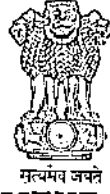


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 195/603/13-RA / 7016

Date of Issue: 03.12.2021

ORDER NO. 847/2021-CX (WZ) /ASRA/MUMBAI DATED 03.12.2021
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 – 382445.

Respondent : Commissioner of Central Excise & GST, Ahmedabad – I
Commissionerate.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal
No.10/2013 (Ahd -I) CE/AK/ Commr (A)/Ahd dated
08.02.2013 by the Commissioner (Appeals – V), Central
Excise, Ahmedabad.

ORDER

This Revision Application has been filed by M/s Halewood Laboratories Pvt. Limited (here-in-after referred to as 'the applicant') against the Order-in-Appeal No.10/2013 (Ahd-I) CE/AK/Commr (A)/Ahd dated 08.02.2013 passed by the Commissioner (Appeals - V), Central Excise, Ahmedabad. The said Order-in-Appeal decided an appeal against Order-in-Original dated 16.05.2012 passed by the Assistant Commissioner of Central Excise, Division - III, Ahmedabad -I Commissionerate.

2. Brief facts of the case are that the applicant was engaged in the manufacture of 'Fruit Squash Crystals' falling under Chapter Heading No.2001.10. They filed rebate claims for duty suffered on the packing material used in the manufacture of the final product which was exported through M/s Pioma Industries, Ahmedabad, a merchant exporter. The rebate claims were filed under Rule 18 of the Central Excise Rules, 2002 read with notification no.41/2001-CE(NT), dated 26.06.2001.

3. It appeared that the applicant had not filed prior declaration in terms of notification no.41/2001-CE(NT), dated 26.06.2001 which required them to declare their manufacturing process/formula indicating the quantity or proportion as well as the quality of the material used; that they had not got the jurisdictional Assistant Commissioner to verify the input/output ratio before export; that they had not exported the goods under Form AE-1 and not the prescribed form which was Form AE-2. It was also noticed that in some cases the rebate claims were filed after one year from the date of export and were hence time barred. Therefore, four Show Cause Notices, as detailed below, were issued to the applicant, requiring them to show cause as to why the rebate claims filed by them should not be rejected.

Sl. No.	Date of Show Cause Notice	Rebate claimed (Rs.)
1	17.08.2004	10,22,159/-
2	24.03.2004	3,69,849/-
3	30.09.2005	4,82,707/-
4	27.02.2006	2,22,100/-

All the above Show Cause Notices were decided vide four separate Orders-in-Original, all dated 19.06.2008, passed by the Assistant Commissioner, Central Excise, Division – III, Ahmedabad – I, wherein the charges in the Show Cause Notices were upheld and the rebate claims rejected.

4. Aggrieved, the applicant filed appeals before the Commissioner (Appeals) against the said Orders-in-Original rejecting their rebate claims. The Commissioner (Appeals) vide Order-in-Appeal dated 30.12.2008 found that the errors on the part of the applicant was procedural and while setting aside the Orders-in-Original, passed the following Order –

“ I also direct the Assistant Commissioner Central Excise, Division – III, Ahmedabad – I to sanction the Rebate claims after ascertaining that the claims are filed within 1 year, reject the claims filed after one year from the date of export. I also reject the claim wherein the relevant documents not filed after due verification and also claim for Nepal export. In addition to that the rebate should be sanctioned subject to the verification of relevant documents regarding duty paid nature of packing material used in the goods exported, its actual exports and import of packing material as referred above.”

5. Aggrieved, the Department filed a Revision Application before the Government of India against the said Order-in-Appeal dated 30.12.2008, on the grounds that conditions imposed by of notification no.41/2001-CE(NT), dated 26.06.2001 were substantial in nature and not merely procedural as held by the Commissioner (Appeals), and sought to recover the rebate claimed by the applicant.

