F.No.195/472, 472(A), 472(B)/16-RA
F.No.195/21 to 23/16-RA

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F. No.195/472, 472(A), 472(B)/16-RA/4618
F. No.195/21 to 23/16-RA Date of Issue: 07.10.2022

ORDER NO.934-939 /2022-CX (WZ) /ASRA/MUMBAI DATED 03.10.2022 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 Sopariwala Exports Pvt. Ltd., Plot No.817, GIDC – Vasna, Borsad, Dist – Anand.
Respondent	:	Commissioner of Central Excise and Customs, Anand Commissionerate.
Subject	:	Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal bearing Nos. VAD-EXCUS-003-APP-364 TO 366/2015-16 and VAD-EXCUS-003-APP- 23 to 25/ 2015-16 dated 04.12.2015 and 15.04.2016, respectively, passed by the Commissioner (Appeals -I), Central Excise, Customs & Service Tax, Vadodara.

ORDER

The subject six Revision Applications have been filed by M/s Sopariwala Exports Private Limited, (here-in-after referred to as 'the applicant') against the two impugned Orders-in-Appeal dated 04.12.2015 and 15.04.2016 passed by the Commissioner of Central Excise (Appeals -I), Central Excise, Customs and Service Tax, Vadodara. The said Orders-in-Appeal disposed of appeals filed by the applicant against the Orders-in-Original passed by the Assistant Commissioner, Central Excise & Customs, Division – II, Anand Commissionerate, which in turn rejected the rebate claims filed by the applicant. The details of the same are as under:-

Sl. No.	Order-in-Original No. & Date	Order-in-Appeal No. & Date	Amount of rebate claimed (Rs.)
1	Reb/369-371/Div.II/15-16 dated 14.09.2015	VAD-EXCUS-003-APP-364 to 366/2015-16 dated 04.12.2015	8,94,451/-
2	Reb/716-718/Dn-II/15-16 dated 15.02.2016	VAD-EXCUS-003-APP-23 to 25/2015-16 dated 15.04.2016	10,34,638/-

Government finds that the issue involved in both the impugned Orders-in-Appeal is common and hence takes up the subject Revision Applications for being decided together.

2. Brief facts of the case are that the applicant held Central Excise registration and was engaged in the manufacture and export of *'manufactured chuna'* falling under Chapter Sub-Heading No.25259040 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA). They filed rebate claims under Rule 18 of the Central Excise Rules, 2002 claiming rebate of the duty paid on the packing material used in the goods which were exported as provided for by notification no.21/2004-CE(NT) dated 06.09.2004. The original authority vide the above mentioned Orders-in-Original rejected the rebate claims as he found that the applicant had availed duty Drawback in the present case and in terms

of Chapter 8, Part V of the CBEC's Excise Manual of Supplementary Instructions, 2005, rebate of duty involved on the inputs was not allowed to be claimed if the export was under claim for duty Drawback. Aggrieved, the applicant filed appeals against the said Orders-in-Original before the Commissioner (Appeals). The Commissioner (Appeals) agreed with the findings of the original authority and rejected the appeals filed by the applicant.

3. The applicant, aggrieved by the impugned Orders-in-Appeal dated 04.12.2015 and 15.04.2016, have filed the subject Revision Applications. The grounds on which the same have been preferred are the same and are as under:-

(a) The Order-in-Appeal was bad in law inasmuch as the same is silent on various pleas made by them and contrary to the correct legal as well as factual position and hence it deserves to be set aside on this single ground;

(b) The Order-in-Appeal had not examined as to which component of duty, ie. 'only customs component' or 'Customs, Excise and Service Tax component' was claimed as DBK, together with the rebate claim; that if the DBK was limited to Customs component only, there was no.legal embargo in claiming rebate of input state central excise duty and no duplication of benefits was being claimed by the exporter in such case;

(c) That for the sake of argument, even if rebate of duty paid on input stage excise as well as DBK of Excise, Customs and Service Tax component was claimed simultaneously, there is no such requirement either under Rule 18 of CER, 2002 or Notification no.21/2004-CE(NT) dt.04.09.2004 which would effect the legitimacy of rebate claim in any manner;

