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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. 195/196-197/15-RA /7348 Date of Issue: 21.12.2021

ORDER NO. 895-896 /2021-CX (WZ) /ASRA/MUMBAI DATED 16.12.2021 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s Sopariwala Exports Pvt Ltd (DTA Unit),
Opp Railway Station,
Borsad-388540, Dist Anand

Respondent: The Commissioner, CGST, Vadodara.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. VAD-Anand/APP-I/57-58/15-16 dated 28.04.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

ORDER

These Revision Applications have been filed by M/s Sopariwala Exports Pvt Ltd (DTA Unit), Opp Railway Station, Borsad-388540, Dist Anand (hereinafter referred to as the 'applicants') against the Orders-in-Appeal No. VAD-Anand/APP-I/57-58/15-16 dated 28.04.2015 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara.

2. The applicants are engaged in the manufacture of branded un-manufactured tobacco falling under Sub-Heading 24011090 and 24012090 and unbranded manufactured tobacco falling under Chapter Sub-Heading 24039910. The applicant filed two rebate claims for Rs. 5,52,678/- and Rs 5,71,100/- in respect of exports under ARE 1 No 62/13-14 dated 14.11.2013 and ARE-1 No 72/13-14 dated 17.12.2013 respectively, seeking rebate of duty paid on excisable goods exported to Sharjah UAE and Hodeidah, Yemen through Mundra Port as a manufacturer exporter under Rule 18 of the Central Excise Rules 2002.

3. Two Show cause notices both dated 24.06.2014 were issued to the applicant seeking to reject the rebate claim of Rs. 5,52,678/- and Rs. 5,71,100/- under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 as department was of the view that the applicant has already claimed both the components of drawback (customs and central excise portion) and allowing benefit of rebate of duty paid on exported goods would amount to double benefit.

4. The adjudicating authority vide Orders. in Original Nos. Refund/62-63/Div-II/14-15 dated 29.01.2015 rejected the rebate claims filed by the applicant.

5. Aggrieved by the said Orders in Original, the applicant filed an appeal before the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

5.1 The appellate authority vide Orders in Appeal Nos VAD-Anand/APP-I/57-58/15-16 dated 28.04.2015 rejected the appeals of the applicant. The Appellate Authority while rejecting the appeals has made the observations as under: -

i) It is evident that availing of the benefits of drawback of the customs and excise portion and rebate on finished goods exported together would tantamount to the applicant being given double benefit.

ii) Drawback is clearly denied when rebate is claimed, so there is a declaration on the document regarding non-availment

iii) After obtaining the benefit of drawback the applicant has stated the declaration to have been made in error by the clerk.

iv) It is evident that a declaration which was used to claim a benefit cannot be rectified at this stage to enable the applicant to avail the benefit which otherwise not allowed.

6. Aggrieved by the impugned Order in Appeal, the applicants have filed the instant Revision Applications on the following grounds:-

(i) The impugned order is ex-facie bad in law and contrary to the correct legal as also factual position.

(ii) The impugned order, upon verification, alleges that the applicant had already claimed both the components (Customs as well as Excise portion) of the Drawback as relevant from the shipping bill. The Department is under the mis-conception that the applicant had availed Cenvat credit under the Cenvat Credit Rules. Hence the Department, under the wrong impression that Credit has already been availed by the applicant, is rejecting the rebate claim, thus alleging a claim for double benefit by the applicant in respect to the subject goods.

(iii) The impugned order has been issued on the mistaken understanding that when DBK (both customs and excise component) is claimed, rebate of duty paid on final product is not admissible. It is submitted that there is no such requirement either under Rule 18 of Central Excise Rules, 2002 or Notification No 19/2004-CE(NT) dated 06.09.2004.

(iv) "DBK" is an export incentive on "input stage" duty involved on any manufactured and exported goods. The rebate in the present case is "duty paid on finished goods" and hence, has no bearing on input stage duty incidence.

(v) If the above legal position is not accepted by revenue authorities for any reason, and if so communicated to the applicant, the applicant undertakes to surrender/pay back the "excise" component of DBK claim and restrict the DBK only to the extent of "Customs component", in order to regularize the rebate claims in question.

(vi) No Cenvat credit had been claimed/availed by the applicant on the inputs/raw materials used for manufacturing the unmanufactured tobacco which was subsequently exported.

(vii) That the ARE-1 which reflects that the Cenvat credit had already been availed by the applicant is a misnomer. That in actuality, the said credit was availed by the applicant in respect of other capital goods/inputs utilized in manufacturing other finished goods and that credit has therefore got nothing to do with the instant matter.

(viii) That the declaration stating that no claim of drawback on excise duty component has been or will be made with the rebate claim under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 with the Customs authorities, was wrongly made by the applicant in the ARE-1 due to clerical error. Instead of stating that DBK will be claimed, it was reflected that it will not be claimed.

(ix) That neither Rule 18 of Central Excise Rules, 2002 nor Notification No.19/04-CE(NT) imposes any such restriction as regards claiming of rebate of duty paid on final products exported simultaneously with DBK benefit.

(x) That the only requirement in law is that in order to claim DBK of customs and excise component both, no Cenvat Credit at input stage ought to have been claimed. In the present case, the applicant has not claimed any Cenvat Credit at input stage, either of excise or Service Tax, as stated hereinabove. That the applicant craves leave to produce, at the time of hearing, copy of their Cenvat Credit register during the relevant period as also CA certificate in evidence of the fact that during the relevant period, the applicant had not availed any input stage credit on inputs and input services in respect of goods exported and which export is the subject matter of the present rebate claim.