6. The Joint Secretary (Revision Application) disposed of the above Revision Application vide Order No.797/2011-CX dated 20.06.2011, wherein the Revisionary Authority noted that the Commissioner (Appeal) had observed that all exports had been made in discharge of export obligation under the Advance Licence scheme. The Revisionary Authority observed that as per Notification No.93/2004-Cus, dated 10.09.2004, as amended vide Corrigendum dated 17.05.2005, (condition- V), in case the goods were exported in discharge export obligation under Advance Licence, the exporter was not entitled to the rebate of duty paid on material used in the manufacture of the resultant exported products in terms of Rule 18 of the Central Excise Rules, 2002. The Revisionary Authority found that this aspect was not examined by the lower authorities and hence set aside the Order-in-Appeal and remanded the case back to the original authority to decide the case afresh in the light of said observation.

7. Thereafter, in remand proceedings, all the rebate claims filed by the applicant were rejected by the original Adjudicating Authority vide Order-in-Original dated 16.05.2012 as he found that the exports in this case, except those made to Nepal, were under the Advance Licence Scheme and hence as per condition no.(v) of the notification no.93/2004-CUS, dated 10.09.2004 read with its Corrigendum dated 17.05.2005, the applicant was not eligible to claim rebate of the duty paid on the packing material used to manufacture the goods that were exported.

8. Aggrieved, the applicants preferred an appeal against the said Order-in-Original dated 16.05.2012 before the Commissioner (Appeals) which was decided by Order-in-Appeal dated 08.02.2013. The Commissioner (Appeals) found that the exports being under the Advance Licence Scheme, condition (v) of notification no.93/2004-CUS, dated 10.09.2004 puts an embargo on availing input stage rebate. In view of the same the Commissioner (Appeals) upheld the Order-in-Original dated 16.05.2012 rejecting the rebate claims filed by the applicant.

9. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed the subject Revision Application on the following grounds:-

- (a) The original Adjudicating Authority had not appreciated the fact that the case was to be decided by him afresh and the findings of the Adjudicating Authority restricting the meaning of the remand order was bad in law;
- (b) If condition (v) of notification no. 93/2004-CUS, dated 10.09.2004 was not complied with, then the benefit of exemption should be denied to such an importer and that the same would not entitle the Customs authorities to deny the rebate claim of an exporter of goods; they cited the case of Commissioner of Central Excise, Jaipur – II vs. Bhilwara Spinners Limited [2011 (269) ELT 384] in support of their argument;
- (c) The Show Cause Notices made no reference to violation of conditions of the aforesaid notification and hence the rebate claims being rejected on these grounds was not sustainable as the impugned Orders had traversed beyond the scope of the Show Cause Notices.
- (d) The authorities below had grossly erred in not appreciating that as far as the goods in question were concerned there was no dispute as regards the export of the same and when the export of the product was not in dispute, the substantive benefit of rebate could not have been denied on technicalities and hence the Order-in-Appeal was unsustainable and deserved to be quashed;
- (e) The appellate authority erred in not appreciating the contents of Circular no.510/06/2000-CX dated 3.2.2000 which clarified that an authority sanctioning rebate should not examine the correctness of the assessment but should examine the admissibility of rebate of duty paid on goods in terms of Rule 18 of Central Excise Rules, 2002; hence the entire course adopted by the officers was beyond their scope requiring the Order-in-Appeal deserved to be quashed.

In view of the above, the applicant prayed for the impugned Order-in-Appeal to be quashed with consequential relief.

10. Personal hearing in the matter was granted to the applicant on 25.05.2015, 05.11.2019, 08.01.2020, 08.01.2021, 15.01.2021 and 25.02.2021; however, no one appeared for the same. Sufficient opportunity having being given to the applicant to be heard in person, the case is now taken up for decision.

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

12. Government notes that the present case had earlier reached this stage, and based on the facts and the legal position involved, was remanded to the original Adjudicating Authority for fresh decision with specific directions. The facts of the case and the decisions of the original Adjudicating Authority and the Commissioner (Appeals) have been elaborated above. Government had remanded the case vide its earlier Order dated 20.06.2011. The relevant portion of the said Order is reproduced below:-

“Government notes that Commissioner (Appeal) has observed that all exports had been made in discharge of export obligation under advance licence scheme. If it is so, the relevant provision of Customs Notification will also get attracted. As per Customs Notification No.93/2004-Cus dated 10.9.2004 as amended vide corrigendum dated 17.05.2005, (condition-V), in case the goods are exported in discharge export obligation under Advance licence, the exporter is not entitled for facility of claiming rebate of duty paid on materials used in the manufacture of resultant exported products, in terms of Rule 18 of the Central Excise Rules, 2002. This aspect was not examined by the lower authorities. In view of the above circumstances, Government sets aside the impugned orders and remands the case back to original authority decide the case afresh in the light of the said observations. A reasonable opportunity of hearing will be afforded to the applicants.”

