes.

5.6 They have availed the three benefits which are as under:

> No Cenvat Credit availed on the inputs used in the manufacture of export goods and claimed duty drawback of the excise duty element;

> Claimed duty drawback of the customs duty element; and

> Finished goods cleared on payment of duty and rebate claimed under Rule 18 of Central Excise Rules, 2002.

They have not claimed any double benefit as observed /held in the impugned order and we have claimed only three benefits which is legally permissible to the manufacturer exporter.

It is a matter of record that they have not claimed any Cenvat Credit on the inputs which are separately procured for exports as explained in brief facts above and the input stage benefit has been claimed by way of duty drawback of both excise element and customs element of the inputs. As regards to finished goods they have cleared the same on payment of duty and claimed refund of the very same amount. Accordingly there is no double benefit claimed by them and the impugned orders have failed to appreciate the said facts.

5.7 Without prejudice to the above, they are making their following alternate additional submissions that it is the removal of the said export goods on payment of duty from the cenvat account which has created the doubt regarding double benefit in the matter and to resolve the said issue they have no objection if the credit so debited is granted back as re-credit in the cenvat account.

5.8 In fact the above principle of allowing re-credit of the Cenvat Credit amount if the rebate is not granted has been settled under the following decisions;

➢ Garden Silk Mills Ltd. Vs. U.O.I - 2018(11) GSTL 272(Guj.);

➢ Aarti Industries Ltd. [2014 (312) ELT 872 (GOV)]; and

➢ Balkrishna Industries Ltd. [2011 (271) ELT 148 (GOI)].

5.9 In view of the above fact that the export goods cannot be burdened with duty and in view of the objection raised regarding the debit / reversal / payment of duty from Cenvat Credit Account and in view of the 'Objection for grant of rebate, we have no objection if the said debit / payment from the Cenvat Credit account is allowed by way of re-credit to the cenvat account.

5.10 Without prejudice to the above, it is observed that after deciding the appeal on merits, the Commissioner (Appeals) has made finding at Para-13 of the OIA that there are nineteen OIOs but there is only one appeal filed by the assessee and on this ground eighteen OIOs are liable to be upheld as not challenged as separate appeals were required for each OIO.

5.11 They do not agree with the said observation and submit that against nineteen rebate clams filed by us , there was one common OIO bearing No. 2437 to 2455/AC/Reb/Div.-Vapi/2011-12/3002 dtd 31/01/2012. They were served with only one OM with single outward number and the said single OIO dealt with all the nineteen rebate claims amounting to the total sum of Rs. 35,34,392/-. Since there was a single common OIO served upon us we had filed common appeal under Section 35 and 35A of Central Excise Act, 1944. It is their bonafide belief and claim even today that it was one common Order for which one common appeal has been filed and there is due compliance of the requirements of Section 35 of Central Excise Act,

5.12 They refer to the following decisions, wherein single appeal filed by the assessee was held to be sufficient under Sec.35 and Sec.35B for appeal against common and consolidated order passed by the authority.

- Eicher Motors Ltd. Vs. Collector of Central Excise, Indore - 2000(116)E.L.T 306(Tri.);
- Escorts Ltd. Vs. C.C.E, Faridabad - 2007(207) E.L.T 287(Tri.-Del.); &
- Alliance Mills (Lessees) Ltd. Vs Collecctor of C.Ex., Calcutta-II-1996(81) E.L.T. 615(Tri).

In the light of the above the applicant prayed to grant the refund along with consequential relief.

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

7. Government notes that the applicant had filed 19 separate rebate claims amounting to Rs. 35,34,392/- during the period from July 2011 to October, 2011. The applicant had claimed Drawback of Customs in respect of input duty fixed under Drawback Rules as well as claimed rebate under Rule 18 of Central Excise Ruls, 2002 on finished goods cleared by them on payment of Central Excise Duty. The issue to be decided in this case is that whether the applicant is eligible for rebate of duty paid from the accumulated Cenvat credit account on the export goods while simultaneously claiming drawback thereon. Although the Commissioner (Appeals) has held that the applicant was required to file 19 separate appeals before him in respect of the single Order-in-Original bearing nineteen serial numbers, the Government holds that the filing of a single appeal suffices the purposes as unlike the Customs, Excise & Service Tax Appellate Tribunal(Procedure)

Rules, 1982 the Central Excise (Appeals) Rules, 2001 does not stipulate filing of separate appeals in such cases.

