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. 195/33-34/WZ/2018-RA/3837 Date of Issue:- 10.8.2020

ORDER NO. 497-498/2020-CX(WZ)/ASRA/MUMBAI DATED 08.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,1962.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/33-34/WZ/2018-RA	M/s Nandan Terry Pvt. Ltd., Ahmedabad	Commissioner, Central Excise ,Ahemedabad.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. AHM-EXCUS-002-APP-251-252-17-18 dated23.01.2018 passed by the Commissioner of Central Excise (Appeals), Ahmedabad.

ORDER

This Revision application is filed by M/s Nandan Terry Pvt. Ltd., Survey No. 357/A/6, Kharati to Dholi Road, DholiRupgadh, Integrated Spinning Park Ltd., Village- Dholi, Taluka – Dholka, Dist. Ahmedabad – 382 240(hereinafter referred to as the 'applicant') against the Orders-In-Appeal AHM-EXCUS-002-APP-251-252-17-18 dated 23.01.2018passed by the Commissioner of Central Excise & CGST (Appeals), Ahmedabad.

2. The Brief facts of the case are the applicant is manufacturer of 100% Cotton Terry Towel falling under Chapter 63026090 of Central Excise Tariff Act, 1985. The applicant had exported 100% Cotton Terry Towels on payment of duty and filed total 3 rebate claims for Rs. 4,51,328/- (Rupees Four Lakh Fifty One Thousand Three Hundred Twenty Eight Only). During the scrutiny of the impugned rebate claims, the rebate sanctioning authority observed that the applicant had applied for rebate and also claimed the benefit of drawback at higher rate thereby contravened the provisions of Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and Sr. No. 7 of Notification No. 131/2016-Customs (N.T.). The Original Authority vide Order in Original No. 680/682/Reb/IV/17-18 dated 28.06.2017 rejected the rebate claims filed by the applicant.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals-I), Central Tax, Ahmedabad. The Appellate Authority upheld the Order in Original by following the decision in case of M/s Raghav Industries Ltd reported in 2016 (334) ELT 584 (Mad.).

4. The applicant, being aggrieved by the order in appeal, filed instant revision application on the following grounds:-

4.1 Exports made are not under dispute.

4.2 They have manufactured goods out of duty paid inputs and cleared goods for export from factory, on payment of duty from accumulated available Cenvat Credit of Capital Goods. They have claimed rebate of duty paid on final product without availing credit of duty paid on input and input services. They have availed the Cenvat Credit of duty paid on "Capital Goods" for goods exported and have paid duty on final products from cenvat credit from Account of Capital Goods.

4.3 Technical interpretation is to be avoided if the substantive fact of export having been made is not in doubt. Liberal view is to be given in case of any technical lapse.

4.4 The Notification No. 131/2016-Cus(NT) has been relied, but not applied correctly in fact of this case. The adjudicating authority was required to find whether appellant has taken any such credit of duty paid on 'Input' and tax paid on 'Input Service'.

4.5 They are eligible for claiming higher drawback permissible under the law when they have not taken credit of duty paid on inputs and not taken credit of Service Tax paid on input services

4.6 They have placed reliance on following cases

(i) Modern process Printer-2006 (204) ELT 632 (GOI)
(ii) Barot Exports – 2006 (203) ELT 321 (GOT)
(iii) CCE Vs. Indian Overseas Corporation – 2001 (137) ELT 1136 (T)
(iv) Kansai Knitwares V. CCE, Chandigarh – 2001(136)ELT 467
(v) Tablets India Ltd. – 2010 (259) ELT 191 (Mad.)
(vi) Jai Corp Ltd- 2014(312) ELT 961 (GOI)

4.7 The re-credit of the duty paid on finished goods ought to have been allowed to the applicant.

4.8 It is settled law that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and it has to be treated as a

voluntary deposit with the Government which is required to be returned to the applicant.

5. A Personal Hearing was held in matter on 07.11.2019.Shri P.P. Jadeja and Shri K.N. Upadhyay, authorised representatives attended the same on behalf of the applicant.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. The issue to be determined is whether the applicants are eligible for rebate of duty paid on exported goods from the accumulated CENVAT credit on capital goods, even after availing higher rate of drawback on the basis of claim that the exported goods were manufactured without availing CENVAT facility.

