F. NO. 195/890/13-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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/890/13-RA /3810 Date of Issue: 10.08.2020

ORDER NO. 526/2020-CX (WZ) /ASRA/MUMBAI DATED 02.07.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Star Extrusion, Umbergaon, Gujarat.

Respondent : Commissioner of Central Excise, Vapi.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SRP/227 to 230/VAPI/2013-14 dated 06.08.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vapi.

ORDER

This revision application has been filed by the applicant Star Extrusion, Umbergaon, Gujarat (hereinafter referred to as 'the applicant') against Order-in-Appeal No. SRP/227 to 230/VAPI/2013-14 dated 06.08.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vapi.

2. Brief facts of the case are that the applicant had filed 4 Rebate claims for amount of Rs.2,12,357/- Rs.1,00,091/-, Rs.21,274/- and Rs.49,026/- altogether amounting to Rs.3,82,748/- in respect of the of the duty paid by them on export of excisable goods viz. "Tinned Copper Terminal Ends" under Drawback Scheme during the period June 2011 to August 2011. Original authority observed that as the applicant had availed double benefit i.e one by way of full drawback and other by claim of rebate on final products,which is not permissible under any law. Accordingly, vide Orders in Original No. 1080 to 1083/AC/REB/Div-Vapi/2012-13 dated 06.12.2012, the Original authority rejected the 4 Rebate claims of Rs. Rs.3,82,748/- (Rupees Three Lakh Eighty Two Thousand Seven Hundred Forty Eight only) filed by the applicant.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeal before Commissioners (Appeals), who vide Order-in-Appeal No. SRP/227 to 230/VAPI/2013-14 dated 06.08.2013 upheld the Orders-in-Original and dismissed the appeal filed by the applicant.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the grounds mentioned therein.

5. A Personal hearing in this case was held on 14.01.2020 which was attended by S/Shri Vinay S. Sejpal, Advocate, Tejas Thakkar, Vice President and D.C.Patel, who were duly authorized by the applicant for hearing. They made written submissions dated 14.01.2020 reiterating therein grounds already made in Revision Applications and also informed that the issue involved is already decided vide GOI Order No.344/2019 CX(WZ)/ASRA/Mumbai dated 10.12.2019 and pleaded that in view of the 'Objection for grant of rebate, they have no objection if the said debit / payment from the Cenvat Credit account is allowed by way of re-credit to the cenvat account. In its additional written submissions filed on 11.09.2019, the applicant mainly contended as under:

5.1 The 4 Rebate claims totally amounting to Rs.3,82,748/- were rejected ex-parte without any show cause notice and without any personal hearing vide common OIO on the grounds that exporter cannot claim rebate of duty and duty drawback together. Their appeal against the said Order in Original has

been decided vide common OIA No. SRP/227 to 230/VAPI/2013-14 dated 06.08.2013 upholding the rejection of the rebate claims on the ground that simultaneous benefit of duty drawback for excise and custom element and claim of rebate of duty on the finished goods is not permitted as it amounts to double benefit under the law.

5.2 In the present appeal there is no dispute as regards to the following;

➢ The goods exported has been cleared on payment of duty and the said duty has been claimed as rebate under Rule 18 of Central Excise Rules,2002.

(a) The inputs required for manufacturing of the said export goods were separately purchased for which separate records were maintained and no Cenvat Credit is availed on the said inputs. The copies of the said invoices on which Cenvat is not availed was produced for verification before the Commissioner (Appeals) and the same was acknowledged in Order in Appeal.

(b) Since the inputs used in the manufacture of the export goods were not subjected to availment of Cenvat Credit, we had claimed higher rate of common duty drawback i.e. rate applicable for excise + customs and the fact of non availment of Cenvat Credit was referred in the ARE-1 and the same was verified at the time of export. The said fact is also observed at Para-3.2 and Para-6 of the OIO.

(c) The only issue / dispute in the present proceedings as observed by the Commissioner (Appeals) at Para-5 of the OIA is,

"The issue to be decided is whether the appellant is eligible for rebate claim when they have paid duty from the Cenvat Credit account on the export goods while simultaneously claiming drawback thereon".

