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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
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F NO. 195/133-429/2016-RA/7009 Date of Issue: 03.12.2021

ORDER NO.531-827/2021-CX (WZ) /ASRA/MUMBAI 30.11.2021 DATED 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 : Indorama Synthetics (I) Ltd.

Respondent : Commissioner (Appeals) Customs, C. Excise & S. Tax, Nagpur

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. NGP/EXCUS/000/APPL/579 to 875/15-16 dated 18.01.2016 passed by the Commissioner (Appeals) Customs, C. Excise & S. Tax, Nagpur.

ORDER

This Revision application is filed by M/s Indorama Synthetics (I) Limited, A-31, MIDC Industrial Area, Butibori, Nagpur (hereinafter referred as "the applicants") against the Orders-In-Appeal NGP/EXCUS/000/APPL/579 to 875/15-16 dated 18-01-2016 passed by the Commissioner (Appeals), Customs, Central Excise & ST (Appeals), Nagpur.

2. The Brief facts of the case are the applicant is the manufacturer of Draw Texturized Yarn (DTY) falling under Chapter Heading 5402 & Polyester Staple Fibre (PSF) falling under Chapter Heading 5503. DTY and PSF are hereinafter collectively referred to as "the finished goods". The applicant are availing the facility of Cenvat credit under the Cenvat Credit Rules, 2004. The applicant has exported Polyester Staple fibre on payment of Central Excise Duty under claims of Rebate of duty and accordingly filed Rebate claims under Rule 18 of the Central excise Rules, 2002 with the Deputy Commissioner, Central Excise Division -II, Nagpur. The Dy. Commissioner sanctioned the Rebate claim vide the following OIOs viz No. 883/2009/Dn-II/Reb to 922/2009/Dn-II/Reb dated 6-11-2009; OIO 1038/2009/Dn-II/Reb to 1058/2009/Dn-II/Reb dated 14-12-2009; 1601/2008/Dn-II/Ref to 1653/2008/Dn-II/Ref dated 12-12-2008; 1238/2008/Dn-II/Ref to 1287/2008/Dn-II/Ref dated 11-10-2008; 1426/2008/Dn-II/Ref to 1509/2008/Dn-II/Ref dated 24-11-2008; 1727/2008/Dn-II/Ref to 1760/2008/Dn-II/Ref dated 30-12-2008; 1851/2008/Dn-II/Ref to 1860/2008/Dn-II/Ref dated 16-01-2009; 1867/2008/Dn-II/Ref to 1869/2008/Dn-II/Ref dated 16-01-2009; and OIO 1918/2008/Dn-II/Ref dated 23-01-2009. In some of the rebate claims, the FOB value of the goods being exported was lower than the assessable value of the goods and hence the rebate was restricted to the duty component of the FOB value and the extra duty paid was permitted to be taken as Cenvat credit. Thus the Deputy Commissioner vide the aforesaid Orders in Original sanctioned total rebate amounting to Rs10,89,69,730/- in cash and Rs.12,39,876/- was permitted to be taken as Cenvat credit, out of the total rebate claim filed amounting to Rs11,02,09,606/-.

3. Aggrieved by the aforesaid Orders the Department filed appeal with the Commissioner Appeals. Vide Orders in Appeal No NGP/EXCUS/000/APPL/579 to 875/15-16 dated 18.01.2016, Commissioner Appeal held that the assessee has got double benefit of liquidation of his Cenvat credit in respect of export of the same goods, once duty drawback under Rule 3 of Customs, Central Excise Duties and Service tax Drawback Rules, 1995 and again as a rebate of duty paid on exported finished goods under Rule 18 of Central Excise Rules, 2002. He held that the rebate claims have been wrongly sanctioned as they have led to double benefit when the excise portion of drawback stands sanctioned and they continued to avail the Cenvat facility having paid the duty

on exported product from Cenvat account. He therefore ordered recovery of the rebate sanctioned alongwith the interest.

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

a) At the outset, the applicants submitted that the impugned Order-in Appeal dated 18.1.2016 passed by the Commissioner (Appeals) Central Excise & Customs, Nagpur is incorrect in facts as well as in law.

b) All the grounds enumerated in the impugned Order-in-Appeal dated 18.1.2016 for recovery of rebate amount sanctioned to the applicants are liable to be set aside since they are beyond the scope of appeal filed by the Revenue. The applicants were not put to notice as regards the grounds now taken in the impugned Order-in-Appeal. The Commissioners of Central Excise, Nagpur reviewed the orders sanctioning rebate claim on the grounds that the applicants are claiming double benefit for liquidation of cenvat credit i.e., duty drawback at full rate on inputs under Duty Drawback Rules and again claiming rebate of duty paid on the goods exported under Rule 18 under Central Excise Rules, 2002. In the impugned Order-in-Appeal, the Commissioner (Appeals) has confirmed demand mainly on the ground that the applicants have avail the facility of cenvat credit for payment of duty on goods exported and hence, the applicants are neither entitled for higher rate of duty drawback nor for rebate under Rule 18 in respect of goods exported on payment of duty. The applicants submit that this was never the case of the Revenue in appeals field by them. Hence the applicants submitted that the impugned Order-in-Appeal dated 18.1.2016 is liable to be set aside in its entirety.

