No.195/256/11-RA

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F.No. 195/256/11-RA
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 6-1-14

ORDER NO. 01 /14-Cx DATED 1-1-2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PII/RKS/11/2012 dated 03.01.2012. passed by Commissioner of Central Excise (Appeals), Pune-II.

APPLICANT : M/s Amit Spinning Industries Ltd.,

RESPONDENT : Commissioner, Central Excise, Kolhapur.

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ORDER

This revision application is filed by the applicant M/s Amit Spinning Industries Ltd., Kolhapur against the order-in-appeal No. PII/RKS/11/2012 dated 03.01.2012. passed by Commissioner of Central Excise (Appeals), Pune-II with respect to order-in-original No. 71/ADJ/K-II/2011 dated 23.09.2011 passed by Deputy Commissioner, Central Excise, Kolhapur-II Division, Kolhapur Commissionerate, Kolhapur.

2. Briefly stated facts of the case are that the applicant M/s Amit Spinning Industries Ltd., engaged in the manufacture of excisable goods viz., Polyester Cotton Blended Yarn falling under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985; That the applicants were clearing their final products without payment of duty availing exemption under Notification No. 30/2004-CE dated 09.07.04; That the applicants were not availing credit of inputs/input services used in or in relation to the manufacture of their final products and that the applicants had purchased polyester staple fibre on payment of appropriate duties and had not availed the CENVAT credit of duty paid on the said polyester staple fibre. During the period from Jan.'11 to April 11', the applicants used the said polyester staple fibre in or in relation to the manufacture of Polyester Cotton Blended Yarn and cleared the said polyester cotton blended yarn for export by following the procedure prescribed under Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001-CE(NT) dated 26.06.2001. Subsequently, the applicants realized the they were to claim the rebate of the duty paid on the polyester staple fibre which is used in or in relation to the manufacture of the said exported polyester cotton blended yarn and that they were to follow the procedure under Notification 21/04-CE(NT) dated 06.09.04 issued under Rule 18 of the Central Excise Rules, 2002. Accordingly, the applicants claimed the rebate of duty paid of Rs.63,28,638/- on the polyester staple fibre which is used in or in relation to the manufacture of the said exported polyester cotton blended yarn. The applicants received 2 Show Cause Notices dated 04.07.2011 & 30.08.2011 for rejection of the rebate claim of Rs.63,28,638/- proposing rejection of the rebate claims for non-fulfillment of basic condition stipulated under Notification 21/04-CE(NT) dated 06.09.04. The original authority vide impugned order-in-original rejected the impugned rebate claims.

3. On being aggrieved by the above said order-in-original, the applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Government of India in the cases of In re:CCE, 2006(200)ELT-175(GOI) has dealt with exactly similar objection and has concluded that the rebate claimed of the duty paid on the inputs used in or in relation to the manufacture of exported goods should not be rejected merely for not filling of the declaration and input/output norms prescribed under Notification No. 41/2001-CE(NT) issued under Rule 18 of the C.Ex.(No.2) Rules,2001 [now Notification No. 21/2004-CE(NT) issued under Rule 18 of the C.Ex. Rules, 2002] holding that substantial benefit of rebate should not be denied for procedural infractions. Similar ratio has been laid down by the Hon'ble High Court in the case of Tablets India Ltd., 2010(259) ELT-191(Mad.-HC) where under the Hon'ble High Court has allowed the rebate which was denied for non-following the procedure under Notification No. 42/94-CE(NT) issued under Rule12 of the C.Ex. Rules, 1994. In such circumstances, the action of the Commissioner, C. Ex.(Appeals), Pune-II for denying the rebate for failure to follow the procedure under Notification No.21/2004-CE(NT) (i.e. of filling declaration/input-output ratio/ issue of ARE-2) is totally unjust and arbitrary.

4.2 The very purpose behind putting the conditions in Notification No. 21/2004-CE(NT) of filing of declaration/input-output ratio/ issue of ARE-2 is to ensure that the exporter should get the rebate of duty paid on the inputs actually used in or in relation to the manufacture of exported goods and should not get the rebate of the duty paid on the inputs which are not actually used in or in relation to the manufacture of exported goods.

4.3 The Applicants submit that they have already submitted documentary evidence along with the rebate claim as well as at the time of personal hearing held before the Asst. Commissioner, C. Ex., Kolhapur-II to prove that they are claiming the rebate of duty paid on only that quantity of polyester staple fiber which is

actually used in or in relation to the manufacture of exported polyester cotton yarn and the said documentary evidence is not declared as wrong or unreliable by the Asst. Commissioner, C. Ex., Kolhapur. In such circumstances, when the purpose behind the conditions of filing declaration/input-output ratio/issue of ARE-2 is served in as much as there is no doubt/dispute about the fact that the rebate claimed by them is of correct duty. For mere non-filing of declaration/getting approved the input/output ratio and issuing ARE-1 instead of ARE-2, they should not be deprived of the substantial benefit of rebate since it will be totally in violation of the Government's intention of boosting exports by reducing the costs of goods to be exported and the objective of the scheme of rebate. The applicants rely upon the latest decision of the Hon'ble GOI's decision in the case of Sanket Industries Ltd. 2011(268)ELT-125(GOI) where under the Government of India has clearly laid down that rebate/drawback are export oriented schemes and unduly restricted and technical interpretation of procedure there under should be avoided and that procedural infraction of notifications/circulars be condoned if exports really taken place as fundamental requirement for rebate.

