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F.No.195/1644-1646/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 24/6/15

ORDER NO. 11-13/2015-CX DATED 22.06.2015 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision application filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. BR(56-58)M-V/12 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.

Applicant : M/s Padam Fashion, Mumbai

Respondent : Commissioner, Central Excise, Mumbai-V, Mumbai

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ORDER

These revision applications are filed by M/s Padam Fashions, Mumbai(here in after referred to as the applicant) against the Orders-in-Appeal No. BR(56-58) M-V/12 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect to Orders-in-Original No. 257/16/DC/KVL/2012, 258/16DC/KVL/2012 , & 259/16/DC/KVL/2012 all dated 13.04.2012passed by the Deputy Commissioner of Central Excise, Kandivali Divison, Mumabi-V.

2. Brief facts of the case are that the applicant, a manufacturer filed rebate claim in respect of excise duty paid on goods cleared for export through a merchant exporter, M/s. Fair Exports (India) Pvt. Ltd., Mumbai. The Original Authority observed that from the Shipping Bills, it was revealed that the merchant exporter have availed drawback of duty in respect of the goods for which the manufacturer has claimed the rebate of Central Excise duty paid at the time of clearance and hence, claims of rebate would result in double benefit. Thus the rebate claim was not found admissible in terms of Section 11 B of the Central Excise Act 1944 read with Rule 18 of the Central Excise Rules 2002.

3. Being aggrieved by the impugned Orders-in-Original, the applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35EE of the Central Excise Act, 1944 before Government on following grounds:

4.1 That the appellant has filed the rebate claims under Notification 19/2004-CE(NT) dated 06.09.2004, as amended the duty paid on finished goods through PLA Account. Notification 19/2004-CE(NT) has been issued in exercise of powers conferred under Rule 18 of the Central Excise Rules, 2002. There is no allegation of non fulfillment of the substantial conditions prescribed

for exports. If the applicant fulfills the condition of the Notification No. 19/2004-C.E (N.T), they are eligible for rebate. In the present case, the applicant has fulfilled all the conditions i.e. company has exported the goods from the factory and therefore rebate should not be denied. In absence of any condition of non-availment of drawback under this Notification, the rebate cannot be denied merely on the ground that drawback has been claimed by the exporter.

4.2 That there is no condition in the Notification 19/2004-CE (NT) under which the rebate has been sanctioned by the authorities of granting drawback on exports. The Deputy Commissioner in his Order has held that the applicant failed to produce any documentary evidences to substantiate that the drawback of only customs portion has been claimed. It is submitted that merely because the drawback has been claimed, the rebate cannot be rejected in absence of any condition in the Notification. Therefore the finding of the Deputy Commissioner that the applicant has not substantiated the claim of only customs portion of drawback, is beyond the scope of Notification. The appellants rely upon the judgment in the Munot Textiles, 2007 (207) ELT 298 (GOI) in which it is held that even if drawback has been availed, yet, rebate shall be granted as there is no condition in the Notification for rejection of rebate claim when drawback has been availed. If there is any condition in the drawback rules for non granting of drawback as rebate has been granted, granting of drawback can be termed as erroneous, but for that purpose rebate claim cannot be rejected.

4.3 The applicant has declared in ARE-I that they have not availed Cenvat Credit on input used in the manufacture of final product. Since, the applicant has not availed the credit of duty, duty at the time of removal of goods have been paid through Personal Ledger Account (PLA). Assuming without admitting that the appellants are not entitled to the rebate of duty paid, it is submitted that in such case, the duty paid is in excess of the duty payable.

There have been lot of cases where duty has been paid on CIF value as against duty payable on FOB value. The department has permitted re-credit of the excess duty paid in the cenvat account in the decisions in case of RSWM Ltd 2012 (281) ELT 735 (GOI), Balakrishna Industries Ltd 2011 (271) ELT 148 (GOI) & Order-in-Appeal No. YDB/191/RGD/2010.

4.4 That the procedure given in Notification 19/2004 read with chapter 8 of the CBEC Manual Supplementary Instruction has been followed. Further if the duty payment has been made and goods have been exported then rebate should not be denied There is no such allegation in the SCN that goods have not been exported as well as duty has not been paid. Without prejudice to the same, to satisfy that the goods are actually exported co-relations of the above mentioned documents has to be seen.

