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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/683-687/2013-RA /6738
F.No.195/790/2013-RA

Date of Issue: 24.11.2021

ORDER NO.521-526/2021-CX (WZ)/ASRA/MUMBAI DATED 22.11.2021 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. Padam Fashions.

Respondent : Commissioner of CGST, Mumbai West.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. BR/13 to 17/MV/2013 dated 04.03.2013 and BR/33/MV/2013 dated 30.05.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

ORDER

These Six Revision Applications are filed by M/s. Padam Fashions, 59, Mehta Industrial Estate, Liberty Garden Cross Road, Malad West, Mumbai 400 063 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal Nos. BR/13 to 17/MV/2013 dated 04.03.2013 and BR/33/MV/2013 dated 30.05.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. Briefly, the Applicant, holding Central Excise Registration AABPC0811EEM002 had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 as amended.

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2.1 On scrutiny of the claims, it was noticed that the merchant exporter - M/s. Fair Exports (I) Pvt. Ltd., had already claimed drawback from the Customs authority in respect of the said goods and thus the payment of rebate of duties of Central Excise would amount to passing of double benefit. Therefore, the Applicant was issued Show Cause Notices for rejection of the rebate claims. The adjudicating authority, Deputy Commissioner, Central Excise, Kandivali Division, Mumbai-V Commissionerate rejected all the 05 rebate claims as the Applicant failed to produce any documentary evidence to show that the drawback claimed by the exporter was under Part B of the drawback schedule and not under Part A of the schedule i.e. was limited to Customs portion only as envisaged in Notification No. 81/2006-Customs(N.T.) dated 13.07.2006 and the drawback schedule for Chapter 61/62 (under which the goods had been exported). Aggrieved, the Applicant filed 05 appeals with the Commissioner (Appeals), Central Excise, Mumbai Zone-I. The Commissioner (Appeals) rejected

their appeals and upheld the Orders-in-Originals. The details of these 5 rebate claims and the orders passed against them are as under:

Sr. No.	ARE-1 No & date	Amt of rebate claimed (Rs.)	SCN date	OIO No & date	OIA No & date	Revision Application No.
1	07/2011-12 dt 8.10.11	3,73,767	14.4.12	389/29/DC/K-03/2012 dt 31.8.12	BR/13 to 17/MV/ 2013 dt 04.03.2013	195/683-687/2013-RA
2	09/2011-12 dt 19.12.11	2,08,427	16.4.12	390/30/DC/K-03/2012 dt 31.8.12		
3	10/2011-12 dt 6.1.12	2,33,159	16.4.12	391/31/DC/K-03/2012 dt 31.8.12		
4	12/2011-12 dt 14.2.12	2,08,427		392/32/DC/K-03/2012 dt 31.8.12		
	13/2011-12 dt 28.3.12	97,891				
	Total	3,06,318	15.6.12			
5	11/2011-12 dt 12.1.12	2,33,159	4.6.12	393/33/DC/K-03/2012 dt 31.8.12		

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2.2 The adjudicating authority Deputy Commissioner, Central Excise, Kandivali Division, Mumbai-V Commissionerate vide Order-in-Original No. 340/25/DC/KVL/2012 dated 16.07.2012 sanctioned the rebate claim of Rs. 2,66,976/- under Section 11B of Central Excise Act, 1944. Aggrieved, the Department filed appeal before the Commissioner(Appeals), Central Excise, Mumbai Zone-I on the grounds that on the export goods, drawback has been availed by the Applicant and the Applicant had failed to produce any documentary evidence showing that drawback availed is limited to Customs portion only, hence rebate cannot be granted to them in view of provision of condition No. 5 of the Notification No. 81/2006(NT) dated 13.07.2006. The Commissioner(Appeals) set aside the Order-in-Original and ordered recovery of wrongly sanctioned rebate claim under Section 11A of the Central Excise, 1944 along with the interest as the Applicant had not produced any documentary evidence showing the drawback availed was limited to Customs portion only

The details of this claim are as given below:

Sr. No.	ARE-1 No & date	Amt of rebate claimed (Rs.)	OIO No & date	OIA No & date	Revision Application No.
6	14/2012 dt 16.3.12	2,66,976	340/25/DC/KVL/2012 dt 16.07.2012	BR/33/MV/2013 dt 31.05.2013	195/790/2013-RA

3. The Applicant filed the six Revision Applications on the following grounds:

(i) The Applicant had complied with provision of Notification No. 19/2004-CE(NT) dated 06.09.2004, paid the duty on finished goods through their PLA accounts. There was no allegation of non-fulfillment of the substantial condition prescribed for exports. 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. Therefore, the finding of the Commissioner(Appeals) that the Applicant had not fulfilled the specified conditions is completely erroneous and not sustainable. In this they relied upon the judgment in the Munot Textiles [2007 (207) ELT 298 (GOI)] where Government has held that the claiming of drawback is incorrect, and the recovery of drawback shall be made when rebate shall be sanctioned.

