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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. 195/134/15-RA /2695 Date of Issue: 21.06.2022

ORDER NO. 659 /2022-CX (SZ) /ASRA/MUMBAI DATED 21.06.2022 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s Raghav Industries Ltd.,
T.S.No. 7, Kattipalayam, Tirchengode-Namakkal Main Road,
Post-Ela Nagar, District-Namakkal.

Respondent: The Commissioner, CGST, Salem.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. SLM-CE APP-04-2015, dated 26.02.2015 passed by the Commissioner (Appeals), Salem.

ORDER

The Revision Application has been filed by M/s Raghav Industries Ltd., T.S.No. 7, Kattipalayam, Tirchengode-Namakkal Main Road, Post-Ela Nagar, District-Namakkal (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. SLM-CE APP-04-2015, dated 26.02.2015 passed by the Commissioner (Appeals), Salem.

2. The facts of the case in brief are that the applicant is a manufacturer of polyester yarn, acrylic yarn and polyester-viscose blended yarn falling under Chapter No. 5509 of the Central Excise Tariff Act, 1985. The applicant filed four rebate claims for the duty paid on the goods exported directly from the factory premises of the applicant by the merchant exporter viz. M/s.SLK Synthetics Ltd., Mumbai. The original authority had observed that the applicant had taken cenvat credit and the exporter has availed the benefit of higher rate of drawback in respect of the goods exported and hence in terms of Customs Notification No. 68/2011-Cus. (N.T.), dated 20.09.2011, the applicant's claim for both the facilities simultaneously would amount to availing double benefit. Accordingly, the original authority vide impugned Order-in-Original Nos.03-06/2015(R) dated 09.01.2015 rejected the four rebate claims amounting to Rs 20,93,613/-.

3. Aggrieved by the said Order-in-Original, applicant filed an appeal before Commissioner (Appeals), Salem who rejected the appeal.

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

i) That the extract of the RG 23 A Part II for April 2014 to December 2014 proved that they had not availed cenvat credit at all for the period from 01.04.2012 onwards and the Central Excise duty on the exported goods from June, 2014 to September, 2014 amounting to Rs.20,93,613/- was debited from the opening balance of Central Excise duty of Rs. 17,96,570/-

(available as on 01.04.2014) and the balance of Central Excise duty Rs.2,97,043/- was debited from the credit that accrued due to transfer of cenvat credit from their other unit during the month of June, 2014.

ii) That the applicant stated that as per para 15(i) of Notification No. 84/2010 Cus.(NT), dated 17.09.2010 cenvat facility on inputs used means that no cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product.

iii) That the clarification issued in Board's circular No.42/2011 Cus. dated 22.9.2011 states that the composite rate for drawback is permissible as long as no cenvat credit is availed for inputs or input services used in the manufacture of export product.

iv) That the claim has been rejected only on the grounds that the drawback is sanctioned to exporters at different rates in respect of export goods where the facility of Cenvat credit is availed and where such facility of Cenvat credit is not availed and the higher drawback is provided on exports goods manufactured out of inputs in respect of which no Cenvat credit is availed under Cenvat Credit Rules, 2004 and they did not avail cenvat credit on inputs used in the manufacture of export goods

v) That the drawback claimed by the merchant-exporter and the rebate claimed by the applicants are absolutely correct.

vi) That the applicants have not been provided with show cause notice mentioning therein the grounds for rejection of rebate claims. The Deputy Commissioner of Central Excise, Erode II Division has issued notice-cum-personal hearing intimation letter mentioning certain grounds under which the applicants are not eligible for rebate claimed. But while passing order-in original, has rejected the rebate claims among various other grounds not mentioned in the Notice-cum-personal hearing intimation letter.

5. Personal hearing was scheduled in this case on 21.12.2021. Shri Rajendra, representative of the applicant and Shri Balasubramaniam, Assistant Commissioner appeared online on behalf of the applicant and department respectively. The applicant submitted that they had not availed cenvat on the exported goods. The departmental representative contested this fact. Both agreed that the factual position needs to be verified.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Order-in-Appeal.