c) The finding of the Commissioner (Appeals) that the applicants were not entitled for higher rate of drawback is beyond jurisdiction and perverse. Orders sanctioning drawback were neither under challenge before Commissioner (Appeals) nor had they been reviewed before appropriate forum by the department. The finding in the Order-in-Appeal that where the exporters claim the rebate on the final product exported then he could claim drawback only in respect of customs duty portion paid on the inputs is immaterial, perverse and has no bearing in deciding the present case. Therefore, the impugned Order-in-Appeal passed by the Commissioner (Appeals) is beyond jurisdiction and perverse. Hence, the Order-in-Appeal is liable to be set aside.

d) The applicants submitted that they have fulfilled all the conditions mentioned in the Notification No.68/2007-Cus(NT) for the grant of drawback @16%. According to the OIA, the only dispute is that the condition prescribed with regard to non-availment of Cenvat credit.

e) The goods in dispute have been exported by the applicants on payment of duty and no Cenvat credit facility has been availed in respect of inputs used in such goods exported. The applicants are regularly availing credit on inputs. But, as far as the export goods are concerned in the present case, the applicants have not availed credit of duty paid on inputs used in the manufacture of such export goods. The applicants have fulfilled the condition in as much as the applicants have not availed credit of duty paid on inputs used in the manufacture of export goods in the present case. The applicants had reversed the credit of duty paid on input used in the final products exported prior to clearance of goods for export. Reversal of credit before utilizing the same amounts to credit not taken at all. Hence, the rebate is correctly eligible to the applicants. In view of the above, the impugned Order-in-Appeal is liable to be dismissed in its entirety.

f) The applicant submitted that prior to claiming the drawback benefit at higher rate of duty, the applicants had reversed credit of duty paid on inputs used in the manufacture of the exported final products. Since credit of duty paid on inputs used in finished goods exported, initially taken has been duly reversed before the clearance for export, the applicants have not availed cenvat credit facility on the inputs used in the manufacture of the finished goods exported. In support of the above submissions, the applicants place reliance on the Hon'ble Supreme Court decision in the case of CCE Vs. Bombay Dyeing & Mfg. Co. Ltd. - 2007 (215) ELT 3 (SC), Circular No. 858/16/2007-CX dated 1.2.2007 and various other judgments wherein it has held that reversal of Cenvat credit prior to utilization amounts to not taking the credit itself. Therefore, the finding in the impugned Order-in-Appeal that the applicants have availed the cenvat credit facility and hence, the applicants are not entitled for rebate claim is erroneous and the impugned Order-in-Appeal is liable to be set aside.

g) There is no express or specific bar under Rule 18 read with Notification No.19/2004-CE (NT) dated 6.9.2004 to deny the rebate of duty paid on the finished goods exported on the ground that drawback has been claimed on inputs or accumulated Cenvat credit has been utilized for payment of excise duty on goods exported for which rebate has been claimed. On going through the Notification, it is clear that Notification No. 19/2004-CE(NT) dated 6.9.2004 nowhere provides that duty on the exported goods cannot be paid through accumulated cenvat credit in order to claim rebate. Further, the notification does not bar the grant of rebate in case where duty drawback has been claimed in respect of inputs used in the export goods. Therefore, during the period

January 2008 to April 2008, when the applicants exported the final product under rebate scheme, there was no requirement which provides that (i) duty has to be paid in PLA / cash and the claimants can claim either drawback on inputs or rebate of duty paid on goods exported. Therefore, the rebate sanctioned by the Deputy Commissioner is correct in law and the Commissioner (Appeals) holding recovery of rebate claim sanctioned to the applicants on the basis of the aforesaid finding is contrary to the conditions prescribed under Rule 18 read with Notification No. 19/2004-CE(NT). Hence, the impugned Order-in-Appeal is incorrect and is liable to be set aside.

h) The applicants have not claimed rebate of duty paid on the inputs used in the manufacture of export goods. Therefore, reliance placed by the Commissioner (Appeals) on Notification No. 21/2004-CE(NT) as well declaration to be provided under ARE-2, is erroneous. ARE-2 is filed when exporter claims rebate of input credit. In the present case, the applicants have not claimed rebate of input credit and hence, the applicants have not filed ARE-2. Therefore invoking ARE-2 or conditions mentioned therein is perverse and irrelevant.

