

REGISTERED SPEED POST AD



**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. 195/471-A/16-RA/4460

Date of Issue: 04.10.2022

ORDER NO. 922 /2022-CX (WZ) /ASRA/MUMBAI DATED 30-9-2022 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 Anand Food & Dairy Products
Chikhodara-Sarsa Road,
Chikhodara, District Anand,
Gujarat - 388320

Respondent: Commissioner of CGST & CX, Vadodara-I

Subject: Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. VAD-EXCUS-003-APP-019/2016-17 dated 15.04.2016 passed by Commissioner (Appeals-I), Central Excise, Vadodara

ORDER

This Revision Application have been filed by M/s Anand Food & Dairy Products, Chikhodara-Sarsa Road, Chikhodara, Dist. Anand, Gujarat-388320 (hereinafter referred to as "the applicant" against OIA No. VAD-EXCUS-003-APP-019/2016-17 dated 15.04.2016 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals-I), Vadodara.

2.1 The applicant are engaged in the manufacturers of Lemon and Mango Pickles having central excise Registration. They had filed rebate claim amounting to Rs.1,85,653/- for input stage duty paid by them on the packaging materials used in the export goods under Notification No. 21/2004-CE(NT) dated 06.09.2004. They had procured duty paid packaging material used for export of their finished products; i.e. mango pulp & pickles. The applicant had availed duty drawback on concessional rate of drawback. After scrutiny of the claim, show cause notices were issued to the applicant alleging non-compliance of certain conditions of Notification No. 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the CER, 2002. The rebate sanctioning authority had subsequently vide OIO No. Reb/144/D-I/15-16 dated 31-12-2015 rejected the rebate claim on the grounds of contravention of the conditions laid down under the said notification and for filing after availing duty drawback in terms of Notification No. 110/2014- Customs dated 17-11-2014 read with Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 in violation of the conditions specified therein.

2.2 Aggrieved by the said OIO, the applicant filed appeal before the Commissioner (Appeals) who vide OIA No. VAD-EXCUS-003-APP-019/2016-17 dated 15.04.2016 rejected the appeals filed by the applicant.

3. Aggrieved by the impugned OIA, the applicant filed revision application on the following grounds:

- (a) The applicant stated that they had filed rebate claim for raw materials/inputs used in the manufacture or processing of finished goods exported and that the duty drawback had been claimed on

concessional rate as per All India Rate on the packaging material. They stated that they were using packaging material like OTS canes, glass bottles, lug caps etc. which they had procured on payment of duty from various suppliers.

- (b) They submitted that they had claimed drawback as per column no. 7 of Notification No. 110/2014-Cus (NT) as per which the prescribed rate of drawback was 0.15% when CENVAT facility had been availed. They submitted that they had not availed double benefit.
- (c) The applicant further submitted that the Commissioner (Appeals) had erred in holding that they had failed to fulfil the conditions of Notification No. 21/2004-CE (NT). They submitted that the input output norms had been approved by the AC/DC on 08.10.2007 and that they had been filing ARE-2 & claiming rebate on its basis. They reiterated that they had fulfilled all conditions of Notification No. 21/2004-CE (NT) dated 06.09.2004.
- (d) The applicant referred para (vi)(d) of CBEC Circular No. 35/2010-Cus dated 17.09.2010 which states that customs component of AIR would be available even if rebate of Central Excise Duty paid on raw materials has been taken in terms of Rule 18 of the Central Excise .
- (e) The applicant averred that the Commissioner(Appeals) had erred in relying upon the judgment of the Hon'ble Bombay High Court in the case of Indorama Textiles Ltd.[2006(200)ELT 3(Bom)] as the circular and notification issued by the Board had clarified the legal position post said judgment. Hence, the ratio of the said judgment was no more good law.
- (f) The applicant placed reliance upon the decision of the Government of India in the case of Four Star Industries [2014(307)ELT 200(GOI)] holding that the customs component of AIR drawback would be available even if the rebate of central excise duty paid on raw materials used in the manufacture of exported goods had been claimed under Rule 18 of the CER, 2002.
- (g) The applicant also placed reliance upon the decision of the Government of India in the cases of Aarti Industries Ltd.[2012(285)ELT 0461(GOI)]

In view of the above the applicant requested to set aside the Order in Appeal and allow the Rebate claimed.

