

REGISTERED SPEED POST AD



**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. 195/138/17-RA

F. No. 195/138-A/17-RA/5394

Date of Issue:

15.09.2020

ORDER NO. ⁵⁸⁸⁻⁵⁸⁹ /2020-CX (WZ) /ASRA/MUMBAI DATED 21.08.2020 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 Anand Food & Dairy Products
Chikhodara-Sarsa Road,
Chikhodara, District Anand,
Gujarat - 388320

Respondent : Commissioner of CGST & CX, Vadodara-I

Subject: Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. VAD-EXCUS-003-APP-380-381/2016-17 dated. 10.10.2016 passed by Commissioner(Appeals-I), Central Excise, Vadodara



ORDER

These revision applications have been filed by M/s Anand Food & Dairy Products, Chikhodara-Sarsa Road, Chikhodara, Dist. Anand, Gujarat - 388320(hereinafter referred to as "the applicant") against OIA No. VAD-EXCUS-003-APP-380-381/2016-17 dated 10.10.2016 passed by Commissioner(Appeals-I), Central Excise, Vadodara.

2.1 The applicant had filed rebate for duty paid on inputs used in the export goods under Notification No. 21/2004-CE(NT) dated 06.09.2004. They had procured duty paid packaging material used for export of their finished products; i.e. mango pulp & pickles. The applicant had availed duty drawback on concessional rate of drawback. After scrutiny of the claim, show cause notices were issued to the applicant alleging non-compliance of certain conditions of Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002. The rebate sanctioning authority had subsequently vide OIO No. Reb/136/D-I/16-17 dated 28.07.2016 and OIO No. Reb/137/D-I/16-17 dated 28.07.2016 rejected the rebate claims on the ground that conditions/procedures of the said notification had not been fulfilled.

2.2 Aggrieved by the OIO's, the applicant had filed appeal before the Commissioner(Appeals). The applicant had contended that they had filed declaration of input output ratio for verification as required by the notification with the competent jurisdictional authority for seeking permission to export the goods and that the same had been approved on 08.10.2007. However, the Commissioner(Appeals) found from the record that the applicant had not produced any documents in support of this contention. He observed that the submission of input output norms by the applicant and its verification for grant of permission by the jurisdictional AC/DC was a vital condition under Notification No. 21/2004-CE(NT) dated 06.09.2004. Commissioner(Appeals) observed that as per para 1.5(i) of Part-V of Chapter 8 of the CBEC Manual of Supplementary Instructions the benefit of input stage rebate cannot be claimed where the finished goods are exported under claim for duty drawback,



where the finished goods are exported in discharge of export obligations under a value based licence or a quantity based licence issued before 31.03.1995, where the facility of input stage credit has been availed under the CCR, 2002, where the market price of the goods is less than the rebate amount and where the amount of rebate admissible is less than Rs. 500/-. The appellate authority found that the said provision does not differentiate drawback into excise portion and customs portion and restrict the availment of input stage rebate, if the export of the finished goods has been done under claim for drawback. Therefore, since the applicant in the present case had exported the goods and received/claimed the drawback amount hence they are not entitled to rebate of inputs/packing material. He placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ITC Ltd. vs. CCE[2004(171)ELT 433(SC)] wherein it was held that the plain and simple wordings of statute are to be strictly adhered to. Moreover, it was observed that although the adjudicating authority had held that the applicant had not followed the conditions of Notification No. 21/2004-CE(NT) dated 06.09.2004, the applicant had not contested this point in the appeal before Commissioner(Appeals). Therefore, the Commissioner(Appeals) rejected the appeals filed by the applicant vide OIA No. VAD-EXCUS-003-APP-380-381/2016-17 dated 10.10.2016.

3. The applicant was aggrieved by the OIA the applicant filed revision application on the following grounds :

- (a) The applicant stated that they had filed rebate claim for raw materials/inputs used in the manufacture or processing of finished goods exported and that the duty drawback had been claimed on concessional rate as per All India Rate on the packaging material. They stated that they were using packaging material like OTS canes, glass bottles, lug caps etc. which they had procured on payment of duty from various suppliers.
- (b) They stated that they had claimed drawback as per column no. 7 of Notification No. 110/2014-Cus(NT) as per which the prescribed rate of drawback was 0.15% when CENVAT facility had been availed. They submitted that they had not availed double benefit.



- (c) The applicant further stated that the Commissioner(Appeals) had erred in holding that they had failed to fulfil the conditions of Notification No. 21/2004-CE(NT). They submitted that the input output norms had been approved by the AC/DC on 08.10.2007 and that they had been filing ARE-2 & claiming rebate on its basis. They reiterated that they had fulfilled all conditions of Notification No. 21/2004-CE(NT) dated 06.09.2004.
- (d) The applicant referred para (vi)(d) of CBEC Circular No. 35/2010-Cus dated 17.09.2010 which states that customs component of AIR would be available even if rebate of central excise duty paid on raw materials had been claimed.
- (e) The applicant averred that the Commissioner(Appeals) had erred in relying upon the judgment of the Hon'ble Bombay High Court in the case of Indorama Textiles Ltd.[2006(200)ELT 3(Bom)] as the circular and notification issued by the Board had clarified the legal position post said judgment. Hence, the ratio of the said judgment was no more good law.
- (f) The applicant placed reliance upon the decision of the Government of India in the case of Four Star Industries[2014(307)ELT 200(GOI)] holding that the customs component of AIR drawback would be available even if the rebate of central excise duty paid on raw materials used in the manufacture of exported goods had been claimed under Rule 18 of the CER, 2002.
- (g) The applicant also placed reliance upon the decision of the Government of India in the cases of Aarti Industries Ltd.[2012(285)ELT 0461(GOI)], Hi Speed Offsets[2014(303)ELT 0316(GOI)], Iscon Surgicals[2013(288)ELT 0147(GOI)] & Mars International[2012(286)ELT 0146(GOI)].
- (h) They also placed reliance upon the CBEC Circular dated 16.09.2016 which had clarified the issue in detail.

