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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 195/595-598/12-RA / 280

Date of issue : 27.11.2017

ORDER NO. 01 to 04 / 2017-CEX(WZ)/ASRA/MUMBAI, DATED 24th NOVEMBER, 2017 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

SL. NO.	APPLICANT	REVISION APPLICATION NO.
1.	M/s Merchant & Sons.	195/595/12-RA
2.	M/s Khushi Impex	195/596/12-RA
3.	M/s Khubpriy Enterprises	195/597/12-RA
4.	Shri Ketan Premchand Gosar	195/598/12-RA

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai.

Subject : Revision Applications Nos. 195/595 to 598/12-RA filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.US/711/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

The four Revision Applications as detailed at pre-page have been filed by M/s. Merchant & Sons CHA, M/s. Khushi Impex, M/s. Khubpriy Enterprises and Mr. Ketan Premchand Gosar. These Revision Applications have emanated from a single order of the Commissioner (Appeals), Central Excise, Mumbai Zone-I Order No.SB(30 to 33)/MI/2011 dated 2.5.2011. In the said impugned order, the Commissioner (Appeals) has upheld the O-I-O No.18/MI/2010-11 dated 31.01.2011 passed by Joint Commissioner, Central Excise, Mumbai-I, in which, the demand of erroneously claimed rebate claims of Rs. 9,48,175/- (Rupees Nine Lakhs Forty Eight Thousand One Hundred Seventy Five) and Rs. 10,18,639/- (Rupees Ten Lakhs Eighteen Thousand Six Hundred Thirty Nine) were confirmed against M/s. Khushi Impex and M/s. Khubpriy Enterprises respectively along with the interest amounts under Section 11 A of Central Excise Act, 1944. Penalty of Rs. 9,48,175/- (Rupees Nine Lakhs Forty Eight Thousand One Hundred Seventy Five) and Rs.10,18,639/- (Rupees Ten Lakhs Eighteen Thousand Six Hundred Thirty Nine) were also imposed upon M/s. Khushi Impex and M/s. Khubpriy Enterprises respectively. Penalty of Rs.1,00,000/- (Rupees One Lakh) and Rs.50,000/- (Rupees Fifty Thousand) were imposed upon Shri Ketan Premchand Gosar and M/s. Merchant & Sons, CHA respectively.

2. The Revision Applicants have filed these four Revision Applications before the Government of India, pleading for setting aside the penalties imposed upon them on the grounds inter alia no penalty is imposable under Section 11AC of Central Excise Act, 1944 since the said provision applied only to cases of short levy and / or non levy of duty and not on the wrongly availed rebate claims. The Revision Applicants, namely, M/s Khushi Impex and M/s Khubpriy Enterprises have already refunded the Rebate claims with interest and no mens rea or malafide intention exists in their case. The Penal clause under Rule 26 (2) of the Central Excise Rules in respect of Rebate claims was effective from 1.3.2007 and this case pertains to the period prior to 1.3.2007.

3. A Personal Hearing was held on 20th November, 2017 which was attended by Shri S.S. Sekhon, Advocate and Shri N.D. George, Advocate and



none was present from the side of Revenue. The Advocates reiterated the submissions filed in the Revision Application and also submitted the Xerox copy of the submissions of Shri Aatif Javedbhai Merchant CHA, and Shri Ketan Premchand Gosar. It was pleaded that in the statements show that the Revision Applicants acted in good faith and promptly deposited the wrongly availed drawback claims vide four cheques, two each by M/s. Khushi Impex and M/s. Khubpriy Enterprises dated 13.5.2005 and 6.10.2005 even at the stage of investigations and much prior to the issuance of the Show Cause Notice which was issued on 10.1.2007. Therefore, it was pleaded that a lenient view may be taken in the instant case and the penalty imposed against the four Revision Applicants may please be set aside.