(ii) Under Rule 18 of Central Excise Rules, 2002, the exporter has two options:

(a) Claim rebate of duty paid on export of final goods/product: or

(b) Claim rebate of duty paid on material used as input in the manufacture of final goods/product.

The Commissioner (Appeal) in Para 8 of the order has held that

> *"under Rule 12 of the Customs, Central Excise duties and Service Tax Drawback (Amendment) Rules, 2006 the merchant exporter at the time of export of the goods in the present case had made a statement/declaration that in respect of duties of Customs and Central Excise paid on the containers, packing materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities. Under such a circumstance the merchant exporter does not have any right*

whatsoever to issue any 'No Objection Certificate'. Since NOC issued by the merchant exporter addressed to the respondent is ab-initio void and contrary to the provisions of law."

As per Rule 18 Central Excise Rules, 2002 *"...duty paid on such excisable goods or duty paid on material used in the manufacture or processing of such goods..."* it can be seen that the above declaration provides restriction only for the rebate claim of duty paid on material used as input in the manufacture of final goods/product, not for the rebate claim on the duty paid on the export of final goods/product. Whereas in the present case, the rebate claimed by the Applicant was not for the duty paid on material used as input in the manufacture of final goods/product, the rebate claims were filed for the duty paid on export of final goods/products through PLA without availing the facility of Cenvat. Therefore, the findings of the Commissioner(Appeals) was erroneous. Therefore, lawfully they are entitled for rebate.

(iii) The Applicant has declared in ARE-1s that they have not availed Cenvat credit on inputs used in the manufacture of final product. Since, they have not availed the credit of duty, duty at the time of removal of goods have been paid through Personal Ledger Account

(iv) Assuming without admitting that they 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 a 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. Following the ratio of the following judgments, re-credit of the duty should be allowed in PLA.

(a) In Re: RSWM Ltd. [2012 (281) ELT 735 (G01)];

(b) In Re: Balakrishna Industries Ltd. [2011 (271) ELT 148 (G01)]

(c) Order in Appeal No. YDB/191/RGD/2010

(v) The rebate sanctioning authority has to verify the two things and if they are satisfying then rebate should be granted, the same are as follows:

(a) The goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported.

(b) That the goods are of 'duty-paid' character as certified on the triplicate copy of ARE-1.

Thus mainly rebate sanctioning authority has to satisfy themselves that duty has been paid and goods which are mentioned in the ARE-1 have been actually exported. There is no such allegation in the SCN that goods have not been exported as well as duty has not been paid. The appellant had paid the duty through the PLA without availing the Cenvat facility.

(vi) In terms of condition No. 5 of the Notification 81/2006(NT) dated 13.07.2006, the drawback shall be limited to the Customs component only when Cenvat facility has been availed. The Applicant had not availed the Cenvat facility and hence the said condition is not applicable to the present case.

(vii) It will be evident from Page No. 3 of the Shipping Bill dated 20.03.2012 that they had availed the drawback benefit as under:

Sr. No.	Chapter/Description
1	610901A
2	620501A

The drawback schedule of the above Chapter is as under:

Tariff Item	Description of goods	Unit	A		B	
			Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback Rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
610901	T-Shirt, Singlets and other vests, knitted or crocheted of cotton	Piece	7.10%	28	2.20%	8.7
620501	Man's or Boy's shirts	Piece	7.10%	40	2.20%	8.4

Thus it will be evident that the Applicant had availed the drawback under Column No. 'A' of the drawback schedule which prescribed the drawback rates when the Cenvat credit facility has not been availed.

(viii) Para 12 of the Notification provides that the conditions required to satisfy by the exporter to prove that the "Cenvat facility has not been availed". The Applicant has exported the goods under claim of rebate of duty and they are under the process of obtaining the certificate from the jurisdictional Superintendent of the factory of production to the effect that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product.

