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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**  
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Mumbai- 400 005

F NO. 195/467/16-RA

4524

Date of Issue: ~~09.2022~~

06.10.2022

ORDER NO. 915 /2022-CEX (WZ)/ASRA/MUMBAI DATED 28.09.2022  
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 Indian Ophthalmics

Respondent : Commissioner of Central Excise, Bhavnagar Commissionerate

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. BHV-  
EXCUS-000-APP-035-16-17 dated 13.05.2016 passed by the  
Commissioner (Appeals-III) Central Excise, Rajkot

**ORDER**

This Revision Application has been filed by M/s. Indian Ophthalmics, 136/137, GIDC Estate, Wadhwan City-363 035, District Surendranagar (hereinafter referred to as "Applicant") against the Order-in-Appeal No. BHV-EXCUS-000-APP-035-16-17 dated 13.05.2016 passed by the Commissioner (Appeals-III) Central Excise, Rajkot.

2. The facts of the case in brief are that the applicant is a manufacturer of excisable goods viz. Medicaments and exported goods from their factory premises, through a merchant exporter M/s. Alvita Pharma Pvt Ltd., Ahmedabad. Subsequently, the applicant filed a rebate claim for Rs.1,13,391/- in terms of Notification No 21/2004 CE(NT) dated 06.09.2004, as amended read with Rule 18 of CER 2002.

3. It was noticed that final product was exported under the Advance Licence No.0310766955 under Shipping Bill No.1651148 dated 18.03.2014. As the goods were exported by availing the benefit of Advance Licence in terms of the exemption Notification No. 93/2004-Cus. / 96/2009-Cus., dated 10.09.2004 and it appeared that the applicant was not eligible for taking the benefit of rebate of duty paid on materials used in the manufacture of resultant products as per the Rule 18 of CER, 2002 read with Notification No.21/2004-CE (NT) dated 06.09.2004, as amended, show cause notice dated 10.04.2015 was issued, proposing rejection of rebate claim. The Adjudicating Authority vide impugned Order-in-Original No. 177//R/2015 dated 14.05.2015, rejected the rebate claim on the grounds that once the goods were exported against Advance Licence Scheme, the benefit of input stage rebate was not admissible to the applicant in terms of Rule 18 of CER, 2002 read with Notification No 21/2004-CE(NT) dated 06.09.2004 as amended.

4. Aggrieved by the said Order-in-Original, the applicant filed an appeal with the Commissioner (Appeal-III), Central Excise, Rajkot. The Appellate

Authority vide Order-in-Appeal No. BHV-EXCUS-000-APP-035-16-17 dated 13.05.2016 rejected the appeal and upheld the Order-in-Original.

5. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed this revision application on the following grounds:

5.1. That the packing materials i.e. empty Aluminum Tube on which the rebate was claimed were procured on payment of central excise duty;

5.2. That the Adjudicating Authority rejected the rebate claim on the ground that the Appellant has exported goods against the Advance Licence, the benefit of input stage rebate claim is not admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 21/2004-CE (N.T.) dated 06-09-2004 as amended;

5.3. That the condition is applicable to the particular goods which are specified in the Advance Licence and which have been utilized in the manufacture of export consignments and then the benefit of rebate is not available and in their case aluminium collapsible tubes have not been specified in the licence;

5.4. That for raw material procured under Notification No. 21/2004-CE(NT) dated 06 09-2004 and not specified in the Advance Licence, the condition No. (v) of Notification No. 93/2004-Cus dated 10.09.2004 is not applicable and benefit of rebate under Rule 18 of CCR, 2002 is available;

5.5. That there is no artificial distinction between raw material and packing material contrary to the adjudicating authority's findings and as per the explanation to Notification No 93/2004-Cus dated 10.09.2004, raw materials are required for manufacture of resultant product and packing material required for packing of resultant product and are different. Thus the finding of the Adjudicating Authority that once the goods has been exported against the Advance Licence Scheme, the benefit of the input stage rebate claim is not admissible, is not correct;

5.6. That the reliance placed by the adjudicating authority on the case of M/s International Tractors Ltd is not relevant to this case;

5.7. that the applicant relied upon the following judgments which held that Notification has to be interpreted in terms of wording, and where the

language is very clear and unambiguous, benefit cannot be denied; that eligible criteria deserves a strict construction although construction as a condition thereof may be given a liberal meaning; that unintended supposed intention cannot be imported into the language of the exemption notification.

- (i) Commissioner of Excise vs. Rukmani Pakkwell Trades [2004 (165) E.L.T. 481 (SC)]
- (ii) Hon'ble Supreme Court of India in the case of Compack (P) Ltd vs. Commissioner of Central Excise, Vadodara
- (iii) M/s India Sugar & Refiners Ltd. vs UOI [1983(12)E.L.T. 209 (Kar)]
- (iv) M/s Inter Continental vs. U.O.I. [2003 (154) ELT 37 (Guj HC)]
- (v) M/s Vandana Ispat vs. Commr. of Central Excise, Hyderabad
- (vi) M/s Spentex Industries Ltd vs. Commissioner of Central Excise [2015 (324) ELT. 686 (S.C.)]

