Whether Rebate under Rule 18 of Central Excise Rules can be claimed along with Advance authorisation?

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Rebate: The provision to claim rebate is governed by **Rule 18** of the Central Excise Rules, 2001. As per the Rule, the rebate may be claimed for

- Duty paid on inputs used in the manufacture of final products which are exported
- Duty paid on final products which are exported

An exporter may claim only one of the options out of two above.

Generally second option is followed under which the manufacturer exporter can opt for rebate of excise duty paid on finished goods exported. Though, the goods exported do not require payment of excise duty. However, in order to en-cash the accumulated cenvat credits, the rebate option in accordance with Rule 18 of central excise rules 2002 can be opted.

Under this scheme, the exporter can pay the excise duty on value of goods exported by utilising the CENVAT Credit and claim the rebate (nothing but refund of duty paid) of such duty paid.

The procedure, conditions and safeguards subject to which rebate may be claimed is governed by Notification No. 19/2004-CE as amended.

Advance Authorisation: Policy relating to Advance authorisation is covered by chapter 4 of the Foreign Trade Policy 2015-20. An Advance Authorisation is issued to allow duty free import of inputs, which are incorporated in export product after making normal allowance for wastage. Advance Autorisation can be issued before fulfilment of export obligation or after fulfilment of export obligation. It can be issued either to manufacturer exporter or merchant exporter along with supporting manufacturer. Advance Authorisations are exempted from payment of basic customs duty, additional customs duty, education cess, anti- dumping duty and safeguard duty, if any. The benefit under this scheme would be subject to conditions which are stipulated in Foreign Trade Policy.

To give effect to the benefit extended under the policy, the notification is required to be issued under Customs law for exempting the customs duty. Following notifications have been issued pursuant to the policy of 2015-2020.

- **Notification No. 18/2015:** Exemption to material imported against a valid Advance Authorisation from whole of Customs duty
- **Notification No.20/2015:** Exemption to materials imported against a valid Advance Authorisation for Annual requirement with actual user condition from whole of Customs duty
- **Notification No.21/2015:**Exemption to material imported for the manufacture of final goods from whole of Customs duty for supply as deemed exports *(Applicable in case of supply to EOU/STP, supply of capital goods against EPCG Authorisation and supply for other specified projects)*
- **Notification No.22/2015:** Exemption to material imported against an Advance Authorisation and meant for export of a prohibited item, from whole of Customs duty

Out of above, the Notification No. 18/2015 and 20/2015 are worth discussion to analyse whether rebate claim can be claimed simultaneous to Advance Authorisation.

First, we will discuss in case of advance authorisation for annual requirement (Nfn: 20/2015)

As per condition (viii) of the Notification: that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation and *in respect of which facility* ***under rule 18*** *or sub-rule (2) of rule 19 of the Central Excise Rules, 2002* ***has not been availed.***

The Notification has clearly restricted the availment of rebate under Rule 18 when benefit of advance authorisation for annual requirement is claimed. Since Rule 18 covers two types of rebate, it is relevant to understand whether the restriction is imposed for rebate of duty paid on raw material used for manufacture of final product or for both i.e. including the duty paid on final products exported?

Similar condition existed under erstwhile Notification No. 99/2009-Cus issued under earlier foreign trade policy. While interpreting the notification, it has been held by Mumbai CESTAT in case of INDORAMA SYNTHETICS (I) LTD.2013 (296) E.L.T. 411 (Tri. - Mumbai) that bar has been imposed under this notification only in respect of input stage rebate not on final stage rebate. (Applying the principle of *ejusdem generis* where rule 18 has been put with Rule 19 (2)). Department has filed appeal against the said decision before Supreme Court which is pending for hearing.

There is contrary judgment also in case of ALCOBEX METALS LTD. where revisionary authority has held that rebate claim is not admissible in case of advance authorisation for annual requirement.

Hence, as per judicial interpretation of CESTAT, the final stage is rebate is admissible in case of advance authorisation for annual requirement. However, the department is not likely to accept this view and could question the admissibility of rebate when advance authorisation under annual requirement is claimed.

Advance authorisation in cases other than for annual requirement (Notification No. 18/2015)

As per condition (viii) of the Notification: that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation.

Unlike in Notification No. 20/2015, there is no restriction that the rebate cannot be claimed along with advance authorisation. On the other hand the conditions contained in the para (v) envisage a situation wherein the benefit of rebate on inputs is availed. Hence, in our view, the benefit of rebate both inputs as well as duty paid on output may be claimed.

If one looks at the condition imposed under similar notification (96/2009) issued under earlier policy, there was restriction on availing facility under rule 18 ***(rebate of duty paid on materials used in the manufacture of resultant product)*** or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed. In that notification the rebate is specifically restricted only for raw material stage and there was no restriction for claiming rebate of duty paid on final products exported even though the goods are getting exported under advance authorisation.

However as discussed above in the present notification No. 18/2015-Cus, no such condition exist and also there is specific provision which speaks about availing rebate of duty paid on both inputs as well as finished goods exported. This aspect is clarified vide Circular No. 14/2015-Cus., dated 20-4-2015 as follows:

> *Keeping in view that an Advance Authorization is issued for a resultant product with specified inputs a change is reflected in Notification No. 18/2015-Customs dated 1-4-2015 which is expected to facilitate exporters who rely simultaneously on imported materials and domestic materials, especially those in the exempted goods sectors. The change allows the resultant products to be made by availing facility of rule*

18 (rebate of duty paid on materials used) or rule 19{2}(removal of material without payment of duty for use in manufacture of goods exported} of Central Excise Rules subject to the condition that duty free material imported is used for manufacture of dutiable goods.

Hence, the rebate claim of duty paid on inputs as well as final products exported is available in case of advance authorisation other than for annual requirement.

The difference appears to be arbitrary between authorisation for annual requirement and normal authorisation as held in case of Indorama Synthetics also. In our view, the benefit of rebate should be admissible under authorisation of both natures as per ratio laid down in case of Indorama Synthetics.