

SPEED POST
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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/124/WZ/2018-RA
F.No.195/137/WZ/2018-RA
F.No.195/123/WZ/2018-RA
F.No.195/231-234/WZ/2018-RA

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Date of Issue: 09.02.2023

ORDER No. 55-61 /2023-CX (WZ) /ASRA/MUMBAI DATED 08.02.2023
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 Halewood Laboratories Pvt. Limited,
Plot No.319, Phase II,
GIDC Vatva, Ahmedabad - 382 445.

Respondent : Commissioner of Central Excise & GST, Ahmedabad South

Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the following Orders-in-
Appeal passed by Commissioner of Central Tax (Appeals),
Ahmedabad :-

Sl. No.	Order-in-Appeal No. & Date
1.	AHM-EXCUS-001-APP-392-2017-18 dated 13.03.2018
2.	AHM-EXCUS-001-APP-447-2017-18 dated 26.03.2018
3.	AHM-EXCUS-001-APP-448-2017-18 dated 26.03.2018
4.	AHM-EXCUS-001-APP-042 to 45-2018-19 dated 31.08.2018

ORDER

The subject Revision Applications have been filed by M/s Halewood Laboratories, Ahmedabad (here-in-after referred to as 'the applicant') against the Orders-in-Appeal passed by the Commissioner of Central Tax (Appeals), Ahmedabad. The issue involved in all the cases being identical, these Revision Applications are being taken up for decision together. The details of the Orders-in-Appeal, the corresponding Orders-in-Original and the amount of Rebate claimed are tabulated below:-

Sl. No.	Order-in-Appeal No. & Date	Corresponding Order-in-Original date	Amount of rebate claimed (Rs.)
1	AHM-EXCUS-001-APP-392-2017-18 dated 13.03.2018	21.11.2017	5,52,328/-
2	AHM-EXCUS-001-APP-447-2017-18 dated 26.03.2018	31.10.2017	3,12,354/-
3	AHM-EXCUS-001-APP-448-2017-18 dated 26.03.2018	12.01.2018	2,18,907/-
4	AHM-EXCUS-001-APP-042 to 45-2018-19 dated 31.08.2018	16.03.2018	3,28,127/-

2. Brief facts of the case are that the applicant filed several rebate claims under Rule 18 of the Central Excise Rules, 2002 read with notification no.21/2004-CE(NT) dated 06.09.2004 in respect of inputs used in the manufacture of goods which were exported by various merchant exporters. On scrutiny it was noticed that though the applicant had declared in the ARE-2's covering the export consignments that they would not be claiming Drawback, the corresponding Shipping Bills indicated that Drawback had been claimed from the Customs authorities. Apart from this mis-declaration, several other discrepancies viz., overwriting of details of Drawback by using a whitener, difference in the quantities in the Invoice, ARE-2, the Shipping Bill and Bill of Lading for the same consignment, etc.

were also noticed. In some cases, the documents submitted indicated that the date of Mate Receipt preceded the date of sealing by the Customs Authorities and in some cases the Shipping Bill submitted did not mention the goods on which rebate was sought to be claimed. The original authority rejected the rebate claims filed by the applicant vide the four Order-in-Original mentioned above for the following reasons:-

- (a) The acts of omission and commission in the form of mis-declaration, tampering of documents;
- (b) CBEC's Excise Manual of Supplementary Instructions, 2005 at para1.5 of Part-V of Chapter 8 laid down that the benefit of input stage rebate cannot be claimed where the finished goods have been exported under claim of duty Drawback;
- (c) Non-following of the changes in the ARE-2 form prescribed by notification no.44/2016-CE(NT) dated 16.09.2016 and Board Circular No.1047/35/2016-CX dated 16.09.2016.

3. The applicant preferred appeals against the said Orders-in-Original before the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned four Orders-in-Appeal upheld the Orders-in-Original rejecting the rebate claims of the applicant. Aggrieved, the applicant has filed the subject Revisions Applications against the impugned Orders-in-Appeal. The grounds on which the Revision Application against the Order-in-Appeal dated 13.03.2018 has been filed is as follows: -

- (a) That refund of Central Excise duties contained in inputs used for manufacture of goods which were exported under claim of rebate by availing the benefit of Notification No. 21/2004-CE (NT) could not be rejected on the basis of certain procedural clerical errors that had occurred while documentation of export of goods;