4. The applicant filed written submissions vide letter dated 01.10.2018 whereby they reiterated the grounds for revision application. The applicant again filed written submissions on 18.12.2019 stating that the matter had been pending since long, that the merits of the case are in their favour, that



there was economic recession and that they were facing serious financial hardship.

5. The applicant was granted a personal hearing in the matter on 03.10.2019. Consultants Shri Shivam Mishra and Shri Ajay Tiwari appeared on behalf of the applicant. They stated that in contrast with the stand of the Department that they had not submitted input output ratio declaration, the input output ratio had been submitted by them on 08.10.2007. They further submitted that they had claimed drawback only in respect of customs portion on the packaging material. They relied upon para 5.1 of CBEC Circular No. 1047/35/2016-CX dated 16.09.2016 and Circular No. 83/2000 dated 16.10.2000.

6. Government has carefully gone through the case records, the written submissions made by the applicant, their submissions at the time of personal hearing, the revision application filed by them, the impugned order and the order passed by the adjudicating authority. The applicant had filed rebate claims for refund of duty paid on inputs used in the goods exported by them and also availed drawback on packaging material used for export. Government observes that the two main grounds on which the rebate claims have been rejected in the impugned order are that the applicant had failed to submit input output norms for verification and grant of permission by the jurisdictional AC/DC and that the para 1.5(i) of Part V of Chapter 8 of the CBEC Manual of Supplementary Instructions bar the benefit of input stage rebate where the finished goods are exported under claim of duty drawback.

7. Government observes that in para 14.3 of both OIO No. Reb/136/D-I/16-17 dated 28.07.2016 and OIO No. Reb/137/D-I/16-17 dated 28.07.2016, it has been recorded that "The claimant during the personal hearing stated to submit the certificate of input-output ratio certificate approved by this office, which was produced by them, the copy of certificate issued from F. NO. V/30-19/Misc/2007 dated 01.09.2008.". The applicant has reiterated in the grounds for revision that they had already submitted input output ratio which had been approved by the concerned AC/DC of the



Department vide letter dated 08.10.2007 and on that basis they had been filing ARE-2 and claiming rebate for all the preceding years. Admittedly, there is a difference in the date on which the AC/DC has approved input output ratio as per the OIO's and as per the applicants submissions in the revision applications filed by them. Be that as it may, there appears to be truth in the submissions of the applicant in this regard. Therefore, the ground on which the Commissioner(Appeals) has rejected the appeals filed by the applicant by stating that the applicant had not obtained any approved verification report/permission regarding input output ratio from the jurisdictional AC/DC as required by the notification is not tenable.

8. With regard to the finding of the Commissioner(Appeals) that input stage rebate would not be available where the finished goods have been exported under claim for duty drawback and that such rebate claim amounts to double benefit, Government finds that this issue has been settled by the CBEC as far back as in the year 2010. Para 2.1 of Circular No. 1047/35/2016-CX dated 16.09.2016 reaffirms the stand of the Board in the matter and is reproduced below for reference.

"2.1 The issue has been examined. Board has already vide Circular No. 35/2010-Cus. dated 17-9-2010 clarified that as per Notification No. 84/2010-Customs(NT) dated 17-9-2010, Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. The Circular No. 35/2010-Cus. dated 17-9-2010 continues to be in operation and Customs portion of drawback so available are specified as per rates and caps under column (6) & (7) of the drawback schedule."


A cursory reading of the text reveals that there is no bar on availing drawback of customs component of AIR and simultaneously claiming rebate of central excise duty paid on inputs used in the exported goods. The contents of the circular dated 16.09.2016 are a more contemporary exposition of the provisions for grant of rebate and drawback and hence will prevail over the



contents of para 1.5 of Part V of Chapter 8 of the CBEC Manual. Moreover, the Joint Secretary has already dealt with this issue at length while passing orders In Re : Four Star Industries[2014(307)ELT 200(GOI)] and In Re : Aarti Industries Ltd.[2012(285)ELT 461(GOI)] and allowed the benefit of rebate to those applicants.

9. In the light of the findings recorded above, Government remands the matter back to the rebate sanctioning authority to consider the rebate claims afresh after ascertaining the factual position in respect of the declaration of input output norms and thereafter consider the rebate claims for sanction; if found in order. This exercise may be completed within a period of six weeks from the date of communication of this order. The revision applications are disposed off in the above terms.

10. So ordered.


(SEEMA ARORA)

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

ORDER No. ⁵³⁸⁻⁵⁸⁹ /2020-CX (WZ) /ASRA/Mumbai DATED 21.08.2020

To,
M/s Anand Food & Dairy Products
Chikhodara-Sarsa Road,
Chikhodara, District Anand,
Gujarat - 388320

Copy to:

1. The Commissioner of CGST & CX, Vadodara-I Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Vadodara
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy

ATTESTED

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

Page 7 of 7