5. The applicant further through their written submission dated 03.10.2013 apart from reiterating contents of grounds of R.A, stated as under:-

5.1 In the instant case drawback is granted for the customs portion, to the merchant exporter M/s. Fair Exports (India) Pvt. Ltd. on the same exported goods for which the manufacturer M/s. Padam Fashion had claimed for rebate on duty paid on final products being exported, admittedly they have declared not to have claimed drawback on the same exported goods. This declaration by the manufacturer is treated as misdeclaration by both the lower authorities, though they specifically mentioned in their respective Orders that it is the merchant exporter who availed the drawback. So, this double speak on the part of both the lower authorities cannot be the cause for rejection of their legitimate rebate claims.

5.2 Granting rebate to the manufacturer on final products exported when drawback on customs portion is already allowed to the Merchant exporter, is permitted as per Circular No. 83/2000- Cus dated 16.10.2000. None of the lower authorities considered the said Circular in adjudging the issue for

reasons best known to them, rather preferred to reject the rebate claim citing various reasons.

5.3 The applicant relies on the following case laws applicable to the instant issue: M/s. Mars International [2012(286)ELT 146 (GOI)] , M/s. Aarti Industries[2012 (285) E.L.T. 461 (G.O.I.)], M/s. Meghdoot Pistons Pvt. Ltd.[2011 (263) ELT610 (Tri.- Del.)]

6. Personal hearing scheduled in this case on 30.03.2015 was attended by Shri R.K.Sharma, Counsel and Shri Mangesh Jha, Executive (legal) of R.K. Sharma & Associates Pvt. Ltd. on behalf of the applicant who reiterated the grounds of revision application. A written submission was also made at the time of hearing where in reliance was placed on following case laws: M/s. Four Star Industries GOI Order No. 11/14-CX dated 03.01.2014, M/s. Benny Impex Pvt. Ltd [2003 (154) ELT 300 (GOI)] & M/s. High Speed offsets [2014 (303) ELT 316 (GOI)].

Shri J.P.Singh, Assistant Commissioner, Mumbai IV represented the respondent Department & made a written submission wherein it is stated that the Order of Commsissioner (Appeals) be upheld, otherwise, it would amount to double benefit.

7. Government has carefully gone through the relevant case record and perused the impugned Orders-in-Original and Orders-in-Appeal.

8. On perusal of case records, Government observes that the rebate claims of the applicant have been rejected on the grounds that the merchant exporter in these impugned cases availed drawback on impugned exports and as such allowing rebate would amount to double benefit. Commissioner (Appeals) upheld impugned Orders-in-Original. Now, the applicant has filed these Revision Applications on grounds mentioned in paras (4) above.

9. Government observes that the applicant exported the goods through merchant exporter and the merchant exporter availed the benefit of duty drawback. The applicant's rebate claims were rejected on the ground that as drawback had been availed allowing rebate will amount to double benefit, which is not admissible. It is held in the impugned Orders that in the instant cases there is no dispute that the merchant exporter has claimed duty drawback which includes Customs, Central Excise, & Service Tax duties. The applicants have failed to prove anything to the contrary with supporting documents.

10. Now, Government proceeds to decide the issue of admissibility of rebate claims taking into account the harmonious and combined reading of statutory provision relating to rebate as well as duty drawback scheme. 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. 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 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 in Rule 18 of Central Excise Rule 2002 is only on duty paid on one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Hence, assessee is not entitled to

claim rebate of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage. The principles laid down in said judgement are to be followed while considering rebate claim under Rule 18 of Central Excise Rules, 2002. Applicant is now claiming rebate of duty paid on exported goods while he has already availed benefit of duty drawback of Central Excise in respect of said exported goods. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and 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 which will be contrary to the above said judgment of Hon'ble Bombay High Court and provisions of rule 18 of Central Excise Rules, 2002. In these cases, the applicant could not substantiate their claim that the merchant exporter has availed only Customs portion of drawback by means of any valid documentary evidences. Hence, it can be implied that the applicant has availed both Customs as well as Central Excise portion of drawback. Under such circumstances, allowing rebate would amount to double benefit, which cannot be held admissible.