4. The Government has gone through the case records, Order-in-Appeals of the Commissioner (Appeals) and submissions made in these four Revision Applications and at the time of Personal Hearing. To recapitulate the brief facts - M/s. Khushi Impex & M/s Khubpriy Enterprises filed 16 rebate claims amounting to Rs.19,66,814/- under Notification No.19/2004 C.Ex.(NT) dated 06.09.2004. The rebate claim was allowed by the Revenue to the exporters. Thereafter the rebate sanctioning authority found that the exporters had procured the goods from two suppliers M/s Goyal Export Co. and M/s Raj Textile Co. which only existed on papers. The invoices issued by M/s Goyal Export Co. and M/s Raj Textile Co. Ahmedabad were fake and the whereabouts of these companies were not known and thus it was held that M/s Khushi Impex & M/s Khubpriy Enterprises had availed the rebate claims on the strength of the bogus / fake invoices and hence they were not eligible for the rebates. An Alert Circular No. CE-13/AE/Div/IV/1 12/2005 dated 17.10.2005 issued by the Commissionerate of Central Excise, New Delhi against both M/s Goyal Export Co. and M/s Raj Textile Co. Ahmedabad, that they were non-existent and the investigation of the department also proved the same.

5. The Revenue also carried out the investigations against the four Applicants and issued a Show Cause Notice dated 10.01.2007. Simultaneously the department challenged the order of sanctioning rebate



claims before the Commissioner of Central Excise Appeals, Mumbai who vide Order-in-Appeal No.SB/40 to 45/M-IV/09 dated 16.9.2009 directed the Revision Applicants to recover the entire amount with interest to the Government.

6. The Revenue also adjudicated the Show Cause Notice dated 10th January, 2007 vide Order-in-Original No.18/MI/2010-11 dated 31.01.2011 demanding the wrongly availed drawback claim on fake and bogus invoices from the non-existent companies along with interest and penalties were imposed on M/s. Khushi Impex & M/s. Khubpriy Enterprises of the equal amount of the wrongly claimed rebates and a penalty of Rs.1,00,000/- and Rs.50,000/- were imposed on M/s. Ketan Premchand Gosar and M/s. Merchant & Sons, CHA. The Applicants appealed before the Commissioner (Appeals), who upheld the Order-in-Original and rejected the appeals of Revision Applicants on the ground that the Show Cause Notice has been issued after completion of the investigations and which established that the offences had been committed. The Commissioner (Appeals) also held that the Appellant could not explain the details of the persons who had purportedly supplied the goods nor could they produce any genuine documents in support of their claims.

7. There is no dispute about the fact that M/s. Khushi Impex & M/s. Khubpriy Enterprises had procured the goods from the two companies namely; M/s Goyal Export Co. and M/s Raj Textile Co. on the basis of fake/bogus invoices and the whereabouts of these two companies were not known. So it is established beyond doubt that the Revision Applicants M/s. Khushi Impex & M/s. Khubpriy Enterprises have claimed the drawback on the basis of fake/bogus invoices which has been correctly recovered by the Revenue with interest.

8. It is also evident from the records that consequent upon the Alert Circular C.No.CE-13/AE/Div/IV/1 12/2005 dated 17.10.2005 issued by the Commissioner of Central Excise, Delhi-I, the investigations were conducted by the department. It is also evident that while the investigations

were in progress, the Revision Applicants M/s. Khushi Impex & M/s. Khubpriy Enterprises had paid back the entire rebate claim with interest amount claimed from the department vide two cheques dated 13.5.2005 and another two cheques dated 6.10.2005. In the instant case, the Show Cause Notices were issued on the 10th January, 2007 proposing to appropriate the said amount of wrongly availed rebate claims and interest etc. It is also evident from the records that M/s. Khushi Impex & M/s. Khubpriy Enterprises had obtained the Central Excise documents from the non-existent manufacturers i.e. on the bogus invoices and deliberately suppressed these facts and with the intention to take the rebate claims fraudulently, in contravention of the provisions of the Central Excise Act, 1944 and Rules framed thereunder. Hence, the penalty under Section 11 AC of the Central Excise Act, 1944 has been rightly imposed by the original adjudicating authority and rightly upheld by Commissioner (Appeals) in the impugned order.

9. The contention of the Applicants that they deposited/refunded back the entirely claimed rebate claims with the department along with the interest at the time of investigation and before issuance of the Show Cause Notice is correct. It is also a fact that had the department not been alerted about the fake/bogus invoices and the investigation not been carried out, the Applicants would have continued to wrongly avail the rebate claims on such bogus invoices issued by the fake and non-existent companies. Therefore, the Commissioner (Appeals) has rightly held that the penalty under Section 11 AC of the Central Excise Act, 1944, has been rightly imposed by the Adjudicating Authority. The Government of India is not inclined to accept the argument of the Revision Applicants that the penalty under Section 11AC cannot be imposed upon the exporters because rebate is not a Central excise duty. What the Revision Applicants have been claiming as rebate is nothing but central excise duty paid or shown to have been paid on the bogus invoices. Therefore, the penalty under Section 11 AC on M/s. Khushi Impex & M/s. Khubpriy Enterprises is liable to be upheld.