- (b) That they had exported the goods through merchant exporter vide various ARE-2's by availing the benefit of Notification No. 21/2004-CE (NT) dated 06.09.2004 and had made an application for rebate of Central Excise duty paid on export of goods under various ARE 2's, which was complete in all aspects and the Department has not objected to any such violation on part of the appellants, when the appellants had submitted the copy of ARE-2 to the Range Officers within 24 hours of clearance of goods for export;
- (c) That they had filed rebate claim of the input tax credit on inputs which were utilized by them for manufacture of exempted goods, which were exported by them under intimation to the department; that they had never claimed the drawback and as such there was no mis-declaration on their part that they had claimed drawback on the body of the ARE 2; that they had already mentioned in the ARE 2, that they will not be claiming drawback, thus, the Customs Officers at the port were required to examine that aspect, especially when the copy of ARE-2 was available with them; that now as the drawback had been sanctioned, due to the reasons best known to the Customs Officers, without the knowledge of the claimant applicant, the rejection of their rebate claims were arbitrary and beyond the jurisdiction of the rebate sanctioning authority;
- (d) They submitted that had declared they will not be claiming drawback and have not claimed any drawback and as such the question of availment of double benefit does not arise and as such they are eligible for the rebate claim and the rebate claim is free from defects as pointed out during the process of processing the rebate claim;
- (e) That the objections raised relating to non-observance of conditions prescribed under Notification No.44/2016-CE(NT) dated 16.9.2016 were only procedural in nature and did not have any implication so far as the processing of subject claims were concerned;
- (f) That the as regards the objections with respect to non-submission of transporter copy, mis-match of ARE 2 quantity with that of corresponding shipping Bill / BL, non-endorsement by Customs, and Shipping date

preceding the container sealing dates of Customs, tampering of Shipping Bill details they stated that they had submitted the entire set of ARE-2 with the range officers within twenty four hours of export and the range officers had never raised any such observation; thus, raising such an observation, simply points out that the above issue has been arisen only to reject the claim; that the adjudicating authority should have himself verified all the shipping bills, as stated by him; that scribbling is done by the exporters due to industrial practice as the exporter will always try to conceal certain details from the manufacturer to protect his business interests, but the same was not done to conceal facts from the Government officers.

The grounds on which all the four Revision Applications have been preferred are similar/identical to the grounds mentioned above. In view of the above submissions, the applicant requested that the impugned Orders-in-Appeal be set aside with consequential relief.

5. Personal hearing in the matter was granted to both, the Applicant and the Respondent. Shri Anil Gidwani, Advocate appeared online on 30.11.2022 behalf of the applicant. He submitted that their rebate claim had been denied because merchant exporter had claimed drawback. He submitted that appellant was not aware about such claim of drawback. He further submitted that in such a case drawback amount claimed by the merchant exporter may be adjusted in the rebate amount.

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

7. Government notes that in the present case, the applicant, in the capacity of a manufacturer, has sought to claim rebate of the duty involved on the inputs used to manufacture the goods exported where the merchant

exporters had already claimed the Drawback from the Customs authorities in respect of the same goods. Government finds that the both the lower authorities have recorded that the applicant had declared that they will not claim Drawback in the ARE-2's under which the goods in question were exported and that this fact has not been disputed by the applicant. Government notes that notification no.21/2004-CE(NT) dated 06.09.2004, which provides for rebate on the inputs used in the manufacture of finished goods, specifically requires such claimant to declare that they shall not claim any Drawback on the export consignment. In this case Government finds that the Commissioner (Appeals) has recorded that the applicant had specifically declared that "*We further declare that we shall not claim any Drawback on export of the consignment covered under this application*" as required by notification no.21/2004-CE (NT) in the ARE-2s under which the goods were exported. In this context, Government finds that the notification no.21/2004-CE(NT) dated 06.09.2004 and also the instructions contained in Chapter 8 of the CBEC's Excise Manual of Supplementary Instruction, 2005 stipulates that input stage rebate cannot be claimed where goods have been exported under claim of duty drawback. Government finds that in this case the Commissioner (Appeals) has correctly held that granting of rebate sought by the applicant in addition to the Drawback already claimed on the same consignments would lead to double benefit. Government does not find any merit in the submission of the applicant, that it was the merchant exporter who had claimed the Drawback and hence they were not at fault and were hence eligible to the rebate claimed, as it was the applicant who was responsible to ensure that the merchant exporter did not claim Drawback in the event of them wanting to claim the rebate of the duty involved on the inputs.

8. Further, Government finds that several other discrepancies, including non-submission of documents, tampering of documents, non-tallying of documents were pointed out for which the applicant has not provided any

proper explanation and has instead submitted that the same should have been pointed by the Range officer when it was submitted prior to their claim for rebate. Government notes that the applicant has not provided any explanation for these discrepancies before any of the lower authorities either. Government finds that it is the responsibility of the applicant to justify any discrepancy/inconsistency pointed out in the documents submitted by them while applying for rebate and hence the submission of the applicant on this count will not hold good.

9. Thus, Government finds the decisions of the Commissioner (Appeals) to uphold the decisions of the original adjudicating authority to deny the rebate claims for the above reasons to be proper and legal. In view of the above, Government does not find any reason to modify or annul the impugned Orders-in-Appeal and upholds the same.

10. All the subject Revision Applications are dismissed.

Shrawan
8/2/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 55-61 /2023-CX (WZ) /ASRA/Mumbai dated 08.02.2023

To,

M/s Halewood Laboratories Pvt. Limited,
Plot No.319, Phase II,
GIDC Vatva, Ahmedabad - 382 445.

Copy to:

1. The Commissioner of Central Excise & GST, Ahmedabad South,
2. The Commissioner (Appeals), Central Tax, 7th floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad - 380 015.
3. Shri Anil Gidwani, Tax Consultant, 412/A, Ratna High Street, Naranpura Char Rasta, Ahmedabad - 380 013.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board.