Government notes that this Order dated 20.06.2011 has not been challenged by either the applicant or the Department and has thus attained finality. Judicial discipline required the original Adjudicating Authority to follow the directions given therein. The plea of the applicant that the Adjudicating Authority travelled beyond the scope of the Show Cause Notice while passing the Order-in-Original dated 16.05.2012, is not correct as the said Order clearly is in compliance with the directions given in the Order dated 20.06.2011 of the Revisionary Authority, which, as stated above, has remained unchallenged. The applicant having accepted the Order dated 20.06.2011 passed by the Revisionary Authority, cannot now claim that the Order passed by the original Adjudicating Authority, in compliance with the said Order of the Revisionary Authority, to be unsustainable on the grounds that the same had travelled beyond the Show Cause Notice. Thus, Government notes that the plea of the applicant that the original Adjudicating Authority had gone beyond the Show Cause Notice will not hold good. Further, the Government also notes that the original Adjudicating Authority has, as directed by the remanding authority, discussed all aspects of the case and has given proper findings on the same. Government finds the submission of the applicant that the original Adjudicating Authority had limited its findings to the directions given by the Revisionary Authority to be incorrect.

13. Government finds the submission of the applicant that if condition (v) of notification no.93/2004-CUS, dated 10.09.2004 was not complied with, then it was the importer who would lose the benefit of claiming exemption and that such infraction would not have a bearing on the rebate claims filed by them as an exporter, to be incorrect. It is a fact that the applicant had voluntarily opted for exporting goods under the Advance Licence Scheme and by doing so they had effectively agreed to the conditions laid down by the law, which included the condition that they would not avail rebate of the duty paid on the material used in the manufacture of the goods that were exported. It is also a fact that the exports had already taken place under the Advance Licence Scheme when the applicant filed the rebate claims in

question. Thus, Government finds that the subject applications made by the applicant seeking rebate of duty paid on the packing material used in the goods exported by them to be a deliberate violation of the said condition of notification no. 93/2004-CUS, dated 10.09.2004 and hence the said applications for rebate deserve to be rejected. Further, Government observes that the case law cited by the applicant is not relevant to the instant case as it dealt with refund of Cenvat Credit under Rule 5 of the Cenvat Credit Rules, 2004.

14. Government finds that the reliance of the applicant on Circular no.510/06/200-CX dated 03.02.2000 to be misplaced as in the subject case no assessment was carried out by the rebate sanctioning authority. Government finds that the original Adjudicating Authority has rejected the rebate claims on substantive grounds of non-compliance of the relevant notification and hence the claim of the applicant that their claims were denied on technicalities is not correct and is rejected.

15. In view of the findings recorded above, Government finds no reason to annul or modify the Order-in-Appeal No.10/2013 (Ahd -I) CE/AK/ Commr (A)/Ahd dated 08.02.2013 by the Commissioner (Appeals - V), Central Excise, Ahmedabad.

16. The Revision Application is dismissed.


11/2/21
(SHRAWAN KUMAR)

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

ORDER No. /2021-CX (WZ) /ASRA/Mumbai dated .12.2021

To,

M/s Halewood Laboratories Pvt. Limited,
Plot No.319, Phase - II, GIDC, Vatva,
Ahmedabad - 382445.

Copy to:

1. Commissioner of Central Excise & GST, Vadodara – I, 7th floor, Central Excise Bhavan, Nr. Govt. Polytechnic, Ambawadi, Ahmedabad – 380015.
2. Commissioner (Appeals – V), Central Excise, Ahmedabad, 7th floor, Central Excise Bhavan, Nr. Govt. Polytechnic, Ambawadi, Ahmedabad – 380015.
3. Assistant Commissioner, Central Excise, Division – III, Ahmedabad, 3rd floor, Central Excise Bhavan, Nr. Govt. Polytechnic, Ambawadi, Ahmedabad – 380015.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Notice Board.