The applicant submitted that the present issue is covered by the decision in the case of L.K. Mehta Polymers Ltd. It was held therein that benefit of drawback of customs as well as excise portion and input stage rebate is not available at the same time. It was also held that drawback of customs as well as excise portion and output stage rebate is available at the same time and that there is no double benefit in this. The GOI held that since the claimant had claimed output stage rebate and not input stage rebate, the rebate claims was not hit by double benefit. The ratio of the aforesaid decision is squarely applicable in the facts of the present case. In the present case also, the applicants have claimed duty drawback at input stage and rebate at output stage and therefore, in view of above judgement in L. K. Mehta Polymers case the applicants have correctly claimed rebate of output stage. The impugned Order-in-Appeal dated 18.1.2016 passed by the Commissioner (Appeals) being contrary to the aforesaid binding decision, is incorrect and liable to be set aside.

j) Decisions relied upon by the Commissioner (Appeals) are irrelevant & distinguishable.

k) There is no double benefit involved in the present case. The applicant submitted that the double benefit arises in case where, for a single tax incidence, relief is availed more than once.
In the present case, the applicants have availed relief only by claiming drawback of excise duty paid on inputs used in the export goods. Credit taken

on inputs was regularly being reversed surrendered as already narrated elsewhere in this application. Therefore, it would be incorrect to hold that the applicants have availed double benefit on inputs. Hence, there is no double benefit as alleged in the present case. In support of the above submission, the applicants place reliance in RE: Banswara Syntex Ltd. - 2004 (170) ELT 124 (GOI). In this case, the assessee has procured inputs without payment of duty under Rule 13 and cleared finished goods for export on payment of duty under claim for rebate under Rule 12. The case of the Revenue was that the assessee has manufactured their exported products from duty free inputs and hence, the assessee was required to export their final products under bond only. As per the Revenue, the assessee has cleared the exported goods on payment of duty in order to encash the accumulated cenvat credit. Accordingly, the Revenue alleged that assessee are not entitled for claim of rebate in respect of goods exported. Under these facts, GOI has held once assessee has followed the provision of Rule 12 and cleared final product export payment the rebate claim cannot be denied to the assessee.

In this regard, the applicants also placed reliance in the case of Spentex Industries Ltd. Vs. CCE- 2015 (324) ELT 686 (SC) wherein it was held that rebate is admissible in respect of duty paid both on final as well as intermediate products, simultaneously. In the aforesaid decisions, the duty on the final product exported is paid by utilizing accumulated cenvat credit, then also the Hon'ble Courts has allowed rebate claim under Rule 18 on such duty paid goods exported. Had there been double benefit, the Hon'ble Courts would not have allowed the rebate claim on such exported goods.

m) The applicants submitted it is a settled principle law that in cases where the rebate not sustainable, interest cannot be levied.

5. In view of the aforesaid submissions, the applicant submitted that the recovery is not sustainable hence, the question of imposing interest does not arise. Therefore, impugned Order-in Appeal is incorrect and requested to set aside the OIA and allow the revision application.

6. A Personal Hearing was held in the matter on 27-10-2021. Shri Gajendra Jain and Shri C.S.Kushawa, General Manager (Indirect Taxation), Authorised representative of the assessee attended the same on behalf of the applicant. They reiterated their submissions and also submitted that they have not availed double benefit.

7. 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.

8. Government observes that the issue involved is whether the applicant can claim rebate of duty paid on export of goods through Cenvat when they had claimed Drawback at All industry rate of duties paid on inputs used in the manufacture of the exported goods claiming that no Cenvat has been availed.

9. Government observes that in this case the Rebate claims were sanctioned by the Deputy Commissioner which was not found to be in order and an appeal was filed with Commissioner Appeals who allowed the appeal of the department and held that M/s Indo Rama Synthetics Pvt ltd. are not entitled to claim benefits of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage and since the applicant has already availed duty drawback, the rebate of duty paid on finished exported goods cannot be held admissible.

10. Government observes that applicant has claimed that they have not taken Cenvat credit on the inputs (as they have claimed to have debited the same before the export) 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 at higher rate (Customs as well as Central Excise portion) in respect of said exports.

11. 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. However, in the instant case the Applicant is now claiming rebate of duty paid on exported goods while the benefit of duty drawback of Central Excise in respect of said exported goods has already been availed. 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. Admittedly, the Applicant has availed both Customs as well as Central Excise portion of drawback. By claiming full drawback, the applicant had already obtained a cash rebate attributable to the duty/taxes paid on the inputs/input services used in the manufacture of DTY & PSF exported by him. In addition, by seeking cash rebate of the duty paid on the DTY & PSF exported, the applicant seeks to obtain cash refund of duty paid on the final product. The net result of the applicant's action is claim of rebate of duty paid on input/input services (as drawback), as well as, rebate of duty paid on final products through the impugned rebate applications. Both the rebates are cash outgo's to the government exchequer. Had the applicant taken credit of duty paid on the input/ input services and used such credit for payment of duty on the final product, his cash rebate would be restricted to the actual duty paid on the finished goods exported, which is the actual tax burden suffered by him in respect of the export consignment. Instead, the applicant has tried to take undue advantage of the export opportunity to ENCASH an additional amount lying idle in his CENVAT account. This cannot be permitted as it results in excess outgo from government's exchequer than the actual tax incidence suffered on the goods exported. There was no necessity to pay duty on exported goods. Apparently, this was done to encash accumulated credit. Thus allowing rebate claimed would amount to double benefit which cannot be held admissible.