5.3 Any manufacturer exporter purchasing goods from the domestic market or imports goods [without any benefit of advance license or advance authorization of any other import license] is eligible to claim three benefits with reference to his procurement of inputs and input services and on export of his finished goods. The manufacturer exporter is eligible for the benefit of the excise duty and customs duty element involved in his inputs and input services and also eligible for the benefit on the duty involved on the finished goods, as the cardinal principles for exports is that only goods should be exported and not the tax involved on the goods.

5.4 Accordingly the manufacturer exporter has option to claim the following benefits with reference to procurement of it's inputs and input services for use in the manufacture of export goods and also eligible for the benefits of the duty involved on the finished goods so exported by them. The benefits eligible under the various provisions [other than benefit of advance license or advance authorization of any other import license] are enumerated as under;

(A) For procurement of inputs and input services, the manufacturer exporter can claim the benefits of;

i. Cenvat Credit benefit as visualized under the provisions of Cenvat Credit Rules, 2004,

ii. Duty drawback as visualized under the provisions of Customs, Central Excise Duties And Service Tax Duty Drawback Rules, 1995,

iii. Rebate of the duty involved on the inputs used in the manufacture of goods exported as per Rule 18 of Central Excise Rules,2002 read with Notification issued thereunder,

iv. [Manufacturer exporter can procure inputs without payment of excise duty locally under Rule 19(2) read with Notification issued thereunder, but the same is not referred / enumerated in the present reply as the same has no applicability].

v. [Manufacturer exporter can claim the benefit of importing goods against various types of advance licenses or advance authorization or other import licenses, but the same is not referred / enumerated in the present reply as the same has no applicability.]

(B) For removal of goods for exports, the manufacturer exporter can claim the benefit of;

i. Removal of finished goods under Bond / LUT without payment of any excise duty as per the provisions of Rule 19(1) of Central Excise Rules, 2002, OR

ii. Removal of finished goods on payment of excise duty and to claim the refund/ rebate of the same as per Rule 18 of Central Excise Rules, 2002.

5.5 The manufacturer exporter has the option to choose any of the benefits or combination of the above benefits to his choice to get /avail the three duty benefits i.e. (a) Excise duty / Service Tax element involved on the inputs and input services ; (b) Customs duty involved on the inputs; and (c) Excise duty element involved on the finished goods exports.

The manufacturer exporter is at liberty to choose any combination of the benefits, so that he can avail the above three benefits on the inputs / input services and the finished goods because no taxes on the goods are permitted to be exported. However the choice of the benefit should be such that there should not be any double benefit to the exporter with reference to above three elements of taxes.

5.6 They have availed the three benefits which are as under :

> No Cenvat Credit availed on the inputs used in the manufacture of export goods and claimed duty drawback of the excise duty element;

> Claimed duty drawback of the customs duty element; and

> Finished goods cleared on payment of duty and rebate claimed under Rule 18 of Central Excise Rules, 2002.

They have not claimed any double benefit as observed /held in the impugned order and they have claimed only three benefits which are legally permissible to the manufacturer exporter.

It is a matter of record that they have not claimed any Cenvat Credit on the inputs which are separately procured for exports as explained in brief facts above and the input stage benefit has been claimed by way of duty drawback of both excise element and customs element of the inputs. As regards to finished goods they have cleared the same on payment of duty and claimed refund of the very same amount. Accordingly there is no double benefit claimed by them and the impugned orders have failed to appreciate the said facts.

5.7 Without prejudice to the above, they are making their following alternate additional submissions that it is the removal of the said export goods on payment of duty from the cenvat account which has created the doubt regarding double benefit in the matter and to resolve the said issue they have no objection if the credit so debited is granted back as re-credit in the cenvat account.

5.8 In fact the above principle of allowing re-credit of the Cenvat Credit amount if the rebate is not granted has been settled under the following decisions;

➢ Garden Silk Mills Ltd. Vs. U.O.I - 2018(11) GSTL 272(Guj.);

➢ Aarti Industries Ltd. [2014 (312) ELT 872 (GOV)]; and

➢ Balkrishna Industries Ltd. [2011 (271) ELT 148 (GOI)].