(ix) The Commissioner(Appeals) has also relied upon the judgment of M/s. Indian Oil Corporation Vs CEx, Vadodara [2012 (276) ELT 145 (SC)] in which it is held that the notification shall be strictly construed. The issue was whether the procedure under Rule 192 shall be complied with in order to avail the benefit of concessional rate of tax. The Court held that conditions and procedure shall be complied with. In the Applicant's case, no procedure is prescribed in the notification. There is no condition that limitation provided under the Drawback Rules, 2005 must be complied with. Therefore, ratio of judgment in the case of IOC (supra) cannot be relied on to deny the rebate to the Applicant.

(x) The Applicant is regularly filing the ER-1 returns and from the ER-1 Returns for the period April 2012 to March 2013 it will be evident that they had not availed any Cenvat credit of the inputs or input services used in the manufacture of their final products.

(xi) The Applicant has paid the duty amount by debit in PLA account.

Sr. No.	ARE-1 No. & date	PLA for the month	PLA debit Entry No.	Invoice export	Amount paid			Total duty	Amt of rebate claimed (Rs)
					BED	Ed.Cess	SHE Cess		
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1	07/2011-12 dt 08.10.11	Oct 11	24	323/11-12 Dt 8.10.11	362880	7258	3629	3,73,767	3,73,767
2	09/2011-12 dt 19.12.11	Dec. 2011	30	380	202356	4047	2024	2,08,427	2,08,427
3	10/2011-12 dt 6.1.12	Jan 2012	34	411	226368	4527	2264	2,33,159	2,33,159
4	11/2011-12 dt 12.1.12	Jan 2012	35	421	226368	4527	2264	2,33,159	2,33,159
5	12/2011-12 dt 14.2.12	Feb 2012	39	483	202356	4047	2024	2,08,427	3,06,318

	13/2011-12 dt 23.3.12		40	495	95040	1901	950	97,891	
F.No.195/790/2013-RA									
6	14/2012 dt 16.3.12	Mar 2012	44 dt 16.03.12	543	259200	5184	2592	2,66,976	2,66,976

4. Personal hearing in the case was fixed for 15.01.2018, 02.02.2018, 16.02.2018. The Applicant vide their letter dated 16.02.2018 requested some time for preparation of documents. Personal hearing was again fixed for 27.08.2019, 09.12.2020, 16.12.2020, 23.12.2020, however no one appeared for the hearing. In view of change in Revisionary Authority, personal hearing was fixed for 03.02.2021, 17,03,2021, 24.03.2021, 22.07.2021, 29.07.2021 and 13.08.2021. On 13.08.2021, on behalf of the Applicant Shri S.S. Gupta, Consultant attended the online hearing and he reiterated the written submissions. He submitted that both drawback and rebate of duty paid on exported goods are admissible to them. He further submitted that duty on exported goods was paid through PLA, therefore, in any case, if duty was not to be paid, the same need to be returned to them.

5. The Applicant submitted their written submissions as follows:

(i) The rebate has been claimed under Notification No. 19/2004-CE(NT) dated 06.09.2004. There is no condition for denial of rebate on the ground that drawback has been claimed by merchant exporter. Therefore, the question of determination is whether exporter has claimed the custom component of drawback or both the component of drawback is totally irrelevant. It is well settled law that the additional condition cannot be incorporated in the notification to deny the benefit. Further, the tax has been paid through PLA and not through utilizing Cenvat credit. This also established that there is no intention to avail double benefit of credit and drawback as the amount was paid through PLA.

(ii) It has been consistently held that when the rebate is rejected for any reason amount should be refunded in the manner in which it was

paid by the Applicant i.e. PLA. They placed reliance on few judgments. However, the PLA does not exist in current taxation system. Therefore, in view of Section 142(5) of the CGST Act, 2017 the amount of such duty paid shall be refunded in cash to the Applicant.

(iii) As per Rule 18 of Central Excise Rules, 2002, the export goods do not attract excise duty. Therefore, the duty paid on export shall be re-credited in PLA. Since, in the current tax system re-credit cannot be granted, the refund of the same should be granted as per Section 142(5) of the CGST Act, 2017.

