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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. 195/519/13-RA / 3 823

Date of Issue: 19.09.2022

ORDER NO. 863/2022-CEX (WZ)/ASRA/MUMBAI DATED 15.9.2022
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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Total Packaging Services

Respondent : Commissioner of CGST & Central Excise, Belapur
Commissionerate

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
US/945/RGD/2012 dated 28.12.2012 passed by the
Commissioner Central Excise (Appeals), Mumbai-II.

ORDER

This Revision Application has been filed by M/s. Total Packaging Services 144/2,D/F,Near M.G. Udhyog Nagar, Opp. Talav, OI DC, Dabhel,Daman(U.T.), 396210 (hereinafter referred to as "Applicant") against the Order-in-Appeal No. US/945/RGD/2012 dated 28.12.2012 passed by the Commissioner Central Excise (Appeals), Mumbai-II.

2. The brief facts of the case are that the applicant is engaged in the manufacture of Chemicals and allied products falling under chapter heading 39 of the Central Excise Act, 1985. The applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE(NT) dated 06.09.2004. The details of rebate claims are as:

Sr. No.	R.C. No./Date	ARE-1 No./Date	Mate Receipt date	Amount of Rebate Claimed (Rs.)
1	17687 dtd.19.09.2008	196 dtd.29.10.2007	03.11.2007	1,29,722/-
2	34547 dtd.23.03.2009	43 did. 19.03.2008	31.03.2008	12,476/-
TOTAL				1,42,198/-

After scrutiny of the rebate claims, the following deficiencies vide Deficiency-Cum-SCN dated 20.04.2012 were communicated to the Applicant:

Sr. No.	R.C. No./Date	Discrepancy
1	17687 dtd.19.09.2008	<ul style="list-style-type: none"> i) Bank Realisation Certificate not submitted. ii) The chapter sub-heading in ARE-1 and C.Ex Invoice is different from that of Shipping Bill. iii) The value mentioned in the said ARE-1 is more than FOB value and rebate is required to be restricted to effective rate of duty payable/paid on FOB value. iv) The scheme of export is shown as "advance license for shipping bill. However, it is not known under which customs notification number, the said advance license is issued.

2	34547 dtd.23.03.2009	<ul style="list-style-type: none"> i) Bank Realisation Certificate not submitted. ii) The chapter sub-heading in ARE-1 and C.Ex. Invoice is different from that of Shipping Bill. iii) Disclaimer Certificate (i.e. No Objection Certificate) not submitted. iv) Duty Payment Certificate not received from jurisdictional Central Excise Office. v) Proof of duty payment on export goods not produced by the claimant.
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The Deputy Commissioner of Central Excise (Rebate), Raigad vide Order-in - Original dated 30.04.2012, rejected both the rebate claims on the ground that in respect of one claim, the applicant had failed to submit the disclaimer certificate from the exporter 'M/s Pooja Exports and in respect of both the claims, the bank realization certificate was not submitted and thus conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled. Aggrieved by the aforesaid order, the Applicant filed appeal with the Commissioner Appeal. The Commissioner Appeal vide his OIA No. US/945/RGD/2012 dated 28.12.2012 rejected their appeal on the grounds of non-submission of disclaimer certificate and restriction on rebates under rule 18 when exports were made under advance license scheme Notification No. 93/2004-cus, dated 10.09.2004.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision application on the following grounds:

- i. The rebate claims cannot be rejected on ground of non-submission of "Disclaimer Certificate" which is only a procedural requirement, which were available after submission of rebate claims.
- ii. The notification 93/2004-cus only prohibits facility under rule 18 (rebate of duty paid, on materials used in the manufacture of resultant product) while the rebate of the duty claimed by the applicant relates to excise duty paid on final product. Also Applicant has not availed benefit of rule 19(2).