8. The applicants main contention is that as per Notification 131/2016-Customs dated 31.10.2016, the expression "when Cenvat facility has not been availed" for the purpose of availing Drawback means payment of duty from the Cenvat credit accrued on the inputs or input services used in the manufacture of the export product and does not include payment of duty on finished product from the Cenvat credit accumulated on Capital Goods. In this regard, the right perspective of the issue demands holistic understanding of the export incentives such as Drawback, Rebate and Cenvat Credit under the respective statutory sections and Rules made thereunder.

9. The Cenvat Credit Rules are notified vide Notification No.23/2004 dated 10.09.2004 and under the said Rules the terms 'inputs' 'input services' and 'capital goods' are defined and the same are reproduced below for reference;

(a) "**Capital goods**" means:-

(A) The following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Excise Tariff Act;

(ii) Pollution control equipment;

(iii) Components, spares and accessories of the goods specified at (i) and (ii);

(iv) Moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

Used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service;

k) "**Input**" means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

(l) "**Input service**" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

From the above, it is clear that these definitions indicate use of these materials in the direct or indirect use in the manufacture of final product. The Cenvat credit is accrued either on account of payment of duty on input or input services or duty on capital goods and the same credit can be used for payment of duty on clearance of either finished goods or any other goods from the factory. The Cenvat credit Rules neither impose any condition that the duty on finished product shall only be paid from the Credit accrued on account of the input or input services used in the finished product nor bar payment of duty from the accumulated credit on Capital goods. Credit so accrued either on input or input services or capital goods is directly or indirectly related to the manufacture of the finished product.

10. Now, the question is whether provisions of drawback makes any distinction between the payments of duty on exported product from the Cenvat accrued on input or input services or on capital goods for granting different rates of drawback on exported product. In terms of the Customs & Central Excise Duties Drawback Rules, 1995, drawback is allowed to the exporters for the duties of Customs and Central Excise suffered on the imported or indigenous inputs used in the manufacture of the export product for which no relief is otherwise available. Accordingly, in the All Industry Rates Drawback Table, notified by the Central Government annually, the drawback rates for various export products are also indicated with their customs and Central Excise allocations. The Notification 131/2016 relied on by the applicant is also one of the periodical Notifications issued for prescribing drawback rates. The Customs allocation denotes the Basic Custom Duty, Surcharge on Basic Customs Duty and the Special Additional Duty paid, if any. The Central Excise allocation represents the Additional Customs Duty leviable in terms of Section 3 of the Customs Tariff Act, 1975 or the Central Excise duty leviable in terms of Central Excise Tariff Act, 1985. It has been specifically provided in various Notifications notifying the Annual Drawback Table that the Central Excise

allocation of the drawback would be allowed only if the exporters do not avail of the MODVAT / CENVAT Scheme.

11. Neither Drawback rules nor the Drawback schedule make any distinction between duty payment from input credit or capital goods credit on exported product. Had statute presumed such distinction in sanctioning different rates of Drawback, there would have been declarations prescribed to that effect either under the Customs & Central Excise Duties Drawback Rules, 1995 or under Cenvat Credit rules. Hence for the purposes of Drawback, Cenvat facility availed means utilization of Cenvat credit, either on inputs or input services or capital goods, for payment of duty on the exported product and Drawback rates are subject to such availability or otherwise.

12. The issue left to be determined is whether the applicant is eligible for rebate even after availing drawback towards customs and central excise duties suffered by the exported product. The export incentives such as Drawback and Rebate are intended to refund the duties suffered by the exporters during the various stages of the exported product and both are mutually exclusive in nature.

13. '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 also a rebate of duty chargeable on inputs used in the manufacture of exported goods.

14. Refund of any duty of excise is governed by Section 11B of the Central Excise Act, 1944. By definition, refund includes rebate of duty paid on goods exported out of India or on materials used in the manufacture of goods exported out of India. Rule 18 of 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.

