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GOVERNMENT OF INDIA
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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

F.No.195/621/2013-RA/1510 Date of Issue: 01.03.2021

ORDER NO. 103 /2021-CX (WZ)/ASRA/MUMBAI DATED 26.02.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Pepco Fabrics Pvt. Ltd.
521, Hazoori Chambers,
Zampa Bazar, Surat.

Respondents : Commissioner of CGST, Belapur Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/827/RGD/2012 dated 20.11.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

## ORDER

This Revision Application is filed by M/s Pepco Fabrics Pvt. Ltd. 521, Hazoori Chambers, Zampa Bazar, Surat (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/827/RGD/2012 dated 20.11.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. The issue in brief is that the applicant engaged in manufacture of 'Man Made Fabrics (MMF)' had filed 8 rebate claims for total amount of Rs. 15,07,445/- (Rupees Fifteen Lakhs Seven Thousand Four Hundred Forty-Five Only) under Rule 18 of the Central Excise Rules, 2002 in respect of the duty paid on the goods exported by them.

3. On scrutiny of the impugned rebate claims, the rebate sanctioning authority observed that :-

a) Self sealing & Self supervision certificate not appearing on ARE-1s;

b) Triplicate copies of ARE1 not filed along with rebate claims;

c) Duty payment certificate not produced from jurisdictional Central Excise Officers, mere certification of duty on triplicate copy of ARE1 not sufficient, also Part A of ARE1 did not show duty payment particulars;

d) Signature of Master Vessel not appearing on shipping bills;

e) Photostat copies of Shipping Bill / Mate Receipt / Bill of Lading etc. does not bear the necessary certificate "Certified True Copy";

f) CE Invoice were not bearing full description of goods exported & the same not tallying with ARE1 / Shipping / Bill of Lading & Mate Receipt;

g) Rebate sanctioning authority shown as DCCEx DivisionIV, Samruddhi Bldg., Nanpura, Surat whereas rebate claims filed with Maritime Commissioner, Raigad.

h) The applicant were also requested to furnish documentary evidence regarding availment of input stage credit on the raw

material & inputs used in the manufacture of export of goods in terms of Notification No. 30/2004-CE dated 09.07.2004.

In view of above deficiencies, the Rebate Sanctioning Authority vide Order in Original No. 2160/11-12/DC(Rebate)/Raigad dated 15.02.2012 rejected the impugned rebate claims.

4. Aggrieved by the impugned Order in Original, the applicant filed an appeal before the Commissioner (Appeals-II), Central Excise, Mumbai. The Appellate Authority vide Order in Appeal No. US/827/RGD/2012 dated 20.11.2012 rejected the appeal and upheld that Order in Appeal. The Appellate Authority while passing the order observed that :-

4.1 In respect of the rejection on the ground that the triplicate copies of the ARE1 duly signed by jurisdictional central excise officer was not submitted, it was held that it was essential as the goods exported and the duty paid nature of that goods can only be verified on the basis of the certificate of jurisdictional central excise officer.

4.2 The main ground on which the adjudicating authority has rejected the claims is that the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The applicant and the processors M/s Ppaco Fabrics & M/s Paco Fabrics were figuring n the Alert notices issued by the DGCEI, Vadodara. The bona fide nature of transaction is imperative for admissibility of the rebate claim filed by the merchant manufacturer.

5. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds:-

5.1 Since there is no dispute or doubt about the manufacture and exportation of the goods by the applicant on payment of duty, the legitimate benefit of rebate is available to them.

5.2 They had submitted to the Rebate Sanctioning Authority all the triplicate copies of ARE1s duly singed by the Superintendent by post and

that the duty paying certificates were sent by concerned Range Superintendent by post on 22.01.2008. That subsequent to clearance of the goods for export, if the applicant had made default in making payment of the said duty payable, the department must have issued Show Cause Notice for recovery of the said duty show payable which is not done in the instant case.

5.3 The DGCEI, Vadodara carried out inquiry / investigation against the suppliers of grey fabrics from Surat and Malegaon who had purportedly supplied grey fabrics to various manufacturers / exporters including the applicant. After details investigation with the applicant and their suppliers / processors, the DGCEI issued SCN which did not cover the impugned eight rebate claims filed by the applicant.

5.4 Mere mention of name of the applicants and / or their processors in the Alert Circulars issued by the DGCEI per se is not sufficient to deny cenvat.

5.5 The investigation carried out by the DGCEI has no impact on the impugned rebate claims as they are not the final authority to decide the rebate claims of the applicant.

6. A Personal hearing in this case was held on 09.02.2021 through video conferencing and Shri K.V. Subrahmanyam, Consultant online for hearing on behalf of the applicant. He reiterated the earlier submissions in 8 rebate claims. He stated that their claims have been rejected on procedural grounds.

The applicant in their additional submissions received on 11.02.2021 have reiterated most of the points discussed above. He also relied upon following judgements to support argument that the procedural deviations should not and cannot come in the way of sanctioning of just rebate claims.

a) 2006(205) ELT 1027 (GOI) – M/s Cotfab Exports.
b) 2012(285) ELT 151 (GOI) – M/s Aventis Pharma Ltd.
c) 2006(203) ELT 321 (GOI) – M/s Barot Exports.
d) 2006(205) ELT 1093 – CCE, Bhopal.
e) 2011(268) ELT 125 (GOI) – M/s Sanket Industries Ltd.
f) 2006(204) ELT 632 (GOI)- M/s Modern Process Printers.
g) 1998(97) ELT 550 (GOI) – M/s Indo Euro Textiles Pvt. Ltd.

