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ADVANCE LICENCE vs REBATE OF DUTY

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Can the export obligation under an Advance License be discharged, by exporting the manufactured resultant products under claim of Rebate of Excise duty?

Before addressing this poser, let us broadly understand the scheme of Advance Licence and Rebate of Excise duty.

Advance Licence:

Advance Licence is an export facilitation scheme, whereby, the exporter is permitted to import the input materials without payment of Customs duties and utilise them in the manufacture of goods, which are subsequently exported in discharge of the export obligation cast on such Advance Licence holder. Chapter 4 of the Foreign Trade Policy (FTP) governs the Advance Licence scheme. The Department of Revenue has also issued relevant exemption Notifications, time to time, to govern the imports against such Advance Licences.

Rebate of duty:

Exports under Central Excise are governed either by Rule 18 or by Rule 19 of the Central Excise Rules 2002. Rule 18 provides for two types of rebates, viz.,

1. Rebate of duty paid on the manufactured excisable goods which are exported (final product rebate) and
2. Rebate of the duty paid on the materials which are used in the manufacture of such export goods (input stage rebate).

Rule 19 consists of three sub-rules, of which, Rule 19(1) provides for the export of manufactured excisable goods without payment of duty from a factory of manufacture / warehouse / any other approved premises and Rule 19(2) prescribes the procedure for removal of any materials from a factory / warehouse / approved premises, without payment of duty, for use in the manufacture of goods which are ultimately exported. Rule 19(3) prescribes the conditions/safeguards/procedures for the above said sub rules. In other words, Rule 19(1) governs the clearance of excisable goods (final products) without payment of duty and Rule 19 (2) provides for clearance of excisable goods (inputs) without payment of duty for use in the manufacture of export goods.

The Department has issued various Notifications, viz., Notification 19/2004 – CE (NT) dated 06.09.2004, as amended, under Rule 18 and Notifications 42/2001, 43/2001 and 44/2001 – CE dated 26.06.2001, as amended, under Rule 19 of Central Excise Rules, 2002, prescribing the procedures and imposing certain conditions.

Now to the moot question placed in the opening paragraph.

Kind reference is drawn to para (v) of the Notification 93/2004-Cus dated 10/9/2004 (which governs the Advance Licences issued under FTP), which reads as:

> *"(v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which* ***facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed" (Emphasis supplied)***

The above said condition in the said Notification, *prima facie,* requires the exporter to export the resultant products without availing the facilities under Rule 18 or Rule 19(2) of the Central Excise Rules, 2002. Thus, it appears, while exporting the resultant goods in discharge of the export obligation under an Advance Licence, the exporter is not entitled to claim any of the rebate of the duty under Rule 18 (be it the input stage rebate or the final product rebate). In other words, the export of resultant products under the Advance Licence scheme can be made only under Rule 19(1), either under Bond or LUT, as the case may be.

Is this correct and is this the intention?

A careful reading of the above said para (v) of the Notification (supra) would reveal that the prohibition cast, is for the facilities under both Rule 18 and Rule 19(2) of the Central Excise Rules, 2002.

As discussed above, Rule 19 deals with two situations. As Rule 19(1) deals with the export of excisable goods without payment of duty under a Bond / LUT, Rule 19(2) governs the procurement of raw materials without payment of duty for use in the manufacture of export goods (governed by Notification 43/2001, as amended). Interestingly the embargo imposed vide para (v) of the Notification (supra) is only to the availment of facility under Rule 19(2) and not under Rule 19(1). In other words, the Notification prohibits only the procurement of raw materials without payment of duty under Rule 19(2). This has to be read in consonance with the bar under Rule 18 also. As stated above, Rule 18 is akin to Rule 19, wherein, it provides for grant of rebate of Excise duty on two situations, one on the duty paid on the input stage and the other on the duty paid on the final products. Though no separate sub-rules are present in Rule 18, as provided for in Rule 19, they are *in pari materia.* The contents of Rule 18 and 19 may be tabulated as below, for easy understanding.

Rule 18	Rule 19
Deals with export of final products on payment of duty and subsequent claim for rebate of such duty paid.	Deals with export of final products without payment of duty.
Deals with procurement of inputs for manufacture of export goods, on payment of duty, and claim for rebate of such input stage duty.	Deals with procurement of inputs for manufacture of export goods, without payment of duty.

In other words, the rebate of duty paid on final products (final product rebate) is *in pari materia* with Rule 19(1) and the rebate of duty paid on input materials used in the manufacture of export goods (input stage rebate) is *in pari materia* with Rule 19(2). Going by the above, it can be reasoned out that, there is no blanket prohibition as to the availment of Rule 18 under the Advance Licence scheme but the prohibition is restricted **ONLY** to the availment of input stage rebate. In other words, there is no restriction for exporting the resultant products under an Advance Licence scheme in discharge of the export obligation under the claim of final product rebate.

