F.No.195/266(I-II)/17-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, Cuffe Parade,
Mumbai- 400 005

F.No. 195/266(I-II)/17-RA /6645 Date of Issue: 12.09.2023

ORDER NO.353-354/2023-CX (WZ)/ASRA/MUMBAI DATED 11.9.23 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. PUN-SVTAX-000-APP-013&014-17-18 dated 10.04.2017 passed by the Commissioner (Appeals)Service Tax -Pune.

Applicant : - M/s. Flexo Lable

Respondent: Pr. Commissioner of CGST & CX, Pune-II.

ORDER

The Revision application is filed by M/s. Flexo Lable (hereinafter referred to as 'applicant') against the Order-in-Appeal No. PUN-SVTAX-000-APP-013&014-17-18 dated 10.04.2017 passed by the Commissioner (Appeals)Service Tax -Pune.

2. Briefly stated the facts of the case are that Applicant, is engaged in manufacture of Branded and decorative handmade paper boxes falling under the chapter No.48173090 of the Central Excise Tariff Act, 1985. They had filed the rebate claims under Rule 18 of the Central Excise Rules 2002, read with Notification No. 19/2004 CE (NT) dt.06.09.2004 as amended as detailed below hereunder.

Sr. No.	OIO	OIA	Rebate Amount
1	R/58/CEX/Div. IV/(Purandar)/2016-17	PUN-SVTAX-000-APP-013&014-17-18	22,43,640/-
2	R/147/CEX/Div. IV/(Purandar)/2016-17	PUN-SVTAX-000-APP-013&014-17-18	11,40,720/-

After due scrutiny of the claim, along with the mandatory documents submitted by the applicant, the sanctioning authority sanctioned the rebate claims. Being aggrieved by the Order in Original, the Pr. Commissioner of CGST & CX, Pune-II (hereinafter referred to as 'Respondent') filed appeal before the Commissioner (Appeals)Service Tax-Pune on the following grounds:

i. as per the ER-1's, the goods viz. Branded and Decorative handmade Paper Boxes were classified under the Tariff item 48173090 of the Central Excise Tariff Act, 1985(CETA, 1985) and duty is shown as 6% Adv., however, as per the CETA, 1985, tariff rate of duty for the instant item was 'NIL.

ii. the applicant had availed the CENVAT credit on the inputs and while export of the said goods, the duty was debited from the CENVAT credit account

iii. the respective shipping bills were filed for the export of the goods under the benefit of the EPCG licenses

iv. As per the grounds of rebate submitted by the applicant, their product is chargeable to NIL rate of duty; that the applicants have a lot of accumulation of CENVAT credit and they do not have domestic clearances. The applicant further submitted that they had paid the duty on the export clearances through oversight.

Appellate Authority vide Order-in-Appeal No. PUN-SVTAX-000-APP-013&014-17-18 dated 10.04.2017 allowed the Appeal and rejected 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. Applicant submits that now they are using the correct tariff heading 48237090 or 48237030 for all the clearances for the same goods.

ii. Applicant submits that as far as the Export of goods are concerned, the export is completed, and the same is not disputed & the proof of export is already submitted along with the refund/rebate claim.

iii. Applicant submits that the concept of Rebate against the export is precisely for making the Export more competitive In the International market and that the intention of the Government is not to export the duty.

iv. Applicant submits that in the appeal presented by the department they have stated only one ground that the Tariff Heading 48173090 mentioned on the ARE-1 & Invoice attracts NIL rate of duty and thereby the Cenvat Credit is inadmissible to the Applicant. As the goods cleared attract Nil rate of duty; the Cenvat Credit is availed is incorrect; and further wrongly paid the duty through Cenvat in Violation.

v. Applicant submits that they have procured the inputs, availed the Cenvat Credit, used in or in relation with the manufacture of the exported goods, and that the said goods are cleared on payment of duty. These facts were not disputed by the department.

vi. Without prejudice to the submissions made herein Applicant submits that even though the product is exempted/Nil rate of duty, Cenvat Credit cannot be denied to the Applicant. It was clarified that the Government cannot withhold the excess paid amount & needs to be refunded either by way of Rebate or by way or refund of Cenvat Credit. Applicant submits that if at all the Cenvat Credit was avalled wrongly as contended in the appeal; there is no Show Cause Issued to that effect by the department as of now.

vii. The omission on the part of the Applicant by mentioning the wrong Tariff head does not withdraw the right of either Cenvat as well as rebate of duty paid against the Export.