5.9 In view of the above fact that the export goods cannot be burdened with duty and in view of the objection raised regarding the debit / reversal / payment of duty from Cenvat Credit Account and in view of the 'Objection for grant of rebate, we have no objection if the said debit / payment from the Cenvat Credit account is allowed by way of re-credit to the cenvat account. If the rebate cannot be granted in cash and the Government cannot be allowed to benefit and retain duty so paid through Cenvat Credit Account and the same should be allowed by way of re-credit in their cenvat credit account as per the settled position of law laid down in the above decisions.

5.10 Transitional provisions under CGST specifically visualisez that any amount of credit which is found admissible and has to be refunded it should be in cash. Accordingly the amount of debit made from the Cenvat account at the time of export has to be ordered to be allowed as re-credit in the Cenvat Credit Register and in view of the above transitional provisons under Section 142(6) (a) and Section 142(7)(b) the said amount of re-credit should be granted by way of cash refund.

6. The respondent Department vide Letter F.No. XXIV/Div-UMG/Star Extrusion- JS (RA)/2019 dated 10.01.2020 filed counter objection to the instant Revision Application filed by the applicant. While countering the grounds of Revision Applications the department mainly contended as under:-

6.1 The applicant have exported Finished Excisable Goods which had earlier classified the same products under CSH No. 85369090 instead of CSH No. 74199990 of CETA, 1985, when they had exported the said goods under DEPB Scheme and thus the variance in the classification was doubtful.

6.2 The relevant shipping bills indicated that they had availed full benefit of Drawback from Customs i.e. Excise + Customs components. The applicant has not disputed the facts that by way of paying duty from credit account the applicant have availed the facility of cenvat credit scheme.

6.3 The applicant has claimed higher rate of drawback@ 11% in respect of the said export goods while availing cenvat facility by way of making payment of duty on export goods from cenvat account, which is not disputed by the applicant. In the schedule to the notification no. 84/2010-Cus(NT)and para 6 thereof clearly provide that the higher rate of drawback(where no cenvat facility is availed)would consist of the Central Excise duty, Customs duty and Service tax components together in respect of inputs/services in relation to the finished exported goods or utilized the credit for payment of duty on finished goods, the claim of rebate is liable to be rejected if the higher drawback including Excise portion of duty on inputs has been claimed. If the higher drawback including Excise portion of duty on inputs has been claimed, this amount to double benefit, which is not permissible in law. Similar issue was dealt with in the case of Suraj Filament P Ltd 2012 (282) ELT 149 (GOI).

6.4 The quoted notification no. 68/2011-Cus (NT) dated 22-09-2011 is applicable w.e.f. 01.10.2011, whereas the instant case involves the period from June 2011 to August 2011. In fact earlier Notification No. 84/2010-Cus (NT) dated 17-09-2010, is relevant to this case which prescribed the schedule of the all industry rate of drawback, subject to certain condition. Further in case of Sabare International Ltd 2012 (280) ELT 575 (GOI), the Revision authority held that allowing Drawback on both Customs and Central Excise portion and rebate of final product would amount to double benefit.

6.5 On perusal of the condition No 6 and 15 to the Notification No. 84/2010-Cus (NT), it is clear that the drawback and the CENVAT credit on inputs can be availed simultaneously provided rate indicated is same in both the columns of the drawback schedule viz. "Drawback when Cenvat facility has not been availed" and "Drawback when CENVAT facility has been availed". In respect of CSH No. 7419 of CETA, 1985, (CSH No. 8536 is not considered in view of their re-classifying their goods under CSH No. 7419 after due intimation to the department and prior to the exports in question), the rates indicated in both the columns are different for other articles of copper i.e. drawback @ 11% if cenvat facility is not availed and drawback @ 1% if the cenvat facility is availed. In the instant case the appellant has claimed

higher rate of drawback @ 11% in respect of the said export goods while availing cenvat facility by way of making payment of duty on export goods from cenvat credit account, which is not disputed by the appellants. The schedule to the notification no. 84/2010-Cus(NT) and para 6 thereof clearly provide that the higher rate of drawback (where no cenvat facility is availed) would consist of the Central Excise duty, Customs duty and Service Tax components together in respect of inputs/services used. Therefore once the appellants has taken credit on the raw materials and input services in relation to the finished export goods or utilized the credit for payment of duty on finished goods, the claim of rebate is liable to be rejected if the higher drawback including Excise portion of duty on inputs has been claimed This would tantamount to double benefit, which is not permissible in law.

