

REGISTERED
SPEED POST



195/152/2010-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 11.12.18

ORDER NO. 649/18 -CX dated 6-12-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P. Sharma, Additional Secretary to the Government of
India under Section 35EE of Central Excise Act, 1944.

- SUBJECT** : Revision Application filed under Section 35EE of
Central Excise Act, 1944, against the Order-in-Appeal
No. 149(SLM)CE/JPR/2015 dated 17.03.2015, passed
by the Commissioner of Central Excise (Appeals),
Jaipur
- APPLICANT** : M/s. Miraj Products Pvt. Ltd
- RESPONDENT** : The Commissioner of Central Goods & Service Tax,
Udaipur.

ORDER

A Revision Application No. 195/152/2015-RA has been filed by M/s Miraj Products Pvt. Ltd., Nathdwara, Rajasthan, (hereinafter referred to as the applicant) against the Order-in-Appeal No. 149(SLM)CE/JPR/2015 dated 17.03.2015, passed by the Commissioner of Central Excise (Appeals), Jaipur, whereby the Order of the original adjudicating authority rejecting the rebate claim of the applicant has been upheld.

2. Brief facts leading to the filing of the Revision Application are that the applicant had filed rebate claims of Rs.5,51,075/- which were rejected by the original adjudicating authority for the reason that the merchant exporter had already claimed composite duty drawback of Customs, Central Excise and Service Tax component as mentioned in Column-A of the Drawback Schedule and, therefore, they could not avail rebate of duty under Notification No. 22/2010-Ce(N.T.) dated 18.05.2010 simultaneously in respect of the same exports of goods as it would be double benefit for the same export. The applicant's appeal filed before the Commissioner (Appeals) against the Order-in-Original was also rejected vide aforementioned Order-in-Appeal and the present revision application has been filed mainly on the ground that drawback of duty in respect of the inputs used in the manufacturing of exported goods and rebate of duty against the Central Excise duty paid on the finished exported goods are two separate incentives granted by the Government and their availment cannot be termed as double benefit as held by the lower authorities. It is also stated that the excess drawback claimed by the merchant exporter had already been returned back vide Challan No. 13216 dated 23.07.2013.

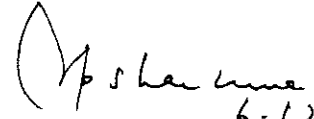
3. Personal hearing was held on 21.08.2018 and Sh. R.B. Bhatt, Assistant Commissioner, appeared for personal hearing on behalf of the respondent who opposed the revision application filed by the applicant for the reasons discussed in the Order-in-Original and Order-in-Appeal. Thereafter Sh. Kartikay Kulshrestha, Advocate, availed personal hearing on behalf of the applicant on

14.09.2018 and reiterated the grounds of revision already stated in their revision application.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has already considered the issue involved in the present revision application in details in his Order-in-Appeal and rejected the applicant's appeal for the reasons that the applicant had availed cenvat credit in respect of inputs as well as drawback of duty in violation of conditions no. 7(e) and 7 (f)) of Notification 68/2007-Cus(NT) dated 04.10.2012, Rule 3 & 12(ii) of Drawback Rules, 1995 and allowing rebate of duty in addition to drawback of duty will amount to double benefit which is not permissible under the law. The applicant has also not denied these facts and has only averred that rebate of duty and drawback of duty are different incentives. Thus the Central issue is whether rebate of duty on exported goods can be granted even when the exporter had already availed composite drawback of duty. The Government finds that this issue has already been considered by the Hon'ble Madras High court of Madras in the case of Raghav Industries Ltd. Vs Union of India {2015(334)E.L.T.584 (Mad.)} and it has been clearly held that availment of drawback of duty as well as rebate of duty on the exported goods will amount to double benefit and, therefore, cannot be availed simultaneously. Further it is also held that the apex court's judgement in the case of M/s Spantex Industries Ltd vs Union of India {2015(324)E.L.T.686(S.C.)} is not applicable in the case because the issue involved in the case of M/s Spantex Industries was totally different. Subsequently the above decision in Raghav Industries Ltd has been followed by Madras High Court in the case of Kadri Mills(CBE) Ltd. Vs Union of India {2016(334)E.L.T.642(Mad.)}. Even earlier the Government in its order No. 1237/2011-CX dated 21.09.2011 in the case of Sabre International Limited vs CCE, Noida, reported as 2012(280)ELT 575(GOI), has held that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. The Government has also held the same view recently in its Order No. 439-492/18-Cx dated 13.07.2018 in the case of M/s

Anshupati Textiles and in Order No. 524/2018-Cx dated 04.09.2018 in the case of M/s RSWM Ltd. Thus the Government is unable to accept the applicant's above contention that they are eligible to avail both the benefit at the same time. The applicant has also advanced another argument that they have already returned the excess drawback claimed by them earlier vide TR-6 Challan No. 13216 dated 23.07.2013 and accordingly the rejection of their rebate claim is not legal and proper. To support their claim, the applicant has provided a copy of letter dated 23.7.13 addressed to the Deputy Commissioner of Customs (Drawback) vide which some amounts are shown as paid against seven shipping bills as per details given therein. As per the said letter, an amount of Rs.19837/- is stated to have been paid against Shipping Bill No.3659940 dated 25.1.13 vide Challan No.13216 dated 23.7.13 which is relevant for the present proceeding. However, the Government is not impressed by this argument as the said amount of drawback of duty of Rs.19837/- is paid after the OIO dated 4.7.13 had already been passed rejecting the claim of Rs.551075/- for the above discussed reason that they had already availed drawback of duty and on the basis of such subsequent payment of the amount the fact of having availed drawback of duty earlier cannot be belied. Moreover, the above fact regarding returning of the drawback amount was never brought to the notice of the Commissioner (Appeals) during the personal hearing or otherwise which is evident from the OIA since no reference is made to any such payment. Therefore, the Commissioner (Appeals) did not have any occasion to consider the admissibility of the rebate claims in the light of the above fact and it has been pleaded for the first time before the Government only. Being the Revisionary Authority, the Government is of the view that the correctness of the OIA can be examined only with reference to the facts and laws points raised before the Commissioner (Appeals) only and it cannot be questioned on the basis of a new fact brought later on for which the Commissioner (Appeals) had never any occasion to consider at his level. Hence, no revision in the Order of the Commissioner (Appeals) is warranted on the basis of above new fact of returning of the drawback amount to the Government even when it is assumed to be true.

5. Accordingly, the revision application is rejected.


6-12-18
(R. P. Sharma)

Additional Secretary to the Government of India

M/s. Miraj Products Pvt. Ltd,
Upar Ki Oden, Nathdwara,
District: Rajsamand,
Rajasthan-313301

ORDER NO. 649/18 EX dated 6-12-2018

Copy to:-

1. The Commissioner of Central Goods and Service Tax, 142 – B, Hiran Magri, Setor 11, Near Shahi Bagh, Udaipur 313002 (Rajasthan)
2. The Commissioner of Central Excise(Appeals), NCR Building, C-Scheme, Jaipur 302005
3. The Assistant Commissioner of Central Excise and service tax, 142 B, Sector 11, Hiran Magri, Udaipur 2483648
4. Mr. Keshav Maloo, CA, 238, 2nd floor, Anand Plaza, Near Ayad Bridge, Udaipur, Rajasthan
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED


6/12/18

(Nirmla Devi)
Section Officer (R.A. Unit)