4. The applicant was granted a personal hearing in the matter on 14-06-2022, 28-06-22, 19-07-22 and 26-07-22. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

5. Government has carefully gone through the case records, the written submissions made by the applicant, the revision application filed by them, the impugned order and the order passed by the adjudicating authority. The applicant had filed rebate claims for refund of duty paid on inputs used in the goods exported by them and also availed drawback on packaging material used for export. Government observes that the two main grounds on which the rebate claims have been rejected in the impugned order are that the applicant had failed to submit input output norms for verification and grant of permission by the jurisdictional AC/DC and that the para 1.5(i) of Part V of Chapter 8 of the CBEC Manual of Supplementary Instructions bar the benefit of input stage rebate where the finished goods are exported under claim of duty drawback.

7. Government observes that in para 13.2 of the Order in Original it has been recorded that "The claimant vide their defence reply has submitted that they had applied for the verification of the input-output ratio and the same has been approved by the department on 8.10.2007". The applicant has reiterated in the grounds for revision that they had already submitted input output ratio which had been approved by the concerned AC/DC of the Department vide letter dated 08.10.2007 and on that basis they had been filing ARE-2 and claiming rebate for all the preceding years. Admittedly, there is a difference in the date on which the AC/DC has approved input output ratio as per the OIO's and as per the applicant's submissions in the revision applications filed by them (date shown in the letter is 1-09-2008). The submissions of the applicant in this regard is found to be true. Therefore, the

ground on which the Commissioner(Appeals) has rejected the appeals filed by the applicant by stating that the applicant had not obtained any approved verification report/permission regarding input output ratio from the jurisdictional AC/DC as required by the notification is not tenable.

8. With regard to the finding of the Commissioner (Appeals) that input stage rebate would not be available where the finished goods have been exported under claim for duty drawback and that such rebate claim amounts to double benefit, Government finds that this issue has been settled by the CBEC vide Circular No. 35/2010. Para 2.1 of Circular No. 1047/35/2016-CX dated 16.09.2016 reaffirms the stand of the Board in the matter and is reproduced below for reference.

“2.1 The issue has been examined. Board has already vide Circular No. 35/2010-Cus. dated 17-9-2010 clarified that as per Notification No. 84/2010-Customs(NT) dated 17-9-2010, Customs component of AIR drawback shall be available even if the rebate of Central Excise duty paid on raw material used in the manufacture of export goods has been taken in terms of Rule 18 of the Central Excise Rules, 2002, or if such raw materials were procured without payment of Central Excise duty under Rule 19(2) of the Central Excise Rules, 2002. The Circular No. 35/2010-Cus. dated 17-9-2010 continues to be in operation and Customs portion of drawback so available are specified as per rates and caps under column (6) & (7) of the drawback schedule.”

The above Circular reveals that there is no bar on availing drawback of customs component of AIR and simultaneously claiming rebate of central excise duty paid on inputs used in the exported goods. The contents of the circular dated 16.09.2016 are a more contemporary exposition of the provisions for grant of rebate and drawback and hence will prevail over the contents of para 1.5 of Part V of Chapter 8 of the CBEC Manual. Moreover, the Joint Secretary has already dealt with this issue at length while passing orders In Re : Four Star Industries[2014(307)ELT 200(GOI)] and In Re : Aarti Industries Ltd.[2012(285)ELT 461(GOI)] and allowed the benefit of rebate to those applicants.

9. In view of the above, Government sets aside the OIA No. VAD-EXCUS-003-APP-019/2016-17 dated 15.04.2016 and allows the application.

10. The revision application is disposed off in the above terms.

Shrawan
30/9/22
(SHRAWAN KUMAR)

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

ORDER No. ⁹²²22/2022-CX (WZ) /ASRA/Mumbai DATED ³⁰09-2022

To,
M/s Anand Food & Dairy Products
Chikhodara-Sarsa Road,
Chikhodara, District Anand,
Gujarat - 388320

Copy to:

1. The Commissioner of CGST & CX, Vadodara-I Commissionerate,
Central Excise Building, Juna Dadar, Anand-388001
2. The Commissioner of CGST & CX, (Appeals), Vadodara, Central Excise
Building, 1st Floor Annexe, Race Course, Vaddara-390007
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board