6.1 The facts stated briefly is that the applicant is engaged in the manufacture of polyester yarn, acrylic yarn and polyester-viscose blended yarn and had filed four rebate claims seeking rebate of duty paid on excisable goods exported under Rule 18 of the Central Excise Rules 2002. The rebate claims were rejected as the department was of the view that the merchant exporter had already claimed both the customs and excise components of drawback and therefore allowing benefit of rebate of duty paid on exported goods to the applicant would amount to double benefit, particularly as the applicant had availed cenvat. Against the said Orders-in-Original, the applicant had filed an appeal which was rejected by the Appellate Authority vide impugned Order-in-Appeal. Aggrieved by the said Order-in-Appeal, the applicant have filed instant revision application on the grounds mentioned in para 4 supra.

6.2 Government observes that the applicant has claimed that they have not availed Cenvat credit and rebate be sanctioned to them. On the other hand, the Departmental authorities have held that as the applicant have availed higher rate of drawback, comprising Customs and Central Excise portion, allowing rebate would amount to double benefit. In view of rival contentions, Government proceeds to examine the case keeping in mind the various provisions of law relating to drawback as well as rebate of duty paid on export goods.

6.3 The government observes that as regards the grounds that the pleas of the applicant were not taken into consideration, Government notes that the original authority and the Appellate Authority had followed the principles of natural justice and had granted personal hearing to the applicant and passed the order in appeal on merits after considering the say of the applicant and the provisions of law involved in it.

6.4 Government notes that the main issue is regarding the admissibility of the rebate of duty paid on finished goods for export manufactured by the applicant when excise and customs portion of drawback has been claimed by the merchant exporter particularly in view of the availment of cenvat credit by way of debit of duty on the exported goods through the cenvat account by the applicant

6.5 For better appreciation of the dispute, the relevant rules of the Customs and Central Excise Duties and Service Tax Drawback Rules,1995 are reproduced below

Drawback has been defined in Rule 2 (a) of the said Rules as under:

"(a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods"

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 by notification grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of goods. Government opines that the principles of the Hon'ble High Court of Bombay at Nagpur Bench in the case of CCE Nagpur vs Indorama Textiles Ltd 2006(200) ELT 3 (Bom) regarding the provisions of the Rule 18 of the Central Excise Rules, 2002 is relevant to the case. In the said

judgement it has been held that the rebate provided in Rule 18 of Central Excise Rule, 2002 is only on duty paid on one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Hence, assessee is not entitled to claim rebate of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage.

6.6. The applicant has claimed rebate of duty paid on exported goods after the benefit of duty drawback of central excise in respect of the said exported goods was availed by the merchant exporter. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and therefore allowing rebate of duty on exported goods will amount to allowing both types of rebates of duty at input stage as well as finished goods stage which will be contrary to the said judgement and provisions of Rule 18 of the Central Excise Rules, 2002. Since the merchant exporter has already availed the central excise portion of duty drawback, the rebate of duty paid on finished goods cannot be held admissible. There is no bar on availing rebate of duty on goods exported, if the duty is paid through Cenvat credit, provided double benefit in form of higher rate of duty drawback and rebate has not been availed

7. Government notes that the applicant has also violated the conditions of Rule 12(1) (a) (ii) of the Drawback Rules, 1995 by availing of cenvat credit on the inputs, drawback of both the excise and customs portion and also rebate of goods exported. Rule 12 (1) (a) (ii) of the said Rules states as under:

"(ii) *in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities:"*

7.1 Since the applicant has already availed said duty drawback in violation of said condition No. 12(ii), allowing rebate of duty paid on exported

goods will amount to double benefit, which is not permissible under the scheme of duty Drawback as well as rebate of duty. CBEC has also clarified in its Circular No. 83/2000-Cus dated 16.10.2000 that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of drawback is claimed. The harmonious and combined reading of statutory provisions of Drawback and rebate scheme envisage that double benefit is not permissible. Since input stage rebate of duty in the form of duty drawback of excise portion has already been availed by them and extending another benefit of rebate of duty paid on exported goods will amount to double benefit. Also in view of the position that drawback of excise portion has already been availed, the rebate is not admissible in light of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 which state that no separate claim for rebate of duty under Central Excise Rules 2002 will be made in such a situation.

