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GOVERNMENT OF INDIA
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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. 195/543/16-RA/4783 Date of Issue: 13.10.22

ORDER NO. 980 /2022-CEX (WZ)/ASRA/MUMBAI
DATED 11.10.2022 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. Gravita India Limited

Respondent : Commissioner of CGST Rajkot.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. – KCH-Excus-000-App-025-16-17 dated 09.09.2016 passed by the Commissioner(Appeals-III),Central Excise ,Rajkot.

ORDER

This Revision Application has been filed by M/s. Gravita India Limited, Plot No. 322, Mithirohar Industrial Estate, Mithirohar, District-Kutch (hereinafter referred to as "Applicant") against the Order-in-Appeal No. – KCH-Excus-000-App-025-16-17 dated 09.09.2016 passed by the Commissioner(Appeals-III),Central Excise ,Rajkot.

2. Brief facts of the case are that the Applicant is manufacturer exporter and had filed rebate claim on 22.10.2013 in respect of finished goods exported under various Shipping Bills and ARE-1s. The original adjudicating authority vide Rebate Order No. 562/2013-14 dated 02.01.2014 rejected the rebate claim partly, on the grounds that the applicant has claimed and received drawback of Customs as well as Central Excise duty under the Central Excise and Service Tax Drawback Rules, 1995 and thus, they intended to avail the dual benefit of drawback as well as rebate, which is not admissible as per Order No. 17/13-CX dated 08.01.2013 passed by the Joint Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi, in the case of M/s. Iscon Surgicals, Jodhpur. However, the applicant vide their letter dated 27.11.2014 re-submitted the rebate claim and requested to release the rebate amount on the ground that they have deposited excess duty drawback along with interest vide challan dated 03.01.2014. The request of the applicant has not been considered by the adjudicating authority vide impugned letter/order stating that the claims has already been disposed off vide Rebate order No. 562/2013-14 dated 02.01.2014 and the claim papers were returned. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals-III), Central Excise, Rajkot, who vide Order-in-Appeal No. – KCH-Excus-000-App-025-16-17 dated 09.09.2016 rejected their appeal.

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

i. impugned order is perverse, non-speaking and against the principal of natural justice.

ii. the contention of the Ld. Commissioner Appeals in para 6 of the impugned order that the applicant had re-submitted the rebate claim on 27.11.2014 after nearly 11 months of deposition of drawback amount along-with interest, is incorrect. The applicant had re-submitted the refund claim on 07.01.2014 immediately after deposition of drawback amount on 03.01.2014 as evident from Annexure-F enclosed herewith this appeal.

iii. the order dated 02.01.2014 passed by the adjudicating authority is in gross violation of principles of natural justice. The adjudicating authority had neither issued any show cause notice proposing rejection of rebate claim nor any opportunity of personal hearing been extended to the appellant. Hence, the applicant was not given an opportunity to explain its case. The applicant immediately after becoming aware about its mistake of claiming drawback under Schedule A instead of Schedule B deposited the drawback amount of Rs.1,95,050/- along-with interest of Rs.3,600/- to the government account thereby returning the benefit claimed due to mistake committed by CHA. After rectifying its mistake, the applicant had re-submitted its refund claim on 07.01.2014 which was under consideration of the department and after lapse of almost 151 months the department vide its letter dated 07.04.2015 returned the applicant's rebate claim on the ground that the same cannot be considered as it had already been rejected vide its earlier order dated 02.01.2014. The applicant submits that after it re-submitted the rebate claim the department was convinced about the admissibility of the claim and therefore, the Deputy Commissioner, Central Excise Division, Gandhidham in charge of sanctioning the rebate claim; conducted inquiry with the Deputy Commissioner, Custom House, Mundra / Kandla seeking confirmation regarding the authenticity of the challans for amount of drawback deposited by the applicant along with interest vide its letter dated 3rd July, 2014. In compliance to the said letter the Deputy Commissioner of Customs, Mundra replied vide his letter dated 4th September, 2014 confirming that the applicant

had deposited amount of Rs. 1,95,050/- along-with interest of Rs. 3,600/-. Hence, when the department was convinced about the admissibility of the rebate claim and for that reason only it conducted various inquiries then now it cannot take somersault after 15 months and reject the rebate claim by simply mentioning that the same cannot be considered at this stage as it had already been rejected vide initial order dated 02.01.2014. If there was any doubt about the admissibility of rebate claim then the department should have rejected the rebate claim immediately after its re-submission and not after 15 months and that too without issuing any show cause notice or extending personal hearing to the applicant. This clearly indicates arbitrary exercise of administrative powers by the department which shakes the public confidence and trust in the system.