(d) Drawback is an export incentive on "input stage" duty involved on any manufactured and exported goods; that this DBK under AIR schedule can be either of "customs alone" or "Excise, Customs and Service Tax"; that in the

present case, the DBK has been claimed of Customs component only; the rebate claimed in the present case is "excise duty paid on inputs" and hence, the DBK had no bearing on input stage excise duty incidence, as such, both customs only DBK and rebate on input stage work on different axis and there was double benefit arising to exporter if both these incentives are claimed simultaneously;

(e) The notification No.98/13-Cus (NT) dt.14.09.2013 and the subsequent notification No.110/14-Cus (NT) dt.17.11.2014, provide at Condition No.7 as follows:

> *"(7) The figures shown in the said Schedule under the Drawback rate and Drawback cap appearing below the column heading "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 heading "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 facility or not."*

(f) As such, in respect of the goods in question, falling under CETH 2825 9040, the AIR DBK schedule provides for DBK rate of 1.4% adv. common under both Column "A" as well as "B"; reading this together with condition No.7 reproduced above, meant that only Customs component of DBK was claimed while exporting goods, and hence claiming of rebate on input stage duty was permissible;

(g) The issue was no longer res integra and had been settled by the following decisions:-

- Meghdoot Pistons P. Ltd. [2011(263) ELT 610 (Tri-Del)]
- Mars International [2012(286) ELT 146(GOI)]
- Aarti Industries Limited [2012(285) ELT 461(GOI)]

They further submitted that the Board vide its Circular No.35/2010-Cus dt.17.09.2010 had made a conscious departure in law vis-à-vis rebate on input stage duty and customs component of DBK being simultaneously available, the impugned Order deserved to be quashed and set aside and that the rebate claimed was legally payable to them alongwith interest;

(h) The inadvertent error in declaration contained in ARE-2 was similar to the situation in the case of Four Star Industries [2014(307) ELT 200(GOI)] and did not affect their rebate claim; that the lower authorities failed to consider this submission; they relied on the case of Benny Impex P. Ltd. [2003 (154) ELT 300(GOI)] which had dealt with precisely the very same issue;

(i) That they had due to a clerical error made 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 and Service tax Drawback Rules, 1995 with the Customs authorities in the ARE-2; that there never was any malafide intent on their part to suppress such facts from the department and since the Shipping Bill submitted along with claim of rebate anyway showed that DBK was claimed by them; that in a sense, the declaration was not even incorrect as they had correctly declared the fact that no DBK was being claimed in so far as rebate on input stage is concerned;

(j) That the CBEC's Central Excise Manual for Supplementary Instructions as mentioned in the Order-in-Appeal should be read in the context of claiming of Central Excise component of DBK simultaneously with rebate claim as being prohibited; and that since the Board had clarified vide its circular dt.17.09.2010 that such benefits do not amount to duplication and can be legally claimed simultaneously, there was no reason to take any different view in the matter;

(k) The decision in the case of Indorama Textiles Limited relied upon by the Commissioner (Appeals) was not applicable to the present case as the issue

involved in the said case was whether rebate of duty involved in raw material as well as finished goods could be simultaneously claimed;

In view of the above submissions, the applicant made a similar prayer in both the cases that the impugned Orders-in-Appeal be set aside and the rebate claimed by them be sanctioned.

4. The applicant made further submissions vide their letter dated 15.06.2022, received on 22.06.2022 wherein, apart from reiterating their earlier submissions, they also submitted as under:-

(a) They illustrated, in the case of two ARE-1s involved, that the DBK Schedule rate in respect of their product as appearing at '2825 A' and '2825 B', was 1.4% as per notification nos.110/14-Cus (NT) dated 17.11.2014, substituted by notification no.110/15-Cus (NT) dated 16.11.2015; which indicated that for goods falling under CETH 2825 9040, the AIR DBK rate was the same in columns 'A' & 'B'; and this when read with the above notifications, indicated that the DBK availed by them was restricted to the Customs component only;

