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F.No. 195/514/13-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 28/8/2015

Order No. 51/2015-CX dated 24.08.2015 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, against the Order-in-Appeal No. 01/2013 dated 31.01.2013 passed by Commissioner of Central Excise, (Appeals), Salem.
Applicant	:	M/s. Raghav Industries Ltd. Tiruchengode,
Respondent	:	Commissioner of Central Excise, Salem.

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ORDER

This revision application is filed by M/s Raghav Industries Ltd., Tiruchengode, against the Order-in-Appeal No. 01/2013 dated 31.01.2013 passed by Commissioner of Central Excise (Appeals), Salem, with respect to Order-in-Original No. 387 to 389/2012(R) dated 29.10.2012 passed by the Assistant Commissioner of Central Excise, Erode-I Division,

2. Brief facts of that the case are the applicant has filed 3 rebate claims for the duty paid on the goods exported. The lower authority had observed that the applicant had taken Cenvat Credit and also availed the benefit of higher rate of drawback and hence in terms of Customs Notification No. 68/2011-Cus. (N.T) dated 20.09.2011 the claimant cannot avail both the facility simultaneously as the same would amount to availing double benefit. Accordingly, Original authority vide impugned Order-in-Original rejected the rebate claim.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has field this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The crux of issue and short point for consideration in the case on hand is as to whether the applicant are eligible to claim rebate duty as well as duty draw back simultaneously. The basic facts and figures including facts of proper exports of duty paid goods as per the respective A.R.E 1 and the documents connected thereto are not in dispute. Rebate of duty paid on finished exported goods is admissible even if the drawback of customs portion is availed and CENVAT facility is also availed. The appellant had claimed and got duty draw back under All Industry rate out of customs portion and no draw back in respect of Central Excise Duty allocation under All Industry Rate of drawback has been claimed. In other words, this appellant is entitled to claim rebate of duty along with duty Draw back in as much as the Draw Back has been claimed in respect of customs duty.

4.2 The instant rebate claims are governed by Notification No.19 / 2004 Central Excise (NT) date 06.09.2004 wherein, condition and procedure has been prescribed for claiming rebate of duty in terms of Rule 18 of Central Excise Rule, 2002. The said notification nowhere puts any restriction to the effect that rebate of duty paid on exported goods will not be admissible, if exporters have availed drawback of customs portion on the said exported goods.

4.3 In order to make the policy of making the Drawback scheme more attractive and beneficial to the exporters, the Government has bifurcated the composite rates of drawback into central excise portion and customs portion and that too in 2 types of different situations (i.e) when CENVAT credit facility has been availed and when no CENVAT facility is availed. In terms of condition No.6 to notification No.103 / 2008-Cus (NT) dated 29.08.2008; drawback of duty can be availed when CENVAT facility has been availed but the rates applicable is lower rate. The CBEC Circular No. 19 / 2005 Cus. dated 21.03.2005 has also clarified that the concept of All Industry Rate of duty drawback that the rates are determined taking into account of average duties paid on inputs and in determining rates, the average (weighted average) consumption of imported / indigenous inputs of a representative cross section of exporters is taken into account. The fact that this applicant has not availed cenvat credit is evidenced from the customs declaration that the applicant had indicated the rate of duty draw back @ 9.5% which is applicable when no cenvat facility is availed.

4.4 The CBEC vide Circular No. 35 / 2010 dated 17.09.2010; has clarified this position. The content of the above circular envisage that the customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw materials used in manufacture of exported goods has been taken in terms of Rule 18 of Central Excise Rule, 2002. This position is made amply clear in notification no. 84 / 2010 Cus (NT) dated 17.09.2010.

5. Personal hearing in this case held on 30.03.2015 and 16.04.2015 Hearing held on 16.04.2015 was attended by Shri M. Kartikeyan, advocate on behalf of the applicant who reiterated the grounds of revision application. During the course of personal hearing, they stated that they will submit written submission and also a certificate from jurisdictional Central excise authorities regarding non-availment of cenvat credit. Subsequently, the applicant vide written submission dated 12.05.2015 mainly reiterated grounds of Revision Application. They also placed reliance upon only of revisionary Authority in the case of Trident Ltd. reported in 2014 (312) ELT 934. They have also submitted certificate dated 28.04.2015 from jurisdictional central excise authorities that they have not availed cenvat credit on inputs used in manufacture of grounds which are exported.