iv. the applicant cannot be made to suffer double blow as on one side it had deposited the excess drawback claimed of Rs. 1,95,050/- along-with interest of Rs.3,600/- so that it becomes entitled for rebate claim of Rs.4,82,201/- and on other hand his rebate claim is not being sanctioned by the department on the ground that he had claimed drawback which is devoid of any merit.

v. the contention of the Ld. Commissioner that since, the applicant had filed an appeal against the order dated 02.01.2014, therefore, his argument regarding ex-parte adjudication of the case and returning the papers under impugned letter is vague and unsubstantiated, is untenable as the applicant had not preferred the appeal against the said order as it took the course of rectifying the defect in the rebate claim by paying the drawback amount and re-submit the rebate claim rather than filing the appeal as it would not have served any purpose unless the drawback amount was retuned and the rebate claim was re-filed.

vi. when the applicant subsequent to his claim of rebate had deposited the drawback wrongly claimed under Schedule-A then his claim of rebate could not be withheld on the ground that he had wrongly

claimed the drawback of customs and excise portion. The applicant place reliance on the following decision wherein it is held that the applicant is eligible for claiming drawback at higher rate of 16% which was available subject to non-availment of cenvat credit; even though the applicant had initially taken cenvat credit but reversed it subsequent to exports. The principle followed in this case was that where reversal of modvat credit before utilization is made by the assessee, the assessee cannot be said to have taken credit of duty on inputs utilized in the manufacture of exported final product and hence, is eligible for claiming drawback at higher rate. Applying the same ratio to the present case, the claim of rebate could not be denied on the ground that the applicant had claimed the drawback of excise and customs portion when the applicant had reversed the drawback claimed by mistake at rate specified in Schedule-A as soon as the mistake came to its notice.

IN RE: INDORAMA SYNTHETICS (1) PVT. LTD (2014 (314) ELT 1006 (GOD)] Held: Demand Recovery of duty drawback erroneously received at higher rate-Non-fulfilment of condition under Notification No. 68/2007 Cus Non-consideration of reversal of Cenvat credit of service tax subsequent to export as compliance of condition under said Notification -HELD: Once department has accepted reversal of Cenvat credit on 'inputs' prior to export as non-availment of said credit, different yardstick cannot be adopted for reversal of credit of 'input services' subsequent to exports - Department had allowed drawback at higher rate of 16% initially on reversal of Cenvat credit of inputs prior to exports without raising any dispute regarding Cenvat credit of Service tax - No mala fide attributable to exporter and reversal of non-utilized Cenvat credit of 'input services' also to be treated as non-availment of said credit-Exporter entitled to drawback claim at higher rate @ 16% of FOB value and initial sanction of said claim legal and proper Impugned order-in-appeal set aside - Section 129DD of Customs Act, 1962.

vii. the contention of the department that the case laws relied upon by the applicant in its memo of appeal before commissioner appeals are on different footing as those pertains to reversal of the cenvat credit on common inputs used in the manufacture of dutiable and exempted goods, is not tenable because the principle laid down in those case laws was that if the applicant had subsequently reversed the cenvat

credit on common inputs he cannot be denied benefit of exemption notification. Though the facts of the case may be different but the rationale in all such cases is that reversal of any particular benefit / facility being initially availed by the applicant would amount to non availing of such benefit and cannot become bar for eligibility of other substantial benefit which is subject to non-availment of the earlier benefit.

viii. it is not only a settled legal position but is also clarified by the Government of India from time to time that export benefits like refund/rebate should not be rejected only on procedural lapses or insignificant infractions, In view of a number ofdecisions and clarifications rendered by the Government as well as the Appellate Tribunal, the adjudicating authority was duty bound to uphold the cause of substantial justice by allowing applicant's rebate claims, but the adjudicating authority had instead denied the rebate claim for reasons which are unjustified defeating entire purpose of the rebate scheme. In this regard the applicant placed reliance on following case laws.