7. Government has carefully gone through the relevant case records and perused the Order-in-Original, the impugned Order-in-Appeal, and written as well oral submissions made by the concerned parties.

8. Government notes that the applicant had filed 4 separate rebate claims amounting to Rs. 3,82,748/- during the period from June 2011 to August 2011. The applicant had claimed Drawback of Customs in respect of input duty fixed under Drawback Rules as well as claimed rebate under Rule 18 of Central Excise Ruls, 2002 on finished goods cleared by them on payment of Central Excise Duty. The issue to be decided in this case is that whether the applicant is eligible for rebate of duty paid from the accumulated Cenvat credit account on the export goods while simultaneously claiming drawback thereon.

9. Government observes that applicant has claimed that they have not taken Cenvat credit on the inputs utilized in the manufacture of their finished goods which is exported by them on payment of Central Excise Duty. However, in this case the finished goods are exported by the applicant by paying duty from accumulated Cenvat credit in order to avail benefit of rebate claim under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. The applicant has already availed duty drawback (Customs as well as Central Excise portion) in respect of said exports (para 5.6 supra).

10. 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

(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. The 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 applicant is now claiming rebate of duty paid on exported goods after having availed benefit of duty drawback of Central Excise portion in respect said exported goods. 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. Since applicant has already availed Central Excise portion duty drawback, the rebate of duty paid on finished exported goods can not be held to be admissible.

11. Government also notes that applicant had paid duty on exported goods from Cenvat credit account. Government notes that C.B.E. & C. has clarified in its Circular No. 83/2000-Cus., dated 16-10-2000 (F. No. 609/116/2000-DBK) that while allowing cash refund of unutilized Cenvat credit claiming of only Customs portion of All Industry Rate of Drawback by the manufacturer would not amount to double benefit. 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 reveal that double benefit is not permissible as a general rule. 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 [as admitted at para 5.2(b) supra], therefore, another benefit of rebate of duty paid on exported goods will definitely result in double and undue benefit.

12. 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.

13. Government observes that the applicant has made alternate additional submissions that it is the removal of the said export goods on payment of duty from the Cenvat account which has created the doubt regarding double benefit in the matter and to resolve the said issue they have no objection if the credit so debited is granted back as re-credit in the Cenvat account.

14. Government has already held availment of double benefit by the applicant in the instant case. The applicant has cited number of case laws in support of his seeking re-credit. But all the case laws have observed that the rebate of duty is to be allowed of the duty paid on the transaction value of the goods as determined under Section 4 of the Central Excise Act, 1944 and the rebate on the amount of duty paid in respect of post-clearance expenses like freight and insurances may be allowed as re-credit entry in their Cenvat account treating it as payment of additional amount in the nature of deposit with Government. Government observes that the applicant in the instant 4 rebate claims had cleared the 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. It is not the case that the said duty paid by applicant, was collected without any authority of law so as to be treated as voluntary deposit (as held in case laws cited supra) and therefore required to be returned to the applicant in the manner it was paid. As such ratio of the said case laws cannot be made applicable to these cases.

15. This authority while deciding the applicant's Revision Application No.195/225/13-RA involving identical issue vide Order No.344/2019 CX(WZ)/ASARA/Mumbai dated 10.12.2019 has also taken similar stand and rejected the said Revision application on the same grounds.

16. In view of the above circumstances, 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 No. SRP/227 to 230/VAPI/2013-14 dated 06.08.2013 passed by the Commissioner (Appeals) Central Excise, Customs and Service Tax, Vapi and therefore upholds the same.

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

18. So ordered.

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

ORDER No.526/2020-CX (WZ) /ASRA/Mumbai Dated 02.07.2020.

To,

ATTESTED

M/s Star Extrusion,
Plot No. 226/A, 1st Phase, GIDC,
Umbergaon, Valsad-396 171,
Gujarat.

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

Copy to :-

1. The Commissioner of CGST, Surat, Central Excise Building, Chowk Bazar, Surat, 395001- Gujarat.
2. The Commissioner of CGST, (Appeals), 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395007
3. Assistant Commissioner of CGST, Division-XII, Umbergaon, Surat Commissionerate , Pooja Park, 1st Floor, Opp. Bank of Baroda, Bhilad, Pin Code-396105
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
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