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सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

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F.No.195/256/2014-RA

Date of Issue:

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ORDER NO. 04 /2019-CX (WZ)/ASRA/MUMBAI DATED 27.8.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Ankur Scientific Energy technologies Pvt. Ltd. Vadodara.

Respondent : Commissioner of Central Excise and Customs Vadodara-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. VAD-EXCUS-001-APP-35/14-15 dated 10.04.2014 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

ORDER

This revision application is filed by M/s Ankur Scientific Energy Technologies Pvt. Ltd. Vadodara (hereinafter referred to as "the applicant") against Order-in-Appeal No. VAD-EXCUS-001-APP-35/14-15 dated 10.04.2014 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

2. The issue in brief is that the applicant filed rebate claims of Rs.10,13,520/-(Rupees Ten Lakh Thirteen Thousand Five Hundred and Twenty only) under Notification No. 21/2004-CE(NT) dated 06.09.2004 for duty paid on raw materials used in "Ankur Gasifier Model WBG-850 exported to M/s KB Energy Ltd., Greece. The original authority vide Order in Original No. Rebate/1212/Ankur/Div-I/13-14 dated 13.01.2014 sanctioned rebate of Rs. 9,08,460/- (Rupees Nine Lakh Eight Thousand Four Hundred and Sixty only) and rejected rebate claim for Rs.1,05,060/- (Rupees One Lakh Five Thousand and Sixty only) interalia on the grounds that the supplier of the goods was not a registered manufacturer/dealer; that the invoices did not show anything about the Central Excise duty element and thus payment of the duty on the goods, which had been claimed for rebate could not be confirmed and therefore these invoices did not satisfy the condition specified at Para 3 of the Notification No. 21/2004-CE(NT) dated 06.09.2004 and thus they were invalid documents for the purpose of the said Notification.

3. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara who vide the impugned Order-in-Appeal No. VAD-EXCUS-001-APP-35/14-15 dated 10.04.2014 rejected the appeal on the grounds that the applicant failed to submit valid duty paying documents before the adjudicating authority at the timing of filing rebate claims as well as before him and thus the adjudicating authority was justified in rejecting the part rebate claim in the absence of supporting documents.

4. Being aggrieved, the applicant has sought revision of Commissioner (Appeals)'s Order mainly on the ground that invoices for two sets of remote radiators received from M/s International coil Ltd., are valid documents under Rule 11 of Central Excise Rules, 2002 and the adjudicating authority rejected the claim without appreciating the factual position and documents submitted to him with rebate application; that the Commissioner (Appeals) rejected their appeal clearly in violation of settled legal position, ignoring factual position, which is illegal and arbitrary. The applicant therefore prayed that the impugned Order in Appeal be set aside and that their rebate claim for Rs.1,05,060/- be allowed with the consequential benefit of interest u/s 11BB of the Central Excise Act, 1944.

5. In response to the notice dated 22-9-2014 issued under Section 35EE of the Central Excise Act, 1944 the respondent department in their cross-objections/submissions vide their reply dated 8.12.2014 mainly contended that:

- As per the provisions of the Notification No.21/2004 CE(NT) dated 06.09.2004 the assessee is mandatorily required to procure the materials to be utilized in the manufacture of the finished goods intended for export directly from the manufacturer from the registered factory. Further, latitude is given in the proviso thereto to the effect that the manufacturer is also at liberty to get the materials from dealers provided they are registered under the provisions of CENVAT Credit Rules, 2004;
- In the instant case, it is not in dispute that the goods viz., remote radiators procured from M/s Cummins Ltd, Pune was not received from any unit registered under the provisions of Cenvat Credit Rules, 2004 and therefore, the claimant (applicant) had not fulfilled the conditions of Notification No.21/2004 CE(NT) dated 06.09.2004;

- Any infraction/deviation in fulfilling/non-observance of the mandatory conditions prescribed under the relevant notification would lead to the loss of the benefit of the Notification to the applicant. Anything prescribed under the notification, which is purely procedural in nature, can be considered leniently. The above point of view has been time and again stressed by the Apex Court in its various judgments;
- they place reliance on rules laid down by Constitutional Bench of Apex Court in its landmark judgment in the case of M/s Hari Chand Shri Gopal Vs Commissioner of Central Excise, New Delhi [reported in 2010-TIOL-95-SC-CX-CB] in the matter of interpretation of notifications;
- they also place reliance on Apex Court judgment in the case of M/s Indian Oil corporation Ltd. Vs Commissioner of Central Excise, Vadodara [2012(276 ELT 145(SC)] which followed the judgment of M/s Hari Chand Shri Gopal (supra);
- the ratio decidendi of the above decisions of the Apex Court is squarely applicable in the present case also and therefore, from the above judgments of the Apex Court, it was well settled that the interpretation of the notification granting benefit of duty should be made strictly in accordance with the language employed in the notification and nothing more or nothing less could be read into the notification. That being the settled legal position, in the instant case, the applicant was not eligible for the rebate of duty paid on the goods, which were not procured in accordance with the conditions stipulated in Notification No.21/2004 CE(NT) dated 06.09.2004, and used in the export of goods. Therefore, the order of the Commissioner (Appeals) bearing No.VAD-EXCUS-001-APP-35-14-15 dated 10.04.2014 was legal and proper and the same is required to be upheld and

consequently, the Revision Application filed by the applicant is liable to be rejected as devoid of merit.