12. Government also notes that condition 6 of the Notification No. 68/2011 - Customs (N.T.) (which was applicable notification for rates of drawback in the instant matter) reads as follows:

'(6) 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) allowable .....'

In this case as the Applicant has availed total drawback (Customs, Central Excise and Service tax component put together), allowing

rebate claimed would amount to violation of Rule 18 of the Central Excise Act, 1944, which permits either rebate of duty paid on excisable goods or duty paid on inputs. Government also notes that applicant had paid duty on exported goods from Cenvat credit account. Therefore the applicant cannot claim that no Cenvat facility has been availed as such they have violated condition No. 12(ii) of Notification No. 68/2007-Cus. (N.T.), dated 16-7-2007. Since the applicant has already availed duty drawback @ 16%, allowing rebate of duty paid on exported goods will definitely amounts to double benefit which is not permissible. The harmonious and combined reading of statutory provisions of drawback and rebate scheme brings out that double benefit is not permissible as a general rule. In view of this position the rebate of duty paid on exported goods is not admissible in these cases.

13. Government observes that the applicant has contended that the finding of the Commissioner Appeal that the applicants were not entitled for higher rate of drawback is beyond jurisdiction since it was not challenged before Commissioner Appeal by the department. The contention does not appear to be correct. On going through the Commissioner Appeal's Order, Government finds that the department in their grounds of appeal has categorically referred to the provisions of Rule 3 of Customs, Central excise Duties and Service Tax drawback Rules,1995. The issue decided by Commissioner (Appeal) is non admissibility of rebate on exported goods.

14.1 Further, the Applicant has cited number of case laws in support of his submission. But none of the case law allow rebate of duty paid on exported goods when duty drawback of Central Excise portion is already availed. In case of Spentex Industries Ltd. Vs CCE-2015-TIOL-239-SC Government observes that the assessee has claimed rebate of duty on inputs and finished exported product, however in the instant case the applicant has availed duty drawback at the higher rate on the inputs even though they have availed Cenvat facility in as much as paying the duty on the finished product through Cenvat account. Similarly in case of L.K. Polymers Ltd.-2013(292)ELT131GOI Government observes that the assessee has taken drawback on the custom portion only which is clearly mentioned in para 8 of the said judgment and hence they are eligible for rebate on exported product. The relevant portion of the para 8 is as under:

8. Government notes that the applicant have availed customs portion of All Industry Rate of Drawback when Cenvat facility has been availed, as evident from copies of Shipping Bills. Copies of Shipping Bills show that the applicant

has claimed drawback @ 2.6% with value cap of Rs. 1.8/unit under the heading 'Drawback under Cenvat facility has been availed.'

14.2 Hon'ble High Court of Madras in the case of Raghav Industries Ltd. Vs Union of India 2016(334)ELT 584(Mad) has held that:

"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 refunding 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.

***14.** As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.*

15. In the judgment relied upon the learned counsel for the petitioner, the Hon'ble Supreme Court has held that the benefits of rebate on the input on one hand as well on the finished goods exported on the other hand shall fall within the provisions of Rule 18 of Central Excise Rules, 2002 and the exporters are entitled to both the rebates under the said Rule.

16. In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002. Since the issue, involved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

17. As per the proviso to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner is not entitled to claim both the rebates."

15.1 Under the circumstances, allowing rebate of duty paid on exported goods in this case would amount to allowing both the types of benefits i.e. drawback of duty at input stage as well as rebate on finished goods stage

allowing encashment of accumulated Cenvat credit unrelated to export goods, which will be contrary to the provision of Rule 18 of the Central Excise Rules, 2002. The Government, therefore holds that impugned rebate claims are not admissible.

15.2 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 exporter has already availed total duty drawback (Customs, Central Excise and Service tax component put together) in respect of exported goods. Government finds no legal infirmity in the impugned Orders-in-Appeal and therefore upholds the same.

16. Revision application is disposed off in above terms.

Shrawan 30/11/2021

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To ORDER No: 531 to 537/2021-CX(WZ)/ASRA/Mumbai 30-11-2021

M/s Indo Rama Synthetics (I0 Ltd.
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