8. Government observes that applicant has claimed that they have not taken Cenvat credit on the inputs utilized in the manufacture of their finished goods which is exported by them on payment of Central Excise Duty. However, in this case the finished goods are exported by the applicant by paying duty from accumulated Cenvat credit in order to avail benefit of rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has already availed duty drawback (Customs as well as Central Excise portion) in respect of said exports (para 5.6 supra).

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 on inputs used in the manufacture of exported goods. The Rule 18 of Central Excise Rules, 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 applicant is now claiming rebate of duty paid on exported goods after having availed benefit of duty drawback of Central Excise portion in respect said exported goods. 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. Since applicant has already availed Central Excise portion duty drawback, the rebate of duty paid on finished exported goods can not be held to be admissible.

10. Government also notes that applicant had paid duty on exported goods from Cenvat credit account. Government notes that C.B.E. & C.'s has clarified in its Circular No. 83/2000-Cus., dated 16-10-2000 (F. No. 609/116/2000-DBK) while allowing cash refund of unutilized Cenvat credit that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of Drawback is claimed. The same analogy will apply to simultaneous availment of rebate and customs portion of drawback. The harmonious and combined reading of statutory provisions of drawback and rebate scheme reveal that double benefit is not permissible as a general rule. However, in this case, the applicant has availed input stage rebate of duty in the form of higher duty

drawback comprising of Customs and Central Excise portion [as admitted at para 5.2(b) supra], another benefit of rebate of duty paid on exported goods will definitely result in double and undue benefit.

11. Government further observes that Hon'ble High Court Madras in W.P. No. 1226 of 2016, decided on 19-2-2016 [2016 (334) E.L.T. 584 (Mad.)] while upholding this authority's Order No. 51/2015-CX, dated 24-8-2015 [2016 (334) E.L.T. 700 (G.O.I.).], in Re: Raghav Industries Ltd. observed as under:-

> *12. After clearing the goods on payment of duty under claim for rebate, the petitioners should not have claimed drawback for the central excise and service tax portions, before claiming rebate of duty paid and they should have paid back the drawback amount availed before claiming rebate. When this was not done, availing both the benefits would certainly result in double benefit.*
>
> *13. While sanctioning rebate, the export goods, being one and the same, the benefits availed by the petitioners on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit.*

12. Government observes that the applicant has made alternate additional submissions that it is the removal of the said export goods on payment of duty from the Cenvat account which has created the doubt regarding double benefit in the matter and to resolve the said issue they have no objection if the credit so debited is granted back as re-credit in the Cenvat account.

13. Government has already held availment of double benefit by the applicant in the instant case. The applicant has cited number of case laws in support of his seeking re-credit. But all the case laws have observed that the rebate of duty is to be allowed of the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post-clearance expenses like freight and insurances may be allowed as re-credit entry in their Cenvat account treating it as payment of additional amount in the nature of deposit with Government. Government observes that the applicant in the instant 19 cases had

cleared the goods on payment of appropriate duty on transaction value of goods exported as determined under Section 4 of Central Excise Act, 1944, under claim of rebate of duty under Rule 18 of Central Excise Rules, 2002. It is not the case that the said duty paid by applicant, was collected without any authority of law so as to be treated as voluntary deposit (as held in case laws cited supra) and therefore required to be returned to the applicant in the manner it was paid. As such ratio of the said case laws cannot be made applicable to these cases.

14. In view of the above circumstances, Government holds that the instant rebate claims of duty paid on exported goods is not admissible under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 when the applicant 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 rejected being devoid of merit.

16. So ordered.

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

ORDER No. 344/2019 /2019-CX (WZ) /ASRA/Mumbai Dated 10.12.2019

To,

M/s Star Extrusion,
Plot No. 226/A, 1st Phase, GIDC,
Umbergaon, Valsad-396 171,
Gujarat.

Copy to:

1. The Commissioner of CGST, Daman, 2nd Floor, Hani's Landmark, Vapi-Daman Road, Chala Vapi.
2. The Commissioner of CGST, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395007
3. Assistant Commissioner od CGST, Division-I, Hani's Landmark, Vapi-Daman Road, Chala Vapi.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.