REGISTERED SPEED POST AD

सत्यमेव जयते

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. 195/216-217/2015-RA 1323 Date of Issue: 07-04-2022

ORDER NO.349-350 /2022-CX(WZ)/ASRA/MUMBAI DATED 31.03.2022 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 Nina Foods
D-7, MIDC, Gokul Shirgaon,
Dist. Kolhapur – 416 234

Respondent : Commissioner of CGST & Central Excise, Kolhapur

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-SVTAX-000-APP-0027-0028-15-16 dated 20.05.2015 passed by the Commissioner of Central Excise(Appeals), Pune.

ORDER

This revision application has been filed by M/s Nina Foods, D-7, MIDC, Gokul Shirgaon, Dist. Kolhapur – 416 234 (hereinafter referred to as "the applicant") against Order-in-Appeal No. PUN-SVTAX-000-APP-0027-0028-15-16 dated 20.05.2015 passed by the Commissioner of Central Excise(Appeals), Pune.

2. The applicant is engaged in the manufacture and clearance of excisable goods falling under chapter 20 of the First Schedule to the CETA, 1985. They had cleared their finished goods; viz. Pickled Baby Corn, Vegetable Beetroot on the strength of ARE-2 for export under claim of rebate of duty paid on excisable materials used in the manufacture and packing of such goods in terms of the provisions of Rule 18 of the CER, 2002. Subsequent to the export, the applicant had filed rebate claims for Rs. 1,94,347/- and Rs. 88,629/-alongwith the required documents. After deducting the excess amounts of Rs. 7,537/- and Rs. 7,743/- respectively, rebate amounting to Rs. 1,86,810/- and Rs. 80,886/- was sanctioned by the Deputy Commissioner, Central Excise, Division-III, Kolhapur Commissionerate vide OIO No. Kolhapur-II/41/ADJ/2013 dated 17.09.2013 and Sanction Order F. No. V(18)K-II/NF-156-158/2013-14 dated 18.10.2013.

3. On examining the OIO and Sanction Order, the Commissioner of Central Excise, Kolhapur Commissionerate found that they were not legal and proper and therefore directed filing of appeal against these orders. The main ground in the appeal filed by the Department was the contention that the claim for drawback at 1% AIR by the applicant was in violation of para 9(a) of Notification No. 68/2011-Cus(NT) dated 22.09.2011 which restricted the benefit of duty drawback where rebate had been claimed for duty paid on materials used in the manufacture of goods which had been exported. On taking up the appeal for decision, the Commissioner(Appeals) found that the fact that the applicant had filed drawback shipping bill had been noticed by the rebate sanctioning authority and necessary clarification had been sought from the applicant. However, the applicant had then stated that they had neither claimed duty drawback nor received any duty drawback. Based on this declaration by the applicant, the rebate claims had been sanctioned by the Deputy Commissioner. The Commissioner(Appeals) found merit in the contention of the Department that claim for drawback at 1% AIR by the applicant was in violation of para 9(a) of Notification No. 68/2011-Cus(NT) dated 22.09.2011 where the applicant had also claimed rebate of duty paid on materials

used in the exported goods. He therefore allowed the appeal holding that the rebate amounts of Rs. 1,86,810/- and Rs. 80,886/- are recoverable from the applicant vide his OIA No. PUN-SVTAX-000-APP-0027-0028-15-16 dated 20.05.2015.

4. Being aggrieved by OIA No. PUN-SVTAX-000-APP-0027-0028- dated 20.05.2015, the applicant has filed revision application on the following grounds :

(a) The applicant submitted that they had been exporting goods under ARE-2 and claiming rebate of duty paid on materials and simultaneously claiming duty drawback since 2012. However, when the Department pointed out from the impugned ARE-2's that they are not eligible for rebate claims if they claim duty drawback, they had immediately paid back the drawback amounts not only in the consignments covered under the disputed ARE-2's but also the drawback in the consignments covered under other ARE-2's pertaining to earlier exports. The applicant stated that although this fact was brought to the notice of the Commissioner(Appeals), he had not taken any cognizance of it.

(b) The applicant placed reliance upon the decisions in the case of Swatantra Bharat Mills[1993(68)ELT 504(GOI)] and Tata Tea Ltd.[1998(103)ELT 190(GOI)] where the assessees had claimed benefit of rebate of duty paid on raw materials used in exported goods as well as duty drawback on the said raw materials and the Government had held that when two benefits are available to the assessee and if he is ready to forego one benefit, then the other benefit would be available to the assessee.