viii. Applicant submits that the correct classification of the goods is 48237090 & 48237030. Applicant further submits that subsequently they had corrected the same.

ix. Accordingly, it is ample clear that the goods are classified under Tariff 48237090 & 48237030 attracting appropriate rate of duty; inadvertently mentioned the wrong tariff head; cleared the goods for export under claim of rebate rightly & on receipt of proof of export claimed the refund/rebate & that the Adjudicating Authority had rightly passed the impugned order as per law.

x. Without prejudice to the submissions made herein: Applicant submits that if at all the Applicant decides to go for a refund under Rule 5 of Cenvat Credit Rules, 2004 against the Inputs Credit; they were entitled for the same, as they were exporting the goods & hardly any domestic clearances were there during the material time.

xi. Applicant submits that the substantial compliance of Cenvat Credit Rules, 2004 (herein after referred as CCR, 2004) is made by the Applicant. Therefore, the question of denying the Cenvat Credit does not arise.

xii. In fact, the proceedings before the Appellate Authority are with regards, to refund/rebate claim allowed by the adjudicating authority & has nothing to do with allowing or rejecting Cenvat credit availed.

xiii. Now demanding the sanctioned rebate claim from the Applicant would be injustice in the GST ERA. Thus, demanding the sanctioned rebate claim and allowing the rebate claim is mere academic. It would be Injustice on the appellant to demand sanctioned rebate with interest. Further there is no provision in existence to claim Refund under Rule 5 of Cenvat Credit Rules, 2004 as well as no procedure to claim the carry forward of accumulated credit in the GST provisions.

xiv. 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 15.03.2023. Shri. Suresh Hole, Proprietor, Shri R.S. Pranjape, FCA appeared on behalf of the Applicant and submitted that during the year entire goods were exported on payment of duty. They have taken credit on inputs since entire goods were exported and they were eligible to avail rebate of either duty paid on inputs or the goods exported. They further submitted that additional submissions will be submitted within ten days. They

requested to allow their application. Shri Srinivas Chakarvarthi, AC , Div II Pune appeared online on behalf of the Respondent and submitted that order of Comm(A) is legal and proper and the same is upheld.

5. Applicant has made the following additional submissions vide their email dated 27.03.2023:

i. The applicant had initially classified product under CETA / CTH 48021010. Later on it is changed to 48173090 as per Customs letter bearing F. No. SG/ Misc-582/11-12 SIIB(X) JNCH dated 04.07.2012. The appellant had requested to the Customs department vide letter dated 09.10.2012, 15.04.2013 and 20.09.2013 regarding nonagreement of new CTH 48173090. However, the Customs Department stick to their stand of classification of CETA / CTH 48173090. It is to be noted that, the classification code modification is not resolved by way of legal proceedings. It is forced on the Appellant about change of classification code from CTH 48021010 to 48173090.

ii. The tariff heading No. 48173090 attracts NIL' tariff rate is came to the notice of the Applicant when the Department had filed an Appeal.

iii. Notwithstanding anything submitted above, the Appellant submits that CETA 48173090 attracts NIL rate of duty in 2015-16 and CETA 48021010 attracts 6% tariff rate.

iv. It is submitted that due to NIL tariff rate against tariff heading No. 48173090 rebate is not allowed then the Appellant is entitled for refund under Rule 5 of Cenvat Credit Rules, 2004 (Refund of Accumulated credit). Thus, rebate or refund of accumulated credit is academic discussion after the proper verification by the Departmental Authorities and sanctioning of Rebate claim and thereafter denial of the same after lapse of five years as well as commencement of GST from July 2017 entire new system and no mechanism provided in the online GST systems.

v. The reliance placed on CBEC Circular No. 928/18/2010-CX Is not relevant in the instant case. The reference to Notification No. 21/2004(NT) dated 06.09.2004 is not applicable since the Appellant is registered as manufacturer of goods and the Appellant is not registered as 100% EOU though the entire sale consists of export

vi. The Applicant relies upon the following judgements.

A) Union of India Vs. Sharp Menthol India Ltd. - 2011(270) E.L.T. 212 (Bom.)

B) Commissioner Vs. Drish shoes Ltd.-2010 (254) E.LT. 417 (H.P.)

vii. Therefore, now demanding the sanctioned rebate claim from the Appellant would be injustice in the GST ERA. Thus, demanding the sanctioned rebate claim and allowing the rebate claim is mere academic. It would be injustice on the appellant to demand sanctioned rebate with interest. Further there is no provision in existence to claim Refund under Rule 5 of Cenvat Credit Rules, 2004 as well as no procedure to claim the carry forward of accumulated credit in the GST provisions.