5.8. That the Adjudicating Authority and the Appellate Authority have erroneously interpreted the condition no. (v) of the Notification No. 93/2004-CUS dated 10-09-2004 as the packing materials had not been specified in Advance Licence and they had not claimed the rebate of inputs which was specified in the Advance Licence but claimed the rebate of packing materials;

5.9 That the impugned Order-in-Appeal be set aside and rebate be granted.

6. The department filed their written submissions vide letter dated 29.03.2017 in which they stated as under

6.1 In the present case the question is of rebate on inputs whereas the specified goods are in relation to the final product, hence, the adjudicating authority has correctly interpreted the condition no. (v) of the above said notification. As per the definition of material it categorically includes packaging material required for packing of resultant product. Therefore, any material if used in the manufacture of export goods is not eligible for rebate if the final product is exported under advance licence;

6.2. That to the applicants submission that Aluminium Collapsible Tube had not been specified in advance licence, it was submitted that the specified goods are in relation to export obligation of final product and not of inputs and it is a misleading and incorrect interpretation and facts.

6.3. That there was no difference between the rebate claim of inputs or packing material and both are covered by the Notification No. 21/2004-CE (NT) dated 06.09.2004.

6.4. That the submission of the applicant that the said packing material is not specified as raw material in the advance licence, hence, the rebate is admissible and they are not violating the condition of the Notification No. 93/2004-CUS. is completely incorrect as the specified goods is in respect of final product as and not in respect of the inputs.

6.5. That the main condition of the above said notification is that - input stage rebate claim is allowed only if the final product is not being exported under advance licence and does not differentiate as to whether the raw material has been procured under advance licence or have been procured on payment of duty or under without payment of duty and allowing such claims would amount to double benefit

6.6. That the applicants attempt to distinguish between the raw material and packing material as per the definition of "materials" in terms of Notification No. 93/2004-CUS was not correct as 'material' includes everything and there can not be any distinction between raw material and packing material for the procurement of raw material for manufacture of exported goods as it includes packing material.

6.7. The case law of M/s. International Tractors Ltd., (2011 (267) ELT. 429 (G.O.I.)) is applicable in the present case and also been upheld by the Appellate Authority and further substantiated as per case law of Omkar Textile Mills [2012(03)LCX0144 [2012(284)ELT-302[G.O.I.]]

7. Personal hearing in the matter was scheduled for 14.06.2022 or 28.06.2022. Shri Nirav Bhatt and Shri A.N.Shah consultant appeared online on behalf of the applicant, on 28.06.2022 and submitted that they have claimed rebate on the packing materials on which duty was paid. They

further submitted that these packing material were not mentioned in the advance licence and requested to allow their claim.

8. 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.

9. Government finds that the applicant had filed rebate claims on the duty paid on packing material used in the finished goods, under Rule 18 of the Central Excise Rules, 2002 read with notification no. 21/2004-CE(NT) dated 06.09.2004 as amended, which were rejected as the goods were exported by availing of the benefit or Advance Licence in terms of Notification No 93/2004-Cus dated 10.09.2004 and thus the applicant was not eligible for availing of the benefit of rebate of duty paid on materials used in the manufacture of resultant products.

10. The applicant on the other hand has submitted that they have neither not availed the benefit of Advance Licence on packing materials nor have claimed rebate on raw material mentioned in the Advance Licence. The applicant has claimed rebate on the duty paid on packing material which has not been mentioned in the Advance Licence.

11. Government observes that the case hinges on the interpretation of condition No. (v) of Notification No. 93/2004-Cus dated 10.09.2004 which reads as under -

*"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 :"*

11.1. Government observes further that on 17<sup>th</sup> May, 2005 a corrigendum was issued by the Board to Notification No 93/2004-Cus dated 10.09.2004 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 10<sup>th</sup> 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)"*

11.2. Government also notes that as per explanation No. (iii) to Notification No 93/2004-Cus dated 10.09.2004:-

"Materials" means-

- (a) raw materials, components, intermediates, consumables, catalysts and parts which are required for manufacture of resultant product;*
- (b) mandatory spares within a value limit of ten per cent. of the value of the licence which are required to be exported alongwith the resultant product;*
- (c) fuel required for manufacture of resultant product; and*
- (d) packaging materials required for packing of resultant product;"*

11.3 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 includes packaging materials as explained above.

12. 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 Benzene (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."*

12.1. Government observes that the conclusions in the above case is applicable to the issue involved in the instant revision application. Government also observes that the order of the Revisionary Authority in the case of M/s International Tractors Ltd [2011(267) E.L.T. (G.O.I) is relevant to the instant case.

12.2. Further, in the case of Jubilant Organosys Ltd. [2012 (276) ELT 335 (Kar)] the Hon'ble High Court of Karnataka observed that Condition No. (v) of Notification No. 43/2002-Cus., dated 19.04.2002, 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.*

13. Therefore, following the ratio of above judgements, Government holds that the availment of rebate of duty paid on inputs /raw materials used in the manufacture of resultant product is not eligible in terms of Notification

No.93/2004-Cus dated 10.09.2004 as amended vide corrigendum dated 17.05.2005.

14. In view of the above discussion, Government holds that the Appellate Authority has rightly rejected the appeal filed by the applicant. Government does not find any infirmity in the Order-in-Appeal No. BHV-EXCUS-000-APP-035-16-17 dated 16.05.2016 passed by the Commissioner (Appeals-III) Central Excise, Rajkot and, therefore, upholds the impugned Order-in-Appeal.

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

*Shrawan*  
28/9/22  
(SHRAWAN KUMAR)

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

ORDER No. 915 /2022-CX (WZ) /ASRA/Mumbai Dated 28.09.2022

To,

M/s. Indian Ophthalmics,  
136/137, GIDC Estate,  
Wadhwan City-363 035,  
District Surendranagar

Copy to:

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2. The Commissioner of CGST, Rajkot Appeals, 2<sup>nd</sup> Floor, GST Bhavan, Race Course, Ring Road, Rajkot 360 001
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board
5. Spare copy