11. Government notes that the CBEC has also clarified in its Circular No. 83/2000-Cus dated 16.10.2000 (F.No. 609/116/2000-DBK) that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of drawback is claimed. The harmonious and combined reading of statutory provisions of Drawback and rebate scheme reveal that double benefit is not permissible as a general rule. The contention of the applicant that for violation of drawback notification, the drawback should be denied and rebate claim which is in accordance with provision of Notification No. 19/2004-CE(NT) dated 06.09.2004, may be allowed, is not acceptable since the applicant failed to prove that input stage rebate of duty in the form of duty drawback of excise portion has not been availed by them and extending another benefit of rebate of duty paid on exported goods will definitely amount to double benefit. Such a contention of the applicant is also not found

sustainable in view of the position that drawback of excise portion has already been availed, the rebate is not admissible in light of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which state that no separate claim for rebate of duty under Central Excise Rules 2002 will be made in such a situation. Applicant's claim could have been considered if they had repaid the duty drawback of availed Central Excise portion. In view of this position, the rebate of duty paid on exported goods is not admissible in these cases.

12. As regards citing of individual interpretations/applicability of above mentioned Notifications/Case Laws, Government observes that Hon'ble Supreme Court in the case of Amit Paper Vs. Commissioner of Central Excise Ludhiana reported in 2006 (200) ELT 365 (SC) has held that primacy to a Notification cannot be given over Rules as such interpretation will render statutory provisions in Rules nugatory and in the case of Commissioner of Trade Tax UP Vs. Kajaria Ceramics Ltd. reported in 2005 (191) ELT 20 (SC) it was held on the issue of interpretation of statutes that context and parameters of statutory provisions under which a Notification is issued, are to be read in toto and when a Notification is issued under one statutory provision for same purpose as a chain of progress without overlapping, the ambiguity of contents of such Notification can be resolved by referring not only to statutory provisions but also to previous and subsequent Notification. Further, Government, going by the observations of Hon'ble Supreme Court in Case (i) ITC Ltd. Vs. CCE [2004 (171) ELT -433(SC)] and (ii) Paper Products Ltd. Vs. C.C. [1999(112) ELT -765(SC)] that the plain and simple wordings of the (clarified/stipulated) statute are to be strictly adhered to, is of the considered opinion that the claimed rebate of duty paid on exported goods is not admissible in these cases. Further, the case laws relied upon by the applicant are not applicable to the present cases as the facts involved are different.

13. In view of above circumstances, Government holds that the instant rebate claims of duty paid on exported goods are not admissible under Rule 18 of Central Excise Rule 2002 read Notification No. 19/2004-CE(NT) dated 06.09.2004 when exporter has failed to prove that they have availed duty drawback of Custom portion only in respect of exported goods. As such, Government finds no legal infirmity in the impugned Orders-in-Appeal and hence, upholds the same.

14. These Revision Applications are thus rejected being devoid of merit.

15. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Padam Fashions.
59, Mehata Industries Estate,
Liberty Garden, X- Road No.3,
Malad(W), Mumbai-400064

ATTESTED

(B.P. Sharma)
OSD (Revision Application)

GOI ORDER NO. 11-13/2015-CX DATED 22.06.2015

Copy to:

1. Commissioner of Central Excise, Mumbai-V, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(E), Mumbai-400051
2. Commissioner (Appeals), Central Excise, Mumbai Zone-I, Meher Builiding, Bombay Garage, Dadishet Lane Chowpatty, Mumbai-400007.
3. R.K. Sharma & Associates Pvt. Ltd. 157, 1st floor, DDA office Complex, C.M. Jhandewalan Extn. New Delhi-55
4. The Deputy Commissioner of Central Excise Kandivali DN: Mumbai-V 4th floor, Takshashila Builiding, Samant Estate, Goregaon(East), Mumbai-400063
5. PA to JS(RA)
6. Guard File
7. Spare Copy.

ATTESTED

(B.P. Sharma)
OSD (Revision Application)