15. Government finds 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 reveals 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, another benefit of rebate of duty paid on exported goods will definitely result in double and undue benefit.

16. 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.

The Hon'ble High Court of Madras, in the above judgement, has ordered that the rebate claims of duty paid (utilised under credit of capital goods) on exported goods are not admissible under Rule 18 of CER, 2002 when exporter has availed higher rate of duty drawback of Customs and Central Excise. The Government opines that the contention of the applicant that the provisions of Notification No.131/2016-Cus(NT) were not brought to the notice of the Hon'ble High court of Madras in this case and the observations made therein may be construed to be *per incuriam* is presumptory and cannot be lent any credence as such these notifications were in existence since the inception of drawback and Notification number and Drawback rates changes annually.

17. The Government further finds that the provisions of Rule 18 of Central Excise Rules, 2002 are interpreted by Hon'ble High Court of Bombay at Nagpur Bench in the case of CCE, Nagpur Vs. Indorama Textiles Ltd., 2006 (200) ELT 3 (Bom.) wherein it was held that rebate provided under Rule 18 of Central Excise Rules, 2002 is only on duty paid at one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Consequently, the exporter is not entitled to claim duty paid at both stages simultaneously *i.e. duty paid at input stage as well as finished goods* stage. The tenets of said judgement would be guiding principle while processing rebate claim under Rule 18 of Central Excise Rules, 2002.

18. The applicant has cited number of case laws which are not applicable to the facts of the instant case. The case laws cited by the applicant have bestowed relief to the exporter where there were procedural lapses like non submission of the copies of requisite documents, non-matching of Invoice No. on shipping bill etc. have occurred. Unlike these issues in the cited cases by the applicant, the rebate claims in the instant case were rejected to check the

double benefit arising in the form of higher drawback as well as rebate on duty paid on finished goods.

19. The Government finds that the applicant has cited the following cases in their written submissions:-

a) 2014(300) ELT 481 (Guj) -Arvind Ltd. Vs. UOI

The Hon'ble High Court in the reference case has dealt with the issue wherein the assessee had simultaneously availed two notifications i.e. one by clearing goods for home consumption without payment of duty and without availing cenvat credit and the other notification by clearing the goods for export under claim of rebate by debiting duty through cenvat credit on capital goods.

b) 2009 (235) ELT 22 (P&H) -Nahar Industrial Enterprises Ltd.

In this case, Hon'ble High Court of Punjab & Haryanahas observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/ amount in Cenvat Credit is appropriate. As such, the excess paid amount/duty is ordered to be returned to the respondent in the manner in which it was paid by him initially.

20. The ratio of the said case laws is not applicable to the present case as the issue does not involve simultaneous availment of benefits under two notifications. Notification No.131/2016 is issued annually for declaring Drawback rates and therefore the said case laws are inapplicable to the facts of the case. In the instant case, the applicant has claimed the duty drawback at higher rate i.e. (Customs as well as Central Excise portion) in respect of said exports. Further, the assessee had opted to pay duty on finished goods exported and claimed the rebate of duty so paid by debiting it through cenvat credit for capital goods. The Government observes that the applicant had cleared the finished 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. As

such, it is not the case that the duty paid by applicant on finished goods, was collected without any authority of law so as to be treated as voluntary deposit and therefore required to be returned to the applicant in the manner it was paid. In view of above discussion, the Government holds that the request of the applicant for re-credit of the duty paid on finished goods cannot be maintained and is liable to be rejected.

21. In view of the above discussion, 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.

22. The revision application is rejected being devoid of merit.

23. So ordered.

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

To

M/s Nandan Terry Pvt. Ltd.,
Survey No. 357/A/6, Kharati to Dholi Road,
DholiRupgadh Integrated Spinning Park Ltd.,
Village – Dholi, Taluka – Dholka,
Dist Ahmedabad – 382 240.

Copy to :

1. The Commissioner of Central Goods & Service Tax, Ahmedabad North Commissionerate, Custom House, 1st Floor, Narangpura, Ahmedabad – 380 009.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare copy.

ATTESTED

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