(b) The relied upon CBEC Circular no.605/65/2006-DBK dated 22.01.2007 to submit that there was no embargo in claiming input stage Advance Licence / Advance Authorization exemption from duty and still claim rebate of duty paid on export goods; that it is trite in law that nothing can be added, altered or removed from the statutory language of the provision and relied on several decisions in support of the same; that Rule 18 of the Central Excise Rules, 2002 did not bar claim of rebate on inputs when DBK was availed on the final product; they also placed reliance on the decision of the Revisionary Authority, GOI in the case of Malancha Polymers P. Limited [2018 (364) ELT 1153 (GOI)] wherein such claim was allowed;

(c) They placed reliance upon the Apex Court decision in the case of Spentex Industries Limited [2015 (324) ELT 686 (SC)] in support of their case and also submitted that the reliance placed by the lower authorities on the case of Indorama Textiles and Parshva Overseas was not proper as the decision therein stood overruled by the Apex Court vide the above cited decision;

(d) They had not availed any credit qua export production at all and the credit availed was only on capital goods which were used to manufacture the exported goods and hence there was no double benefit which accrued to them; they finally submitted that the quasi-judiciary authority was required to follow judicial discipline.

5. Personal hearing in both the above cases was held on 21.06.2022. Shri Saurav Dixit, Advocate appeared online on behalf of the applicant and mentioned that there are six applications on identical issues. He submitted that DBK claimed was only of the Customs portion (as rates under Schedule 'A' and 'B' were the same). He therefore requested to allow rebate.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Orders-in-Original and the impugned Orders-in-Appeal.

7. Government finds that the claims for rebate of the Central Excise duty paid on the packing material used in the final products which were exported by the applicant has been rejected by the lower authorities as it was found that they had availed Drawback on the exported goods and were hence ineligible for the rebate claimed. It was held that availment of Drawback and rebate on the same consignment would lead to double benefit and was not permitted by the laws governing the same. Government finds that the neither the duty paid nature of

the inputs nor the export of the finished goods is in dispute in the present case. Government notes that at this juncture it is pertinent to examine the facts of the present case vis-à-vis the regulations governing the same and proceeds to do so.

8. Government observes that the product exported by the applicant falls under the Chapter Heading No.28259040 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA), as recorded in the Orders-in-Original. Further, Government finds that the All India Rates of Drawback and the conditions for availing the same were specified by notification no.110/2014-CUS (NT) dated 17.11.2014, effective during the period the exports in question took place. The relevant portions of the Schedule and the 'Notes and Conditions' of the said notification are reproduced below:

SCHEDULE:

			A		B	
Tariff Item	Description of goods	Unit	Drawback when Cenvat facility has not been availed		Drawback when Cenvat facility has been availed	
			Drawback Rate	Drawback cap per unit in Rs. (₹)	Drawback Rate	Drawback cap per unit in Rs. (₹)
2825	Hydrazine and hydroxyl- amine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides and peroxides		1.4%		1.4%	

Notes & Conditions:

" 7. The figures shown in the said Schedule under the Drawback rate and Drawback cap appearing below the column heading "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 heading "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 facility or not."

A reading of the above indicates that the rates of Drawback for the product exported by the applicant is the same under Column 'A' as well as Column 'B'. It has been clarified, at point no. 7 of the notes and conditions part of the notification, that if there is a difference between the rates specified in the two Columns, the difference refers to the Central Excise and Service Tax component of the Drawback and when the rate of Drawback remains the same in both the Columns it shall mean that the Drawback pertains only to the Customs component. Thus, given the fact that there is no difference between the rates in both the columns with respect to the commodity exported by the applicant, Government finds that it is clear that the Drawback availed by the applicant was limited to the Customs component on the final product exported. Further, the said note also explains that the such Drawback will be available to the exporter even if they have availed Cenvat facility.

9. In this context, Government finds that Circular no.35/2010-Cus dated 17.09.2010 issued by the CBEC, subsequent to the issue of notification no.84/2010-CUS(NT) dated 17.09.2010 which provided the All India Rates of Drawback for the earlier period, provides clarity on the issue in dispute. Government notes that the notification no.84/2010-CUS(NT) dated 17.09.2010, in the 'Notes & Conditions' part, had a similar note at para 6, which is reproduced below : -

" (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."