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

7. 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 read with Notification No. 19/2004 CE (NT) dt.06.09.2004. The original authority sanctioned the rebate claim which was rejected by the Appellate Authority. Government notes that issue to be decided in the instant case is whether the rejection of the rebate is proper or otherwise.

8. In the present case, Government notes that it is an admitted fact that the applicant filed rebate claims for duties they weren't initially required to pay. This is because the exported goods were categorized as 'Nil'-rated. The government observes that the goods exported fall under chapter heading No. 48173090 of the Central Excise Tariff Act, 1985, which is subject to a 'Nil' rate of duty. Therefore, the applicant had no option to pay duty as per sub-section (lA) of Section 5A of Central Excise Act, 1944, which is reproduced hereunder:

"(lA) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of excisable goods from whole of duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay duty of excise on such goods."

Government notes that as the applicant was not required to pay duty at the time of export, therefore, the amount debited by the applicant cannot be treated as duty paid in terms of provision of Section 3 of the Central Excise Act,1944. The rebate of duty paid on excisable exported goods is admissible when duty leviable as per Section 3 of Central Excise Act is paid. Thus, the impugned amount paid cannot be termed as a duty and therefore rebate is not admissible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004.

9. Government finds that any amount paid that was not originally required as duty is to be treated voluntary deposit with the Government and same cannot be retained without any authority of law. The said amount is required to be refunded in the manner it was paid as held by Hon'ble High Court of Rajasthan in the case of C.C.E. v. Suncity Alloys reported at 2007 (218) E.L.T. 174 (Raj. H.C.). Hon'ble High Court of Punjab & Haryana vide order, dated 11-9-2008 in the case of M/s. Nahar Industrial Enterprises Ltd. V. UOI reported as 2009 (235) E.L.T. 22 (P & H) has also held that refund in case of higher duty paid on export product which was not payable, is not admissible and refund of excess paid duty/amount in Cenvat credit is appropriate.

10. As regards to the contention of the Appellate Authority on admissibility of the cenvat credit, Applicant relies on various judgments:

i. Union of India Vs. Sharp Menthol India Ltd. - 2011(270) E.L.T. 212 (Bom.)
ii. Commissioner Vs. Drish shoes Ltd.-2010 (254) E.LT. 417 (H.P.)
iii. PRUDENTIAL PROCESS MGMT. SERVICES (I) (P) LTD. 2016 (42) S.T.R. 764 (Tri. - Mumbai)
iv. P.R.S. PERMACEL PVT. LTD. 2006 (202) E.L.T. 153 (G.O.I.)
v. Repro India Ltd., [2009 (235) ELT 614 (BOM)]

In case of Union of India Versus Sharp Menthol India Ltd. 2011 (270) E.L.T. 212 (Bam. HC), Hon'ble Hight Court has held that exempted goods were exported under Bond and therefore by virtue of Rule 6(6)(5) of Cenvat Credit Rules, 2004, provisions of sub-rules (1), (2), (3) of Rule 6 ibid were not applicable. In other words, the assessee was eligible to avail and utilize Cenvat credit of inputs/input services used in manufacture of exempted goods which were exported under Bond.

In the instant case, Applicant has cleared all the manufactured goods for exports and there is no home clearance during the material time. They have also exported the exempted goods under bond. Therefore, case relied upon by the Applicant squarely applies to the issue in hand.

11. In view of the findings recorded above, Government modifies the Order-in-Appeal No. PUN-SVTAX-000-APP-013&014-17-18 dated 10.04.2017 passed by the Commissioner (Appeals)Service Tax -Pune to the extent of returning the amount paid in excess in the manner it was paid initially.

12. Revision application is/are disposed off on the above terms.

Shrawan 11/9/23

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

ORDER No. 353-354 /2023-CX (WZ) /ASRA/Mumbai Dated 11.9.23

To,

1. M/s. Flexo Lable, S.No. 28/11, Kanade Nagar, Undri, Katraj, Pune-411060.
2. The Pr. Commissioner of CGST & CX, Pune-III, 41/A, Ice House, Opp Wadia College, Sassoon Road, Pune-411001.

Copy to:

1. The Commissioner (Appeals), Pune, 3rd Floor, F wing, Ice House, 41-A, Sassoon Road, Pune-411001.
2. Adv Anand Kulkarni, Flat No. 102, Sudarshan Apartment, Sheelavihar colony, Erandawane, Pune-411004.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.