8. Government also notes that condition 6 of the Notification No. 98/2013 - Customs (N.T.) dated 14.09.2013 (applicable notification for rates of drawback in the instant case) 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 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.'

8.1 Further Condition No 15 Notification No 98/2013–Customs (N.T) dated 14.09.2013 reads as follows

(15) The expressions "when Cenvat facility has not been availed", used in the said Schedule, shall mean that the exporter shall satisfy the following conditions, namely:-

(a) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product;

(b) if the goods are exported under bond or claim for rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in-charge of the factory of production, to the effect that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product, is produced;

8.2 Government also notes that though the applicant has stated that no cenvat credit of input has been availed by them, it is an undisputed fact that the applicant has paid the duty on the goods exported by debit to the cenvat credit account. Therefore, it cannot be claimed that Cenvat facility has not been availed for goods under export and as such Condition No. 15(ii) of Notification No. 98/2013 –Cust (N.T) dated 14.09.2013 has been violated. Thus, as the merchant exporter has availed total drawback (customs, central excise and service tax component put together) and the applicant has also utilised cenvat credit on inputs for payment of duty on export goods, allowing rebate claimed would amount to violation of Rule 18 of the Central Excise Rules. Government opines that the applicant at best would be eligible only for the drawback allowable under the customs component. However, in this case, the applicant has availed input stage rebate of duty in the form of higher duty drawback comprising of Customs, Central Excise and Service Tax portion, and also cenvat credit on inputs, another benefit of rebate of duty paid on exported goods will definitely amount to double benefit.

9. Government also places reliance on a similar case of the applicant wherein the Hon'ble High Court of Judicature at Madras [2016(334)ELT.584(Mad)] dismissed the Writ Petition filed by the applicant

against Order No. 51/2015 dated 24.08.2015 of the Revisionary Authority [2016(334)ELT 700(GOI)]. The Order of the Hon'ble High Court of Judicature of Madras states 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.

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.

18. In these circumstances, the respondents have righly rejected the claim made by the petitioners. I do not find any error in the order passed by the respondents and the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs."

10. Government observes that in view of the above discussion and the applicants submissions of non-availment of cenvat credit and the departments contention to the contrary and also the averment and agreement of the applicant as well as the departmental representative during the personal hearing that the verification of the factual position was required, Government observes that in the interest of justice, the verification needs to be carried out by the original authority and base the decision of eligibility on the said verification.

11. In view of the above discussion, Government modifies the Order-in-Appeal No. SLM-CE APP-04-2015, dated 26.02.2015 passed by the Commissioner (Appeals), Salem and remands the case back to the Original Authority for verification on the lines discussed above.

12. The Revision Application is disposed off on the above terms.

Shrawan 21/06/22

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

ORDER NO. 659 /2022-CX (SZ) /ASRA/MUMBAI DATED 21 .06.2022

To,

M/s Raghav Industries Ltd.,
T.S.No. 7, Kattipalayam, Tirchengode-Namakkal Main Road,
Post-Ela Nagar, District-Namakkal.

Copy to :

1. The Commissioner of CGST, Salem, No. 1 Foulks Compound, Annai Medu Salem 636001
2. The Commissioner of CGST, Coimbatore (Appeals), 6/7, A.T.D Street, Race Course Road, Coimbatore 641 018
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.
5. Spare copy.