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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. 195/190/14-RA / 54 dr

Date of Issue: ~~09.2020~~
02.10.2020

ORDER NO. 641/2020-CX (SZ) /ASRA/MUMBAI DATED 15-09.2020
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 CENTRAL EXCISE
ACT,1944.

Applicants : M/s Elegant Drugs (P) Ltd.,
No. 59/3A, Chalamatti, Kalaghatagi Taluk,
Dharwad District, Karnataka - 581 196.

Respondents : The Commissioner of CGST, Belgavi.

Subject : Revision Application filed, under Section 35EE of
Excise Act, 1944 against the Order-in-Appeal No.
BEM-EXCUS-000-AC-APP-HAB-007-2014 dated
26.02.2014 passed by the Commissioner of Central
Excise (Appeals), Mysore.

ORDER

This revision applications is filed by M/s Elegant Drugs (P) Ltd., Dharwad, Karnataka (hereinafter referred to as ' the applicant') against the BEM-EXCUS-000-AC-APP-HAB-007-2014 dated 26.02.2014 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. Brief facts of the case are that the applicant are holder of Central Excise Registration No. AACE3971BXM001 for manufacture of excisable goods viz. P.P. Medicines falling under CSH 3003 of Central Excise Tariff Act, 1985. The applicant had filed 14 rebate claims for total amount of Rs. 4,73,665/- (Rupees Four Lakh Seventy Three Thousand Six Hundred Sixty Five Only) under Rule 18 of Central Excise Rules, 2002 in respect of goods exported by them. The applicant is availing credit of duty paid on inputs, capital goods and input services under the provisions of Central Excise Rules, 2004. It is further observed that the applicant had not imported any inputs for the manufacture of exported goods. The Rebate Sanctioning Authority observed that the applicant had availed duty drawback as per Schedule of Drawback rates mentioned in the Notification No. 92/2012 Cus (NT) dated 04.10.2012 on the said goods exported. As such a Show Cause Notice was issued to the applicant proposing rejection of the impugned rebate claim. The Adjudicating Authority vide Order in Original No. BEL-EXCUS/000-HUBL-ASC-SVB-013/13-14 dated 10.07.2013 rejected the rebate claim filed by the applicant.

3. Aggrieved by the said Brand Rate Fixation Letters, the respondent filed an appeal before the Commissioner of Central Excise (Appeals), Mysore on the following grounds :-

3.1 They rely on the case of Aarti Industries Ltd. Vs. GOI 2012(285)ELT 461 (GOI) and M/s Mehta Polymers 2013(292)ELT 131 (GOI) in support of their claim.

3.2 They had neither used any imported raw material in the manufacture of final product nor had they claimed Customs duty drawback on

the raw material, hence they were eligible for rebate under Rule 18 of the Central Excise Rules, 2002.

4. The Appellate Authority vide impugned Order in Appeal rejected the appeal filed by the applicant. The Appellate Authority while passing the impugned Order in Appeal observed that :-

4.1 The applicant had failed to file necessary declaration as required under Rule 12(1) of the Drawback Rules, 1995.

4.2 The duty incidence actually incurred either at the stage of input or at the stage of final products only can be allowed as rebate and not at both stages.

4.3 The applicant had availed Cenvat credit on raw materials which is equivalent of rebate on input stage only.

4.4 As per the Drawback Rules, 1995 the duty incidence incurred either at the input stage or the final product only is admissible for grant of rebate. In this case, the applicant had availed Cenvat credit of the duty paid on inputs and the same had been utilised for discharging the duty payable of the final product.

4.5 Law does not envisage the double benefit accruing to the applicant as per the Drawback Rules.

4.6 As per the conditions of Notification No. 92/2012 Cus (NT) dated 04.10.2012, the applicant can only avail customs duty drawback. But they have not imported any raw material for the manufacture of excisable goods. Hence they are not eligible for Customs duty drawback on the raw materials.

5. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of the Central Excise Act, 1944 before Government on following grounds :-

5.1 They had got drawback under All Industry Rate only of Customs portion and no drawback in respect of Central Excise duty allocation.

5.2 The Shipping Bills are evident that they had claimed only Customs portion of drawback.

5.3 The Notification No. 40/2001-CE (NT) dated 26.06.2001 does not bar any exporter from rebate in case the party exported the goods under All Industry Rate in force.

5.4 CBEC Circular No. 83/2000-Cus dated 16.10.2000 clarifies that where only customs portion of duties is claimed as per the AIR, Rule 57F(14) does not come in the way of admitting refund of unutilised credit of Central Excise / Countervailing duty paid on inputs used in the products exported. .

5.5 The drawback schedule as clarified vide Notification No. 92/2012-Cus (NT) dated 04.10.2012 specifically provide separate drawback rate in case where Cenvat Credit facility has not been availed which refers to total drawback. . The drawback availment and cenvat credit facility are mutually exclusive.