4.4 The mistake of not filing of declaration/input-output ratio and not issuing ARE-2 has taken place in the initial period of starting exports due to misunderstanding/due to lack of proper knowledge by the concerned person. However, subsequently, they have filed the declaration / input-output ratio and are issuing ARE-2 and are getting the rebate. The present rebate fits in the input/output ratio (which is approved by the Asst. Commissioner, C.Ex., Kolhapur-II for the subsequent exports) and the quality of the polyester cotton yarn involved in the subsequent rebate cases is one and the same and hence also there is no question of they claiming any extra rebate and hence also non-filing of declaration/input/output ratio by them in the present case is bound to be condoned.

5. Personal hearing scheduled in the case on 26.11.2011 was attended by Shri R.K. Sharma, Advocate on behalf of the applicant, who reiterated grounds of Revision Application. Nobody attended hearing on behalf of department.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government notes that applicant exported Polyster cotton blended yarn under rule 19 of Central Excise Rule 2002 read with Notification No. 42/2001-CE(NT) dated 26.06.2001 on ARE-1 forms. The said ARE-1 forum were endorsed with remark read as "Export under NIL Rate of duty vide Notification No. 30/2004-CE dated 09.07.04. After exporting goods in Jan. & Feb. 2011, they realized that they were entitled for refund of duty paid on inputs viz Polyster staple Fibre, and they were required to follow the procedure laid down under Notification 21/04-CE(NT) dated 06.09.04. The said rebate claims filed by applicant on 06.05.2011, 06.06.2011 and 21.06.2011 were rejected by original authority for non compliance of the provisions of Notification 21/04-CE(NT) dated 06.09.04. Commissioner (Appeals) upheld the said order. Now applicant has filed this revision application on the grounds stated above.

8. The applicant has neither filed any declaration of input-output norms nor exported the goods on ARE-2 form. Regarding input-output declaration applicant has submitted that this lapse has occurred due to misunderstanding and the input-output ratio/declaration filed subsequently was approved by Assistant Commissioner of Central Excise. They have also claimed that for subsequent exports made on ARE-2 the input rebate claims have been sanctioned by department. Government finds force in this contention of applicant that by mistake they could not follow the laid down procedure. If department has approved the input-output ratio for said commodity subsequently, the same norms/ratio can be accepted for impugned exports provided inputs & output are same. Government has already held in case of CCE Bhopal Vs M/s Sidhartha Soya Products Ltd. reported as 2006(205) ELT 1093(GOI) that substantial benefit of input rebate claim cannot be denied for said procedural lapse. Moreover as per provisions of para 3.2 of Part V of Chapter 8 of CBEC Central Excise Manual on Supplementary Instructions, the input-output norms notified under Export-Import Policy may be accepted by department unless there are specific reasons for variation. Under such circumstances, Government finds that the input output ratio, as per input output ratio specified in SION or the approval granted by department for subsequent exports can be accepted.

9. Government observes that rebate claims were also rejected on ground that original and duplicate AREs-2 duty certified by Customs were not submitted as they had exported goods on ARE-1 forms. In regard Government observes that Hon'ble High Court of Bombay in its judgements dated 24.4.2013 in the case of M/s U.M. Cables Vs. UOI (WP No. 3102/13 & 3103/13) reported as TIOL 386 HC MUM CX. has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Government, therefore, in the light of principle laid down by Hon'ble High Court of Bombay in the said case, is of the view that original authority has to consider the input rebate claims on the basis of collateral evidence which establish export of goods. The original/duplicate copies of ARE-1 forms duty certified by Customs and Shipping Bills/Bill of Lading will establish the export of said goods.

10. Government notes that substantial condition for claiming input rebate is that paid inputs are used in the manufacturing of exported goods. The lower authorities have not discussed any thing about use of duty paid materials in the manufacture of exported goods. Applicant claimed that they had submitted documentary evidences alongwith rebate claims to prove the use of duty paid materials i.e. polyster staple fibre in the manufacturing of exported goods. Applicant has now submitted copies of documents mentioned on Exhibit-1, 2 and 3 of this revision application, which are claimed as duty paying documents. The fundamental condition for granting input rebate claim is that duty paid inputs are used in the manufacture of exported goods. So, the original authority is required to conduct verification from the original records to ensure the compliance of above said condition of Rule 18 of the Central Excise Rules, 2002 read Notification 21/04-CE(NT) dated 06.09.04. As such case in required to be remanded for fresh consideration.

11. In view of above discussion, Government sets aside impugned Order-in-Appeal and remands the case back to original authority to decide the case afresh in accordance with law after taking into account the above said observations. A reasonable opportunity of hearing will be afforded to concerned parties.

12. Revision Application is disposed off in above terms.

13. So, ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

M/s Amit Spinning Industries Ltd.,
Gate No. 47 & 48,
At & Post, Sangawade, Taluka-Karveer,
Dist.- Kolhapur – 416202.

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

No.195/256/11-RA

G.O.I. Order No. 01 /14-Cx dated 1.1.2014

Copy to:-

1. The Commissioner, Central Excise, Kolhapur Commissioneer, Kolhapur.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Bombay Garage, Dadi Seth Lane, Chowpatty, Mumbai- 400007.
3. The Deputy Commissioner, Central Excise, Kolhapur-II Division, Kolhapur.
4. M/s R.K. Sharma & Associates Pvt. Ltd., 157, 1st Floor, Drawback Office Complex, C.M. Jhandewalan Extn. New Delhi-55.
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

(Bhagwat P. Sharma)
OSD (Revision Application)