The CBEC vide the above referred Circular dated 17.09.2010, while clarifying the issue of whether both Drawback and rebate would be allowed on the same export consignment, had clarified as under:-

*" (vi) **Miscellaneous***

.....

(d) The earlier Notification No. 103/2008-Cus. (N.T.), dated 29-8-08 as amended) provided that the rates of Drawback in the Drawback Schedule would not be applicable to products manufactured or exported by availing the rebate of Central Excise duty paid on materials used in the manufacture of export goods 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. References have been received that exporters are being denied 1% of Drawback, which is the customs component of the AIR Drawback, on the basis of the above condition although the manufacturers had taken only the rebate of Central Excise duties in respect of their inputs/procured the inputs without payment of central excise duties; and the Customs duties which remained unrebated should be provided through the AIR Drawback route.

The issue has been examined. The present Notification No. 84/2010-Cus. (N.T.), dated 17-9-2010 provides that 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."

Government finds that the relevant condition of notification no. 84/2010-CUS(NT) dated 17.09.2010 and the notification no.110/2014-CUS (NT) dated 17.11.2014, both of which have been reproduced above, is the same. Government finds that the Board had clarified vide the above referred Circular dated 17.09.2010 that 'Customs component' of AIR Drawback would be available to an exporter even when they have availed rebate on the duty paid on the raw material used in the manufacture of the exported goods, which effectively

indicates that the same would be true vice versa too, the only condition being that the exporter should have limited the availment of Drawback to the rate specified at Column 'A' which covers only the 'Customs duty' component and should not have availed the rate of Drawback specified under Column 'B' which includes the 'Central Excise duty and Service Tax' component. Thus, Government finds that in this case the Drawback availed by the applicant being limited to the 'Customs duty component' they would be eligible to the claim the rebate of Central Excise duty paid on the inputs used to manufacture the goods exported.

10. As regards the findings of the lower authorities that the rebate claimed by the applicant could not be sanctioned as notification no.21/2004-CE(NT) dated 06.09.2004 and instructions contained at Chapter 8, Part V of the CBEC's Excise Manual of Supplementary Instruction of 2005, that input stage rebate would not be allowed if the finished goods were exported under claim for duty Drawback appears to be incorrect, as the same seeks to avoid extending double benefit to the exporter wherein they avail duty Drawback of the entire duty component, i.e. Customs and Central Excise and Service Tax and then again seek rebate of the duty/tax paid on the inputs used in the finished goods. In the present case, as found above, the Drawback claimed by the applicant is limited to the 'Customs component' and does not cover the 'Central Excise or Service Tax component'. Thus, the rebate claimed by the applicant in the present case would not be hit by the restriction put in place by the above-mentioned notification or the Supplementary Instructions. Thus, Government finds that the applicant will be eligible to the rebate of the duty paid on the inputs used in the exported finished goods and accordingly holds so.

11. As regards the incorrect declaration by the applicant on the ARE-2s to the extent that the exports were not under claim of Drawback, they have submitted that it was a clerical error and the facts was not suppressed as the Shipping Bills submitted by them did indicate that they had availed Drawback. Given the facts

of the case, Government finds that the said error would not have a bearing on the outcome of the present case and accepts the explanation provided by the applicant, as the same appears to be a technical error.

12. In view of the above, the subject Revision Applications are allowed with consequential relief.

Shrawan 31/10/22

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

ORDER No.934-939/2022-CX (WZ) /ASRA/Mumbai dated 03.10.2022

To,

M/s Sopariwala Exports P. Limited,
Plot No.817, GIDC Vasna,
Tal. Borsad, District Anand
Gujarat – 388 540.

Copy to:

1. Commissioner of CGST & Central Excise, Vadodara – I Commissionerate, GST Bhavan, Race Course Circle, Vadodara 390007.
2. The Commissioner of Central Excise, (Appeals -I), Central Excise, Customs and Service Tax, Vadodara, Central Excise Building, 1st floor Annex, Race Course, Vadodara 390 007.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board