(xi) That the Department cannot outrightly reject the applicant claim and deny the benefit duly available to them. If anything, the DBK claim ought to be reduced to the extent of rebate claim already allowed to the applicant, which is a function of the Customs authorities.

The applicant relied upon the following case laws:

a. In Re: Aarti Industries Ltd. 2012(285) ELT 461(GOI)
b. In Re: Four Star Industries 2014(307) ELT 200(GOI)
c. Go Go International 2012-TIOL-716-CESTAT-MAD
d. M/s. Sterling Agro Industries Ltd. V/s. UOI 2013-TIOL-329-HC-MP-CX

7. Personal hearing was scheduled in this case on 13.08.2021 and 20.08.2021. Shri Saurabh Dixit, Advocate, appeared before the Revision Authority for personal hearing on 20.08.2021 and reiterated his earlier submissions. He further submitted that drawback on exports and rebate of duty paid on exported goods is not double benefit and hence the claim has to be allowed

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

8.1 The facts stated briefly is that the applicants are engaged in the manufacture of branded un-manufactured tobacco falling under Sub-Heading 24011090 and 24012090 and unbranded manufactured tobacco falling under Chapter Sub-Heading 24039910 and had filed two rebate claims seeking rebate of duty paid on excisable goods exported to Sharjah UAE and Hodeidah, Yemen through Mundra Port as a manufacturer exporter under Rule 18 of the Central Excise Rules 2002. Pursuant to issue of show cause notices, the rebate claims were rejected as the department was of the view that the applicant has already claimed both the customs and excise components of drawback and therefore allowing benefit of rebate of duty paid on exported goods would amount to double benefit. 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 6 supra.

8.2 The government observes that as regards the grounds that the pleas of the applicant were not taken into consideration, Government notes that 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.

8.3 Government notes that the statutory provisions and relevant applicable rules/notifications relied by the applicant and the department are the same but differ on the interpretation of the same. The main issue is regarding the admissibility of the rebate of duty paid on finished goods exported by the applicant when excise and customs portion of drawback has been claimed by the applicant particularly in view of the availment of cenvat credit by way of debit of duty on the exported goods through the cenvat account and in view of the declaration by the applicant that no claim of

drawback on excise duty component has been or will be made with the rebate claim under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, with the Customs authorities

8.4 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 applying and following 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, the inadmissibility of the rebate of duty paid on finished goods comes to the fore, since the applicant has already availed the central excise portion of duty drawback.

8.5. The applicant has claimed rebate of duty paid on exported goods after having availed benefit of duty drawback of central excise in respect of the said exported goods. 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 applicant has already availed the central excise portion of duty drawback, the rebate of duty paid on finished goods cannot be held admissible.

9. 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:"*

9.1 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 (F.No. 609/116/2000-DBK) 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. The contention of the applicant that for violation of drawback notification, the drawback should be denied and rebate claim which is in accordance with provision of Notification No. 19/2004-CE(NT) dated 06.09.2004, may be allowed, is not acceptable 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. Such a contention of the applicant is also not found sustainable 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.

10. 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.'

10.1 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;

10.2 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. The applicant has failed to produce any documentary evidence regarding non availment of cenvat, despite undertaking to produce the same at the time of personal hearing. 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 Applicant has availed total drawback (customs, central excise and service tax component put together) and 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 Act, 1944. 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.

11. Government also observes that the reliance placed by the applicant on various case laws mentioned in para 6 supra is misplaced in as much as the applicants/appellants in those cases had substantially complied with the provisions under the relevant Notifications/Circulars whereas in the instant case the applicant has failed to follow the provisions under the Customs, Central Excise Duties and Service Tax Drawback Rules,1995 as rightly held by Appellate Authority in the Order in Appeal. The ratio of the judgment of the Hon'ble High Court of Madras in the case of India Cements Ltd. vs. Union of India [2018(362) ELT 404(Mad)] would be relevant here. The relevant text is reproduced.

"27. Whenever a statute requires a particular thing to be done in a particular manner, it is a trite position of law that it should be done in that manner alone and not otherwise. .....".

12. Since the applicant has failed to comply with the requirements of the Customs, Central Excise Duties and Service Tax Drawback Rules,1995 and

the CEA, 1944 and the rules/notifications issued thereunder, the reliance placed on these case laws by the applicant is also misplaced.

13. In view of the above discussion, Government holds that the appellate authority has rightly rejected the appeal filed by the applicant. Thus, Government does not find any infirmity in the Order-in-Appeal No. VAD-Anand/APP-I/57-58/15-16 dated 28.04.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara and therefore upholds the impugned order in appeal

14. The Revision Application is dismissed as being devoid of merits.

Shrawan 16/12/21

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

895-896

ORDER NO. /2021-CX (WZ) /ASRA/MUMBAI DATED 16.12.2021

To,

M/s Sopariwala Exports Pvt Ltd (DTA Unit),
Opp Railway Station,
Borsad-388540,
Dist Anand

Copy to :

1. The Principal Commissioner of CGST & Central Excise, Vadodara I, GST Bhavan, Race Course Circle, Vadodara- 390 007
2. The Commissioner (Appeals), Vadodara, Central Excise Building, 6th Floor, Race Course Circle, Vadodara 390 007
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.