10. The Revenue has imposed a penalty of Rs. one lakh on Shri Ketan Premchand Gosar and Rs. 50,000/- (Rupees fifty thousand) on M/s. Merchant & Sons, CHA under Rule 26 of the Central Excise Rules on the ground that Mr. Ketan Premchand Gosar was the person who procured the goods and documents from the non-existent firms and the CHA, M/s. Merchant & Sons abetted for the same. The contention of the Revision Applicants that the penalty was imposed under Rule 26(2) of the Central Excise Rules does not hold much ground because the penalty has been imposed under Rule 26 and not explicitly mentioned under Rule 26(2). The omissions and commissions committed by the Revision Applicants Mr. Ketan Premchand Gosar and M/s. Merchant & Sons, broadly fall under the provisions of Rule 26(1) of the Central Excise Rules. Therefore, the contention of the Applicant that no penalty was imposable for wrong availment of rebate prior to 01.03.2007 when the provision was brought in explanation to Rule 26(2) of the Central Excise Rules. However it is noticed that the role of Mr. Ketan Premchand Gosar and M/s. Merchant & Sons, CHA is not so grave in the investigations in the omissions and commissions of the offences highlighted in the notice and adjudication order. Moreover, there is no material on record to suggest that Mr. Ketan Premchand Gosar and M/s. Merchant & Sons, CHA had any knowledge or pre-concert in / or about the tainted nature of Central Excise documents and or the non existence of the Ahmedabad Firms. M/s. Khushi Impex & M/s. Khubpriy Enterprises and their representatives have dealt with the subject procurement of goods and the CHA has handled Exports as a routine normal export. Therefore, a lenient view is being taken while deciding on the quantum of penalty against Mr. Ketan Premchand Gosar and M/s. Merchant & Sons, CHA.

ORDER

11. The Government of India upholds the order of Commissioner (Appeals) No. US/711/RGD/2012 dated 20.10.2012 in so far as the imposition of penalty of Rs. 9,48,175/- (Rupees Nine Lakhs Forty Eight Thousand One Hundred Seventy Five) and Rs.10,18,639/- (Rupees Ten Lakhs Eighteen



Thousand Six Hundred Thirty Nine) imposed on M/s. Khushi Impex and M/s. Khubpriy Enterprises under Section 11AC of the Central Excise Act, 1944. However, the quantum of penalty imposed on M/s. Ketan Premchand Gosar is reduced from Rs.1,00,000/- (Rupees One Lakh) to Rs.20,000/- (Rupees Twenty Thousand) and the quantum of penalty is reduced from Rs.50,000/- (Rupees Fifty Thousand) to Rs.10,000/- (Rupees Ten Thousand) on M/s. Merchant & Sons, CHA under Rule 26 of the Central Excise Rules. The said four Revision Applications are disposed off on the above terms accordingly.

Ashok Mehta

(ASHOK KUMAR MEHTA)
Principal Commissioner (RA) &
Ex-Officio Additional Secretary
to the Government of India

ORDER No. 01 to 04/2017-CEX(WZ)/ASRA/Mumbai, Dated: 24.11.2017

To,

- (i) M/s Merchant & Sons Mohatta Market, Office No. 8, 1st Floor, Paltan Road, Mumbai-400 001
- (ii) M/s Khushi Impex 1A, 3rd Floor, Prakash Bhavan, 180/182, Samuel Street, Mumbai 400 009.
- (iii) M/s Khubpriy Enterprises 1A, 3rd Floor, Prakash Bhavan, 180/182, Samuel Street, Mumbai 400 009.
- (iv) Shri Ketan Premchand Gosar, Flat No. 2, Meet Coop, Hsg. Society, Dhobiali Thane (W).

Copy to:

1. The Commissioner, CGST & Central Excise Commissionerate, Mumbai South.
2. The Commissioner (Appeals-II), CGST & Central Excise, Mumbai.
3. The Deputy Commissioner (Rebate), CGST & Central Excise Commissionerate, Mumbai South.
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard File.
6. Spare Copy.