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

7. Government observes that the issue involved is whether the rebate of duty paid on export of goods through PLA should be granted to the manufacturer when the merchant exporter had claimed full rate of drawback of duties paid on the inputs which have gone into manufacturing the said exported product

8. Government observes that the Applicant had 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 case the Applicant failed to produce any documentary evidence to show that the drawback claimed by the exporter was under Part B of the drawback schedule and not under Part A of the schedule i.e. was limited to Customs portion only as envisaged in Notification No. 81/2006(NT) dated 13.07.2006 and the drawback schedule for Chapter 61/62 (under which the goods had been exported).

9. 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. Every year the drawback rates are notified for each tariff heading. The drawback rates are notified for each tariff heading depending upon availment and non-availment of Cenvat facility by the manufacturer. The drawback rates where Cenvat facility has not been availed by the manufacturer are generally higher.

9.1 As per Rule 12(1)(a) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 (as amended) the exporters shall at the time of export of the goods –

> *(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that -*
>
> *(i) a claim for drawback under these rules is being made;*
>
> .
> .
> .

9.2 On perusal of the records and on test checking one rebate claim, Government observes that:-

i. Rebate Claim dated 16.04.2012 is for Rs.2,66,976/-.

ii. It covers ARE-1 No.14/2011-12 dated 16.03.2021 and Invoice no. 543 dated 16.03.2021. The goods mentioned in said documents are 5760 nos. of Shirts and 1728 nos. of T-Shirts totally valuing at Rs.25,92,000/- and involving total central excise duty of Rs.2,66,976/- .

iii. It covers Shipping bill no. 8089558 dated 20.03.2012. The goods mentioned are 1728 pcs of Men's Knitted T-Shirt and 5760 pcs of Men's woven shirt.

iv. The shipping bill also mentions drawback details -

Inv Item	DBK S.No.	Total DBK Amt.	DBK Qty
1	610901A	37248.92	1728
2	620501A	148999.87	5780

9.3 Government observes that Column No. 'A' of the drawback schedule to the Notification No. 68 / 2011 - Customs (N.T.) dated 22.09.2011(which was applicable notification for rates of drawback in the instant matter) is regarding *'Drawback when Cenvat facility has not been availed'*. As per note 6 of said Notification *'the figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together).*

The relevant entries in the drawback schedule pertaining to serial number shown by applicant in the shipping bill mentioned in para 9.2 read as follows:

Tariff Item	Description of goods	Unit	A		B	
			Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback Rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
6109	T-Shirt, Singlets and other vests, knitted or crocheted of cotton					
610901	Of cotton	Piece	7.10%	28	2.20%	8.7

6205	Men's or boy's shirts					
620501	Of cotton	Piece	7.10%	40	2.20%	8.4

Thus, the Government observes that the stipulated conditions to claim drawback have been adhered to in the instant case.

9.4 Rule 18 of the 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 inputs used in the manufacturing or processing of such goods. Thus, from a plain reading of Rule 18, it is clear that rebate of duty paid at one of the stages i.e. either on excisable goods or on inputs used during manufacture or processing of such goods can be claimed. In the instant case the Applicant has claimed rebate of duty paid through PLA on the exported goods. Government observes that the Applicant could have cleared the exported goods without payment of duty under Rule 19(1) of the Central Excise Rules, 2002. They would have still been eligible to claim total drawback (customs, central excise and service tax component put together). Hence, as exports do not attract Central Excise duty, the amount paid through PLA by the applicant while clearing the goods exported, need to be returned back.

10. In view of discussions and findings elaborated above, Government holds that impugned six rebate claims are not admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.2004. However, amount paid on exported goods was not required to be paid, hence same is required to be returned to them in the manner it was paid, subject to verification by original adjudicating authority of the duty payment particulars pertaining to impugned exports.

10.1 In view of above findings, the Government sets aside the impugned Orders-in-Appeal Nos. BR/13 to 17/MV/2013 dated 04.03.2013 and BR/33/MV/2013 dated 30.05.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I and remands the case back to Original Authority. The Original Authority is directed to carry out verification within

eight weeks on the basis of the above directions and pass appropriate orders.

11. These six Revision Applications are disposed of on above terms.

Shrawan 22/11/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.521-526/2021-CX (WZ)/ASRA/Mumbai dated 22.11.2021

To,
M/s Padam Fashions,
59, Mehta Industrial Estate,
Liberty Garden Cross Road,
Malad West,
Mumbai 400 063.

Copy to:
1. The Commissioner of CGST, Mumbai West, Mahavir Jain School, C.D.Barfiwala road, Juhu, Andheri(W), Mumbai 400 058.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.