5.1 A written submission/ Counter reply to the Revision Application was also made by the department vide its letter dated 26.03.2015 (received on 31-03-2015) wherein it was started as under:-

5.1.1 The applicant has availed 9.5% drawback which is nothing but total drawback inclusive of all components i.e. Customs, Central Excise & Service tax, the rebate claim filed by them is liable to be rejected.

5.1.2 After issue of new drawback schedule introduced in customs notification No. 68/2011 Cus (NT) at 22.09.2011, the customs Notification 103/2008 Cus (NT) dated 29.08.2008 & CBEC's Circular No. 19/2005 Cus dated 21.03.2005 and circular No. 35/2010 dated 17.09.2010 relied upon by applicant are redundant & not relevant to this case.

6. Government has carefully gone through the relevant case records/available in case files, oral & written submission and perused the impugned order-in-original and order-in-appeal.

7. The applicant exported the goods on payment of duty during from their cenvat credit account. Subsequently, they filed rebate claims. The original authority held that as the applicant availed higher rate of drawback, the benefit of rebate cannot be held admissible, as it will amount to double benefit. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the applicant, has claimed that as they have availed custom portion of drawback and have not availed cenvat credit and as such there is no bar on availing drawback and rebate simultaneously and rebate be sanctioned to them in cash. On the other hand, the departmental authorities have held that as the applicant have availed higher rate of drawback, comprising Customs and Central Excise portion, allowing rebate would amount to double benefit. In view of rival contentions, Government proceeds to examine the case keeping in mind the various provisions of law relating to drawback as well as rebate of duty paid on export goods.

9. Government first 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 materials 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. In this case, the applicant is claiming rebate of duty paid on exported goods while he has already availed benefit of higher rate of duty drawback comprising of Custom and Central Excise portion 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 this case, the applicant has paid duty from cenvat credit availed on capital goods. There is no bar on availing rebate of duty on goods exported, if the duty is paid through cenvat credit available on capital goods, provided double benefit in form of higher rate of duty drawback and rebate has not been availed. In this case, the applicant has availed higher rate of drawback @ 9.5%. As such, the original authority's findings that the applicant has availed higher rate of drawback @ 9.5% is an admitted fact which has not been controverted by the applicant by way of any documentary evidences and reliance of the applicant on Circular No. 35/2010 dated 17.09.2010, also does not come to the rescue of the applicant. Reliance is placed upon Notification No. 68/2011-Cus(NT) dated 22.09.2011 by the lower authorities, wherein it has been stipulated that benefit of rebate and higher rate of drawback cannot be availed together, also lent support to the contention of Department. Under such circumstances, allowing rebate would amount to double benefit, which cannot be held admissible.

10. Government notes that CBEC'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 custom 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, another benefit of rebate of duty paid on exported goods will definitely amount to double benefit.

11. 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.

12. 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 availed higher rate of duty drawback of Customs and Central Excise in respect of exported goods. As such, Government finds no legal infirmity in the impugned Order-in-Appeal and hence, upholds the same.

13. The Revision Application is thus rejected being devoid of merit.

14. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s. Raghav Industries Limited,
T.S.NO.7, Kattipalayam, Elanagar Post,
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Tiruchengode-637212.

ATTESTED

(B.P.SHARMA)
OSD (RA)

GOI Order No. 51/2015-CX dated 24.08.2015

Copy to:

1. Commissioner of Central Excise, Salem-636 001.
2. Commissioner of Central Excise (Appeals), No. 1 Foulkes Compound, Anaimedu Road, Salem – 636 001.
3. Assistant Commissioner, Central Excise, Erode-II Division, Bharathi Nagar, Erode -638004.
4. Shri M. Kartikeyan, advocate, # 18, Rams flats, Ashoka avenue Directors Colony Kodambakkam, Chennai- 600024.
5. PA to JS(RA).
6. Guard File.
7. Spare Copy.

ATTESTED

(B.P.SHARMA)
OSD (RA)