- iii. The notification 19/2004 dated 06.09.2004 does not prescribe any condition relating to fulfillment of Advance Authorization conditions. The fulfillment of the conditions of the advance authorization has to be submitted to the DGFT and not to the excise department and for non-fulfillment of the same penal provision has been provided under Foreign Trade Policy i.e. if any action needs to be taken then same has to be taken by the DGFT and not the central excise officer.
 - iv. The procedural infraction of Notification/ circulars etc. are to be condoned if exports have really taken place, and the law is settled that substantive benefit cannot be denied for procedural lapses and rebate should be granted.
 - v. If the duty payment has been made and goods has been exported than rebate should not be denied.
 - vi. Applicant prayed to set aside the Order-in-Appeal and to allow the rebate.
4. Personal hearing in the matter was scheduled on 23.08.2019, 17.09.2019, 2.2.2021, 16.02.2021, 18.03.2021 and 25.03.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records
5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application. On perusal of the records, Government finds that the applicant had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE(NT) dated 06.09.2004, which were rejected due to non-submission of disclaimer certificate and the restriction on allowance

of rebate claims filed under rule 18 as per condition(v) of Notification no. 93/2004-cus.

6. Government notes that in impugned Order-in-Appeal, it has been observed by the Appellate authority that since the exports were made under advance license scheme Notification No. 93/2004-cus, dated 10.09.2004, the rebate is liable for rejection. While arriving at the said conclusion, the Commissioner (Appeals) relied on condition No. (v) of the Notification No. 93/2004-Cus dated 10.09.2004 which read as follows-

"v) that the export obligation as specified in the said license (both in value and quantity terms) is discharged within the period specified in the said license or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said license and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed ."

In this regard Government observes that on 17th May, 2005 corrigendum was issued by the Board to above Notification which is reproduced below:

CORRIGENDUM

" In condition (v) of opening paragraph of the Notification of the Government of India, in the Ministry of Finance (Department of Revenue) Nos.93/2004-Customs, dated the 10th September, 2004, published in the Gazette of India (Extraordinary), vide GSR 606(E), the words & figures "under rule 18" shall be corrected to read as "under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)"

Government observes that vide corrigendum dated 17 May 2005 the rebate of duty paid on materials was restricted under rule 18 of the Central Excise Rules, 2002 and not the duty paid on the finished products.

6.1 In this regard Government places its reliance on GOI Order IN RE Garden Silk Mills reported under 2014 (311) E.L.T. 977 (G.O.I.) wherein while deciding the issue of "Duty paid on final product, final product exported - Condition No. (viii) of Notification No. 96/2009-Cus. debars only the facility of rebate of duty paid on inputs used in the manufacture of

exported goods, condition not violated - Export of duty paid goods not disputed - Rebate claims admissible - Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) the Revisionary Authority at paras 9 to 9.3 observed as under:

“Government notes that in this issue to be decided is whether rebate of duty paid on exported goods is not admissible for violation of Condition No. (viii) of Customs Notification No. 96/2009-Cus., dated 11-9-2009.

9.1 In order to examine the issue in the context of Notification No. 96/2009-Cus., dated 11-9-2009, it would be proper to peruse the Condition No. (viii), which reads as under :-

“that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed :

Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;”

The said Condition No. (viii) debars availment facility of rebate claim on duty paid on materials used in manufacture of resultant product under Rule 18 and also the facility of duty free procurement of raw materials under Rule 19(2) of Central Excise Rules, 2002. The applicant has claimed rebate of duty paid on final product and not of duty paid on raw materials/inputs used in manufacture of final resultant product exported as is evident from the order-in-original. There is a categorical declaration in the ARE-1 form that no facility of Notification 21/2004-C.E. (N.T.), dated 6-9-2004 i.e. input rebate claim and under Notification 43/2001-C.E. (N.T.), dated 26-6-2001 i.e. duty free procured of raw material under Rule 19(2) was availed.

9.2 Commissioner (Appeals) has relied upon G.O.I. Revision order in the case M/s. Omkar Textiles - 2012 (284) E.L.T. 302 (G.O.I.). Government notes that in the said case exporter M/s. Omkar Textile has purchased inputs i.e. Linear Alkyl Banzone (LAB) and Sulphuric Acid and used the same in the manufacture of exported goods. They had claimed rebate of duty paid on inputs (LAB) used in the manufacture of exported goods. Government had denied the input rebate claim in the said case since final