We have also attempted to explore the reason, if any, as to why there should be a restriction, on Rule 19(2) or on input stage rebate under the said Notification. As discussed above, Rule 19(2) provides for procurement of input materials without payment of duty for the manufacture of export goods. If a manufacturer avails the facility under Rule 19(2) and procures his input materials without payment of duty and also imports the materials under Advance Licence without payment of duty and if he is allowed to discharge the export obligation both under the Advance Licence as well as under Rule 19(2), then, it will confer an undue double benefit to the exporter. For a single export, the exporter would be entitled to two benefits viz., discharge of obligation under the Advance Licence as well as the obligation under Rule 19(2), which is sought to be curbed by the said condition. Input stage rebate under Rule 18, being similar to Rule 19(2), it shall also be prohibited on the same lines, to create a level playing field.

The above reasoning is also further fortified, if a cruise is taken along the legislative history. Advance Licence is an age-old scheme which has traveled through decades. Earlier to 1995, there were two types of Advance Licences viz., quantity based and value based (popularly known as QBAL and VBAL). Reference is drawn to Notification No.203/92-Cus dt.19.5.1992 as amended & Notification No.204/92-Cus dt.19.5.92 as amended. A similar embargo, as to the present one, has been cast on the said notification vide para (v) of the said notification. As per the same, the facilities contained under Rule 12 (1) (b) or Rule 13 (1) (b) of the erstwhile Central Excise Rules, 1944 were prohibited for fulfillment of export obligation under the said notification. Rule 12 & Rule 13 ibid are respectively akin to Rule 18 & Rule 19 of the present Central Excise Rules, 2002. In other words, as Rule 12 dealt with the rebate of duty of excise on inputs and finished goods, Rule 13 dealt with the exports of finished goods and also procurement of inputs intended for the manufacture of export goods, without payment of duty. The only

difference between the erstwhile Rule 12 and the present Rule 18 is that the erstwhile Rule 12 had two sub-rules viz., Rule 12 (1) (a) and Rule 12 (1) (b), whereas the present Rule 18 does not have such bifurcation. It could be seen that the erstwhile Rule 12 (1) (a) dealt with the finished product rebate and Rule 12 (1) (b) dealt with the input stage rebate, whereas, the present Rule 18 provides for both, without any sub-rules. As stated above, the erstwhile Notifications 203/92 and 204/92 prohibited only the availment of input stage rebate under erstwhile Rule 12(1)(b) and **NOT** the final stage rebate under Rule 12 (1) (a) ibid. When the new set of Central Excise Rules replaced the erstwhile Central Excise Rules, 1944 the notifications governing the Advance Licences were amended, whereby, Rule 18 or Rule 19 was inserted in place of Rule 12 (1) (b) or Rule 13 (1) (b), in the relevant paragraphs vide Corrigendum F.No.605/187/2001DBK dt.22.10.2001. Subsequently, the department further amended the relevant notifications and replaced Rule 19 by Rule 19(2) vide its Corrigendum F.No.605/20/2001-DBK dt.24.6.2002. While doing so, the department has erroneously omitted to carry out a similar amendment in respect of Rule 18 also. The above said omission could well be due to the fact that there are no sub-rules in Rule 18 unlike in the case of Rule 19. But, the omission of the department cannot be a reason to deny the legitimate and legislative benefit available to the exporters.

Thus, from the above, it shall be inferred and concluded that, the prohibition cast vide para (v) of the said Notification, is only for the input stage rebate under Rule 18 and not for the rebate of duty paid on the final products, which are exported.

Before parting...

There is a possible mischief, whereby, a manufacturer has an unfair means of encashing his accumulated Credit, accrued not by way of exports but otherwise. By paying the duty on the export products and claiming the rebate, which is not entitled otherwise, there is a chance of a foul play. But with the rate of duties having been streamlined such accumulation and undue encashment could only be a stray possibility. The Government has to be benevolent while framing the legislation and shall not frame laws based on exceptions, as it is said, *"One sparrow does not make a summer".*

Kudos to the Board

(By S.Jaikumar, G. Natarajan & M. Karthikeyan)

Readers kind attention is invited to our article titled "Advance Licence Vs Rebate of duty", published in 2005 (188) ELT A 17. In the said article, we have observed that the restriction contained in para (v) Notification 93/2004, to the effect that the facility under Rule 18 of the Central Excise Rules, 2002 shall not be admissible if the exports are made in discharge of export obligations under Advance Licence Scheme, should only refer to the exports made under claim for rebate of duties paid on raw materials under rule 18 ibid and not with reference to the rebate of duty paid on final products. In this connection,

we wish to bring to the kind notice of the readers, the corrigendum to Notification 93/2004 Cus, which vindicates the above stand. The said corrigendum is reproduced below.

17th May, 2005

CORRIGENDUM

In condition (v) of opening paragraph of the Notification of the Government of India, in the Ministry of Finance (Department of Revenue) Nos.93/2004-Customs, dated the 10th September, 2004, published in the Gazette of India (Extraordinary), vide GSR 606(E), the words & figures "under rule 18" shall be corrected to read as "under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)"

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UNDER SECRETARY TO THE GOVERNMENT OF INDIA