6. The personal hearings fixed on 09.01.2020 and 15.01.2020. Shri Kamalakara, Cost Accountant of the Applicant appeared for personal hearing on 15.01.2020. No one attended the hearing as fixed above on behalf of the department.

7. Government has carefully gone through the relevant case records, written submission and perused the impugned Order-in-Original and Order-in-Appeal.

8. 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. It is noted that it is not in dispute that the applicants have cleared the impugned goods on payment of Central Excise Duty under the ARE-1s procedure. It is also not in dispute that the applicants have exported the impugned goods out of India. Government further notes that the applicants rebate claims have been rejected on the grounds that applicants have claimed drawback on the goods exported. The applicant have contended that they have claimed and got drawback under

All Industry Rate only of Customs portion and no drawback in respect of Central Excise Duty allocation under the All Industry Rate of Drawback has been claimed. On this contention, Government would observe that there is no contrary evidence on record. Moreover, the applicants rebate claims are governed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-2001, wherein certain conditions and procedure have been prescribed for claim of rebate. Government notes that the perusal of the said Notification reveals that the said Notification nowhere debars any exporter-party from rebate in case the party exported the goods under claim of drawback, under All Industry Rate in force. Government has also perused conditions contain in sub-para 1.5 of Part-V of Chapter 8 of the CBEC Excise Manual of Supplementary Instruction as on 1-9-01 which says that the benefit of input stage rebate cannot be claimed in any of the following situations :

- (i) where the finished goods are exported under claim for duty drawback;
- (ii) where the finished goods are exported in discharge of export obligations under a value advance licence or a quantity based advance licence issued before 31-3-1995;
- (iii) where facility of input stage credit is availed under Cenvat Credit Rules, 2001;
- (iv) The market price of the goods is less than the rebate amount;
- (v) The amount of rebate admissible is less than Rs. 500/-.

However, in the instant case, the applicants have not claimed input rebate under Notification No. 41/2001-C.E. (N.T.), dated 26-6-2001, hence the above conditions are not applicable.

9. Further, the Government observes that in terms of condition No. 6 of Notification No. 92 / 2012 - Customs (N.T.) dated the 4th October, 2012 which determined the rates of drawback as specified in the Schedule annexed thereto, reads as under:

"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 and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."

9.1 The applicant have submitted the copies of relevant shipping bills in support of their claim. On perusal of the shipping bill No. 1731678 dated 13.09.2012 pertaining to ARE-1No. 14/11.08.2012, it is observed that the applicant have claimed the drawback under Sr. No. 3004000099 @ 2%. A cursory glance at Duty Drawback schedule for the year 2012-13 (relevant year) reveals as under:

SCHEDULE

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
CHAPTER – 30 PHARMACEUTICAL PRODUCTS						
3004000099	OTHERS		2%		2%	

9.2 In view of the provisions of Notification No. 92 / 2012 - Customs (N.T.) dated the 4th October, 2012 as detailed above, as the rate indicated at column No. 4 and 6 of the Drawback Schedule in respect of the goods exported (column No.2 above) by the applicant being same i.e. 2%, it is obvious that the same pertains to only Customs component and is available irrespective of whether the applicant has availed of Cenvat or not.

9.3 In view of the foregoing discussion, Government holds that the applicant is availing Customs Portion of Drawback, in respect of Shipping Bill

No. 1731678 dated 13.09.2012 and as a result, the applicant is eligible for the rebate of Central Excise duty paid on goods cleared for export under impugned ARE-1 / shipping bill. Therefore, rejection of the rebate claim on this contention is not just and proper.

9.4 The Government directs the original authority to carry out verification of all relevant shipping bills, as detailed in para 9 above, pertaining to the impugned rebate claims to ascertain whether the applicant had availed the customs portion of duty drawback or otherwise.

10. In view of above facts and circumstances, Government is of the considered opinion that the impugned orders-in-appeal are not maintainable. This view is already taken by Government vide GOI Order Nos. 884-885/06, dated 29-9-2006 and in the case of *Benny Impex Pvt. Ltd.* reported as 2003 (154) E.L.T. 300 (GOI). Government accordingly sets aside the order of lower authorities and remands the matter back to the original authority for sanctioning rebate, if applicant has availed drawback of only customs and claim is also otherwise in order.

11. Revision applications are disposed of in terms of above.

12. So ordered.



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

ORDER No 611 /2020-CX (SZ) /ASRA/Mumbai DATED 15 .09. 2020

To,

M/s Elegant Drugs (P) Ltd.,
No. 59/3A, Chalamatti, Kalaghatagi Taluk,
Dharwad District,
Karnataka - 581 196.

Copy to:

1. The Commissioner of Central Tax, Belgavi Commissionerate, No. 71, Club Road, Belgavi-590 001.
2. The Commissioner of CGST (Appeals), Belgavi Appeals, No. 71, Club Road, Belgavi-590 001.
3. The Dy. Commissioner, CGST, Dharwar Division, C.R. Building, 2nd floor, Navanagar, Hubli- 580 025.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.