6. A personal hearing in the case was held on 19.08.2019. Shri Ajay Banarjee, Consultant, appeared on behalf of the applicant. He reiterated the submission filed through Revision Application. No one appeared on behalf of the respondent department.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal and the Notification No.21/2004 CE (NT) dated 06.09.2004.

8. Government observes that at para 6 of their Revision Application the applicant contended that invoices for two sets of remote radiators received from M/s International Coil Ltd., Gurgaon are valid documents under Rule 11 of Central Excise Rules 2002. The Adjudicating Authority had rejected the claim of Rs.1,05,060/- without appreciating the factual position and documents submitted to him with rebate application and during personal hearing and therefore the rebate claim should have been sanctioned. However, the Original authority has specifically mentioned in Order in Original that

*"The invoices do not say anything about the Central Excise duty element. So the invoices do not help to confirm whether the duty, which has been claimed for rebate, has been paid on the goods. Therefore these 2 invoices do not satisfy the condition, specified at Para 3 of the said Notification and are invalid documents for the purpose of the said Notification Therefore claim amounting to Rs.1,05,060/- relating to these invoices is inadmissible.*

9. It is also on record (para 9 of the Order in Original No. Rebate/1212/Ankur/Div-I/13-14 dated 13.01.2014) that in respect of the input/raw material (Remote radiators) which were received by the applicant from M/s International Coil Ltd., Gurgaon, the applicant submitted Commercial invoices issued by M/s Cummins India Ltd Power Generation Business Unit, Pune, who is not a registered manufacturer or a dealer.

10. Government observes that the applicant had filed rebate claims for duty paid on raw materials used in the goods exported in terms of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 and Para No. 3 in the Notification, which is relevant to the instant case, reads as under :

*“(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002 :*

*Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the Cenvat Credit Rules, 2002 under invoices issued by such dealers.”*

11. Government further notes that as per condition No. 3 of the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004, the materials/inputs are to be procured directly from the registered factory in which such goods are produced and accompanied by invoice issued under Rule 11 of Central Excise Rules, 2002. The said condition also states that manufacture or processor may procure materials from dealers registered for the purpose of the Cenvat Credit Rules, 2002 under invoices issued by such dealers. In the instant case the Invoices issued by M/s Cummins India Ltd Power Generation Business Unit, Pune, (who is not a registered manufacturer or a dealer) and produced by applicant before the original authority with the rebate claim were not issued under Rule 11 and therefore were not valid duty paying documents. Moreover, Government observes from the impugned Order in Appeal that the applicant not only failed to submit valid duty

paying documents i.e excise invoices, before the adjudicating authority at the time of filing rebate claims but also failed to produce the same before Commissioner (Appeals) in Appeal proceedings. In spite of these factual findings recorded by the lower authorities while disallowing the rebate regarding non-submission of valid duty paying documents, it is noted that the applicant has again failed to submit valid duty paying documents even before the Government in these proceedings. Also, the applicant has failed to persuade with any cogent reasoning as to why the primary basis for denial of the rebate claim to them viz. para 3 of Notification No.21/2004-C.E. (N.T.), dated 6-9-2004 should be disregarded.

12. Government, therefore, is in complete agreement with the assertion of the respondent department made in its cross-objections/submissions (para 5 supra) that the interpretation of the notification granting benefit of duty should be made strictly in accordance with the language employed in the notification and nothing more or nothing less should be read into the notification.

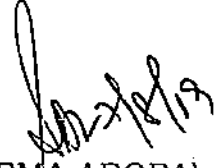
13. As per literal rule of interpretation of a statute, a legal provision should be construed as per the words and the texts used in a provision and not by any other method. From the words and texts of the above cited para 3 it is very clear that for the purpose of availing rebate of any duty, obtaining of materials from a registered factory or a dealer in India is necessary under excise invoices and there is no scope of any other mode of interpretation. Needless to say, the purpose of the said condition is to ensure the duty paid nature of the goods which have been exported. The right of the exporter to rebate of duties paid on export goods is coupled with the obligation to evidence the duty paid nature of the goods by producing the invoices of a registered person to authenticate the duty payment thereon.

14. In view of the above discussion, Government notes that lower authorities have correctly rejected the rebate claims of Rs.1,05,060/- of the

applicant for violating the provisions of the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. Government, therefore, finds no infirmity in the impugned order-in-appeal and upholds the same.

15. Revision application is dismissed being devoid of merit.

16. So, ordered.



(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 04 /2019-CX (WZ)/ASRA/Mumbai DATED 27.08.2019.

To,  
M/s Ankur Scientific Energy technologies Pvt. Ltd.,  
Near Navrachana School, Sama,  
Vadodara - 390 024.

Copy to:

1. The Commissioner of GST & CX, Vadodara-1, GST Bhavan, Race Course Circle, Vadodara-390 007.
2. The Commissioner of GST & CX (Appeals) Vadodara, GST Bhavan, Race Course Circle, Vadodara-390 007.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file
5. Spare Copy.