(c) It was further submitted that it has been the policy of the Government to either grant rebate of duty paid on the raw materials used for exported goods or to grant drawback on the said material. It was averred that it was the intention of the Government to not allow to retain both the benefits either with it or with the assessee. They contended that although in the present case they had initially availed both benefits, they had subsequently on realizing their mistake returned the benefit of drawback to the Government alongwith interest and that too not only in respect of the ARE-2's involved in this case but also in respect of other ARE-2's. The applicant submitted that if the rebate involved in the disputed ARE-2's in the present case is not allowed to them, the Government would retain both the benefits and this would go against the

intent of the Government when they have already returned back the drawback.

(d) The applicant further submitted that it was apparent from the findings of Commissioner(Appeals), that he was holding the applicant guilty of malafide intention whereas there was no such allegation made by the Department in their appeal before Commissioner(Appeals) or even in the SCN dated 30.05.2014 issued for recovery of erroneously sanctioned rebate claim. Therefore, these findings were beyond the scope of the appeal before the Commissioner(Appeals).

(e) The applicant stated that they had clarified in their letters dated 19.04.2015 and 27.04.2015 that they had committed the mistake of claiming both the benefits due to oversight and that they had suo moto returned the drawback benefit, that too along with interest and not just in respect of ARE-2's involved under this application but also other ARE-2's. They had also assured that the mistake will not be repeated by them in future.

(f) The applicant submitted that they are situated in a rural area where the frequency of exporting goods on a yearly basis is very minimal and where the advice of experts in Customs matters is rarely available. These facts were sufficient to prove that they had no malafide intention and that the mistake had happened inadvertently and that they had corrected the mistake on their own after realising it.

5. The applicant was granted a personal hearing in the matter on 17.08.2021. Shri M. A. Nyalkalkar, Advocate appeared online and submitted that there are two revision applications and that the drawback claimed has been returned in both the cases. He therefore requested that the rebate claims be allowed.

6. Government has carefully gone through the impugned OIA, the OIO, the sanction order, the submissions filed by the applicant in the revision application and their submissions at the time of personal hearing. The issue involved in the present case is that the applicant had claimed both rebate of excise duty paid on raw materials used in the exported goods as well as AIR drawback on the raw materials. In view of the condition 9(a) of Notification No. 68/2011-CE(NT) dated 22.09.2011, the Department has contended that the applicant would be eligible for

only one of the two benefits; viz. rebate or drawback. Therefore, since the applicant had claimed the benefit of AIR drawback, the applicant would not be eligible for the benefit of rebate of duty paid on raw materials. This contention of the Department has been approved by the Commissioner(Appeals) in the impugned OIA and hence the applicant has filed for revision before the Government. After the issue was pointed out by the Department, the applicant has paid back the drawback sanctioned to them alongwith interest.

7.1 Government observes that the applicant has acquiesced to the standpoint that they cannot claim rebate as well as drawback. The applicant has accordingly paid back the drawback amount sanctioned to them alongwith interest. While doing so, the applicant has not just paid back drawback pertaining to the exports covered under the rebate claims in this case but also the drawback received by them in respect of previous consignments.

7.2 The case for inadmissibility of rebate claims is entirely based on the fact of them having simultaneously claimed drawback on the same exports. Other than this fact, the Department has not found any other deficiency in the rebate claims filed by the applicant. The inference that follows is that the rebate claims were otherwise admissible. The drawback on the inputs used in the manufacture of exported goods and rebate of duty paid on inputs used in the manufacture of exported goods are both schemes instituted to offset the tax effect on exports. In certain circumstances, drawback and rebate are mutually exclusive. However, in a case where the applicant has followed the required procedures they would be eligible for either the drawback or the rebate component of the duties incurred on the inputs.

7.3 In the present case, the applicant has paid back the drawback received by them to the Department alongwith interest and therefore it must be regarded as the applicant having restored themselves to the position of not having claimed drawback. In this view, it would be grossly inequitable to hold that the applicant would have to forego the benefit of both drawback and rebate for the mere reason that they had initially claimed drawback which they have repaid back to the Department alongwith interest. The action on the part of the applicant to pay back the drawback received by them even in respect of earlier exports bears out their bonafides. It would therefore be apposite to hold that the applicant is now entitled to the rebate claimed in the rebate claims impugned in these proceedings.

8. Government therefore sets aside the impugned OIA No. PUN-SVTAX-000-APP-0027-0028- dated 20.05.2015 and allows the revision application filed by the applicant.

31/3/22

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

ORDER No. 349 - 350 /2022-CX(WZ) /ASRA/Mumbai DATED 31.03.2022

To,
M/s Nina Foods
D-7, MIDC, Gokul Shirgaon,
Dist. Kolhapur – 416 234

Copy to:

1) The Commissioner of CGST & Central Excise, Kolhapur
2) The Commissioner (Appeals-I), Pune
3) Sr. P.S. to AS (RA), Mumbai
4) Guard file