7. Government first proceeds to discuss issue of time bar in filing this revision application. The chronological history of events is as under.

a) Date of receipt of Order in Appeal dated 20.11.2012 : 04.12.2012
b) Due date for filing Revision Application : 04.03.2013
b) Date of filing of Revision Application : 23.05.2013

From the above, it is clear that applicant has filed this revision application after 81 days i.e. 2 months and 21 days. As per provisions of Section 35EE of Central Excise Act, 1944, the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay upto another 3 months can be condoned provided there are justified reasons for such delay. The Government considers that revision application is filed after a delay of only 2 months and 21 days which is within condonable limit. Government, in exercise of powers under Section 35EE of the Central Excise Act, 1944 and considering the genuineness of reasons for delay put forth by the applicant condones the said delay and takes up the revision application for decision on merit.

8. The Government observes that the applicant had filed 8 rebate claims involving an amount of rebate claim to the tune of 15,07,445/- for the goods exported by them. The Government observes that the Appellate Authority had rejected the appeal filed by the applicant mainly on two grounds as follows :-

a) Non submission of triplicate copies of the ARE1

b) The genuineness of cenvat credit availed is not proved.

9. As regards rejection of the impugned rebate claims on account of non submission of triplicate copy of ARE-1s as well as Duty Payment Certificate by the applicant, Government observes that the applicant has contended that they had submitted Triplicate copies of ARE1 to rebate section for further process.

9.1 In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the

relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

9.2 Thus, the Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

> *"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

9.3 In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. *However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg*

*Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.*

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.*

9.4 Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding

the identical issue, relying on aforestated order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

> 7. *"Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".*

10. Government, further, observes that the another ground on which the rebate claims were rejected was that the applicant have not produced evidence of the genuineness of the Cenvat Credit availed by the processors; that the goods were cleared on payment of duty by debit of Cenvat Credit; that during the material time a number of processors fraudulently availed Cenvat Credit on the basis of 'invoices' issued by bogus non-existent grey manufacturers; that the applicant was party in the said fraudulent availment of Cenvat Credit; that the rebate sanctioning authority was not satisfied about the bona fide / duty-paid' character of the exported goods from the certificate given on the triplicate copy of A.R.E. 1 received from the

11. The Government finds that Page 4 of the order in appeal records that *"The main ground on which the adjudicating authority has rejected the claims is that the appellants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The appellants and the processors M/s Pepco Fabrics & M/s Paco Fabrics were figuring in the Alert notices issued by the Assistant Commissioner, Central Excise, Surat-I and DGCEI,*

*Vadodara. The bondfide nature of transaction is imperative for admissibility of the rebate claim filed by the merchant exporter".*

12. The Government finds that the DGCEI had issued a Show Cause Notice vide F. No. INV/DGCEI/BRU/15/2008 dated 04.02.2010 seeking recovery of wrongly taken credit of Rs. 63,52,552/- on the basis of bogus invoices issued by the suppliers of grey fabrics. It is also observed that the applicant vide their letter dated 01.04.2008 had withdrawn the rebate claims to the tune of Rs. 63,52,552/- which were declared by the DGCEI in para no. 15 of the impugned SCN as fake rebate claims liable for rejection. The Government also observes that the name of the applicant has been reflected in the Alert Notices issued by the Assistant Commissioner, Central Excise, Surat-I and DGCEI, Vadodara.

13. Government in this case observes from the Order in Original dated 15.02.2012 that reasonable opportunity was given to the applicant for submission of documents /records regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently shown used as inputs in the manufacture of exported goods covered under the subject ARE-1. However, the applicant did not submit any corroborative records / documents proving the genuineness of the Cenvat credit availed & subsequently availed / utilized by them on the strength of invoices issued by processors listed in the Alert Circular for payment of duty on the above exports. Adjudicating authority under para 20 of the Order in Original has given a clear finding in this regard.

14. From the above it is clear that the Order in Appeal has not merely proceeded on a premises and conjectures but on the basis of alert that the Applicants/ processor may apparently be a party to fraudulent availment of credit. Even after being provided an opportunity, no substantiation or any documentary evidence was produced by the applicant during the course of adjudication / appeal to prove the genuineness of transactions in respect of the availment of cenvat credit in the instant case. As such, the contention

of the applicant that the entire ground for rejection of the rebate claim is based on premises & conjectures is not correct. In view of above, Government holds that the impugned Order in Appeal issued by the Appellate Authority is just and legal.

15. In view of discussions and findings elaborated above, Government finds no infirmity in the impugned Order in Appeal No. US/827/RGD/2012 dated 20.11.2012 rejecting the rebate claims for non-furnishing the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by them for payment of duty. Government, therefore, does not find any reason to modify Order in Appeal No. US/827/RGD/2012 dated 20.11.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai and therefore refrains from exercising its revisionary powers in these Revision Applications.

16. The Revision applications are disposed off as above.

Shrawan 26/02/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 103/2021-CX (WZ)/ASRA/Mumbai DATED 26.02.2021.

To,
M/s Pepco Fabrics Pvt. Ltd.
521, Hazoori Chambers,
Zampa Bazar, Surat.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.