IN RE: A.G. ENTERPRISES [2012 (276) E.L.T. 127 (G.O.I.)] Held: Rebate Export rebate - Minor mistakes in documentation not to affect grant of rebate - Package number of exported goods not mentioned on the Bill of Lading - Rebate claim not to be rejected on minor mistakes of not mentioning of marks, number of packages on Bill of Lading when export documents ARE-2, Shipping Bills and BRC contain the endorsement of Customs authorities to the effect of export of all goods Rule 18 of Central Excise Rules, 2002 [paras 7, 9].

ix. In view of above applicant requested to set aside the impugned order and to allow the rebate claims.

4. Personal hearing in the matter was fixed on 15.06.2022 and 30.06.2022. Mr. Ankit Totuka, Advocate appeared online on behalf of the applicant on 15.06.2022 and submitted that grave injustice has been done to them as their claim of rebate was rejected even when they had paid back drawback amount which was verified and confirmed by the concerned customs authorities of port. He requested to allow their rightful rebate

claim. While G.S. Chholak, Assistant Commissioner appeared on behalf of the Department on 30.06.2022. He reiterated the earlier points. He submitted that subsequent payment of drawback of excise portion is not sufficient for claiming rebate. He requested to disallow rebate.

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.

6. On perusal of the records, Government finds the issue to be decided in the instant case is whether the appellate authority has rightly upheld the OIO/letter dated 07.04.2015 vide which consideration of rebate claims is denied to the applicant.

7. Government hold that it has been discussed elaborately in the impugned OIA that the rebate claims denied to the applicant vide order-in-original 562/2013-14 dated 02.01.2014 was an appealable order. Applicant, if aggrieved, had the remedy to file the appeal against that order itself. In the instant case the applicant instead of filing the appeal which was the proper judicial procedure, they have re-submitted the rebate claims to the same Authority after rectifying the rebate claim by paying the drawback amount. In this regard, Government is of the considered opinion that the Deputy Commissioner, Central Excise Division, Gandhidham had already taken decision vide OIO 562/2013-14 dated 02.01.2014 on the rebate claims filed by the applicant. Therefore, the said Deputy Commissioner became *functus officio* after passing his decision and therefore, he had no authority to review his own decision. Applicant was communicated the same vide letter/order dated 07.04.2015. Therefore, the question of taking decision by the same Deputy Commissioner on the applicant's letter on resubmission of same rebate claims did not arise. The recourse open to the applicant if he was aggrieved by the said decisions, was to file appeal before the Commissioner (Appeals) under Section 35 of the Central Excise Act, 1944. A fact which cannot be denied by the applicant is that Order in Original issued on 02.01.2014 was not challenged by them. The legislative intent is abundantly clear in empowering quasi-judicial authorities to provide for an appellate

mechanism in the Central Excise Act, 1944/Customs Act, 1962. When the Legislature has specifically provided an appellate structure, the intent not to avail of the normal appellate remedy by the applicant or by revenue when aggrieved, cannot be admitted that bypass the judicial procedure as provided in the statute. The law does not come to the aid of the indolent, ignorant litigant. As such, the Government holds that the Appellate Authority has rightly dismissed the appeal filed by the applicant.

8. In view of the above discussion and findings, the Government does not find any reason to interfere with or modify the Order-in-Appeal No. – KCH-Excus-000-App-025-16-17 dated 09.09.2016 passed by the Commissioner(Appeals-III),Central Excise ,Rajkot and upholds the same.

9. Revision application is disposed off in above terms.

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

ORDER No. 380 /2022-CEX (SZ) /ASRA/Mumbai Dated 11.10.2022

To,

1. M/s. Gravita India Limited, Plot No. 322, Mithirohar Industrial Estate, Mithirohar, District-Kutch.
2. Sh. Ankit Totuka(Advocate), G-3m Shivgyan Avenue, 2-Yudhisthar Marg, C-Scheme, Jaipur.
3. The Commissioner CGST & CX, Rajkot Commissionerate, CGST Bhavan, Race Course Ring Road, Rajkot -360001.

Copy to:

1. The Commissioner(Appeals-III),Central Excise ,2nd Floor CGST Bhavan, Race Course Ring Road, Rajkot -360001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.