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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... 18/11/18

ORDER NO. 688-691/18-CX dated 10-12-2018 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 Applications filed under Section 35EE of
Central Excise Act, 1944, against the Orders-in-
Appeal No. 31/CE/ALLD/2015, 32/CE/ALLD/2015,
33/CE/ALLD/2015 and 34/CE/ALLD/2015 all dated
12.02.2015, passed by the Commissioner of Customs,
Excise & Service Tax (Appeals), Allahabad

APPLICANT : M/s. Orient Micro Abrasives Ltd,

RESPONDENT : The Commissioner of Central Excise, Allahabad

ORDER

Revision Applications No. 195/137/2018-RA, 195/138/2018-RA, 195/139/2018-RA and 195/140/15- RA have been filed by M/s Orient Micro Abrasives Ltd, (hereinafter referred to as the applicant) against the Orders-in-Appeal No. 31/CE/ALLD/2015, 32/CE/ALLD/2015, 33/CE/ALLD/2015 and 34/CE/ALLD/2015 all dated 12.02.2015, passed by the Commissioner of Customs, Excise & Service Tax (Appeals), Allahabad, whereby the orders of the original adjudicating authority rejecting the rebate claims of the applicant have been upheld.

2. Brief facts leading to the filing of the Revision Applications are that the applicant had filed rebate claims which were rejected by the original adjudicating authority for the reason that the applicant 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. 19/2004-Ce(N.T.) dated 06.09.2004 simultaneously in respect of the same exports of goods as it would be double benefit for the same export. The applicant's appeals filed before the Commissioner (Appeals) against the Orders-in-Original were also rejected vide aforementioned Orders-in-Appeal and the present revision applications have 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.

3. Personal hearing was held on 19.09.2018 and Sh. Prashant Srivastava, Advocate, appeared for personal hearing on behalf of the applicant who reiterated the grounds of revision already stated in their revision applications.

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 applications in details in their Orders-in-Appeal and rejected the applicant's appeals for the reasons that the applicant had availed cenvat credit in respect of inputs as well as drawback of duty 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. The applicant has also submitted a certificate dated 31.08.2018 from M/s Kutch Chemical Industries Limited saying that they have not availed the duty drawback in respect of excise duty. However, the said certificate can not be accepted as a clinching evidence that the merchant exporter had availed duty drawback in respect of customs portion only and not for the Central Excise duty. Instead this fact can be verified from Shipping Bill and sanctioning order of the jurisdictional Assistant/Dy. Commissioner which were not apparently provided by the applicant at all before the lower authorities and are not produced here also. Most relevant document for this issue which could be easily available with the applicant or the merchant exporter is the duplicate/triplicate copy of the Shipping Bill from which it can be clearly ascertained whether the drawback of duty was claimed for all duties or for customs portion only. But the duplicate/triplicate copy of the Shipping Bill is also not produced by the applicant to verify their claim that the merchant exporter had availed drawback of duty in respect of customs portion only and from the Xerox copy of the EP copy of the Shipping bill sent by the applicant on 26.09.2018 also the claim of the applicant that drawback in respect of Central Excise duty was not availed is not established. Rather from the said copy of the Shipping bill it is evident that the merchant exporter has availed drawback of duty from which it is implied that they had availed duty drawback in respect of customs as well as other Excise duty. Thus the applicant has failed to substantiate their claim that the merchant exporter had availed the duty

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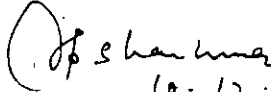
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drawback in respect of customs portion only. Now the Central issue is whether rebate of duty on exported goods can be granted even when the exporter had already availed composite drawback of duty. The Government finds that this issue has already been 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 avilment of drawback of duty as well as rebate of duty on the exported goods will amount to double benefit and, therefore, can not be availed simultaneously. Apparently this decision of the Madras High Court was not challenged by the Raghav Industries also before the Division Bench of Madras High Court. 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. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles and in Order No. 195/795/2010 dated 04.09.2018 in the case of M/s RSWM. Hence, the Government does not find any fault in the orders of Commissioner (Appeals).

5. Accordingly, the Revision Applications are rejected.


10.12.18
(R. P. Sharma)

Additional Secretary to the Government of India

M/s. Orient Micro Abrasives Ltd,
viii-Labhari, Vikash Nagar,
P.O. Baipan, District Sonebhadra,
Uttar Pradesh.

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ATTESTED

N.D.
10/12/18

(Nirmala Devi)

Section Officer(R.A. Unit)

^{688-69/18}
ORDER NO. - CX dated 10-12-2018

Copy to:-

1. The Commissioner of Goods & Service Tax, Chandigarh, 38, M.G. Marg, Civil Lines, Allahabad 211001.
2. The Commissioner of Central Excise & Service Tax (Appeals), 38, M.G. Marg, Civil Lines, Allahabad 211001
3. The Assistant Commissioner of Central Excise, Jangi Road, Mirzapur.
4. Mr. G.K. Sarkar, Advocate, Lexmalgan, I-1649, LGF, C.R.Park, Near IDBI Bank, New Delhi 110019
5. P.S. to A.S.
6. Guard File ✓
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