goods were exported in discharge of export obligation under Advance License Scheme in terms of Notification No. 93/2004-Cus., dated 10-9-2004 as there was similar Condition No. (v) in the said notification which was exactly similar to Condition (viii) of Notification No. 96/2009-Cus., which debarred the exporter from claiming input rebate claim i.e. rebate of duty paid on inputs/raw materials used in the manufacture of exported goods. In that case the inputs rebate claim was disallowed, whereas in the instant case applicant has claimed rebate claim of duty paid on (finished) exported goods. As per Condition (viii) of Notification No. 96/2009-Cus. or Condition No. (v) of Notification 93/2004-Cus. relating to advance licence scheme, there is no restriction on availing the facility of rebate claim of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. In the instant case issue relates to rebate of duty paid on (final) exported goods and therefore ratio of above said G.O.I. Revision Order is not applicable to this case.

9.3 *Government notes that in the case of M/s. Shubhada Polymers Products Pvt. Ltd. reported as 2009 (237) E.L.T. 623 (G.O.I) this revisionary authority has held that rebate of duty paid on goods exported (finished) in discharge of export obligation under advance licence scheme in terms of Notification No. 43/2002-Cus., dated 19-4-2002 as amended vide corrigendum dated 29-11-2002 is admissible since the amended Condition (v) of said notification debarred only the availment of rebate of duty paid on inputs/raw materials used in the manufacture of finished exported goods. The said Notification No. 43/2002-Cus. was subsequently replaced by Notification No. 93/2004-Cus., dated 10-9-2004. In view of the position, the rebate claim of duty paid on export goods (finished goods) cannot be rejected on this ground since there is no violation of Condition (viii) of Notification No. 96/2009-Cus., dated 11-9-2009 which debars only the facility of rebate of duty paid on inputs used in the manufacture of exported goods.”*

6.2 Government observes that the ratio of the above case is applicable to the issue involved in the instant revision application. Further, in the case of Jubilant Organosys Ltd.(2012 (276) ELT 335 (Kar)) Hon'ble High Court of Karnataka observed that Condition No. (v) of Notification No. 43/2002-Cus., dated 19-4-2002 corrected by corrigendum dated 29-11-2002 clarifying that 'under Rule 18' of Central Excise Rules, 2002 shall be corrected to read as 'under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) and held that

a corrigendum in question has been issued for correction of the notification and it relates back to the date of the notification corrected. It

ceases to be a correction if it is effective from the date of its issuance. It then becomes an amendment. A correction relates back to the date of the notification itself. If that is so, the order of the appellate authority as also the revisional authority are contrary to the notification dated 29-11-2002.

Therefore, following the ratio of above judgement, Government holds that rebate of duty paid on goods exported (finished) in discharge of export obligation under Advance license scheme in terms of Notification No.93/2004-Cus dated 10.09.2004 as amended vide corrigendum. dated 17.05.2005 is admissible to the applicant as the amended condition (v) of the said notification restricted only the availment of rebate of duty paid on inputs /raw materials used in the manufacture of resultant product.

7. With respect to the non-submission of disclaimer certificate, Government finds that though later the applicant has submitted the same. Further, Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported. The second is that the goods are of a duty paid character. It is observed that, in the present case, no doubt has been expressed by the Department on both the aspects. As such the fundamental condition for allowing rebate claims that duty paid goods are exported, already stands satisfied in this case. Hence the Revision Application is liable to be allowed and the impugned Order in Appeal is liable to be set aside.

8. In view of the above Government holds that the said rebate claims are admissible to the applicant under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Hence, the impugned Order in Appeal No. US/945/RGD/2012 dated 28.12.2012 is set aside.

9. This Revision Application is disposed off on the above terms.

Shw awf
15/9/22

(SHRAWAN KUMAR)

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

ORDER No. 863/2022-CEX (WZ) /ASRA/Mumbai Dated 15.9.2022

To,

M/s. Total Packaging Services 144/2,D/F,Near M.G. Udhyog Nagar,
Opp. Talav, OIDC, Dabhel,Daman(U.T.), 396210

Copy to:

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2. The Commissioner CGST, Belapur, 1st Floor, CGO Complex, Sector,
C.B.D. Belapur, Navi Mumbai-400614.
3. The Deputy Commissioner, of CGST & Central Excise, Raigad.
4. Sr. P.S. to AS (RA), Mumbai
5. ~~Guard file~~