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F.No. 195/13/12-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 28/10/13

ORDER NO. 1338 /13 DATED 28.10.2013 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 Section 35 EE of the Central Excise Act, 1944 against the order-in-appeal US/424/RGD/2011 dated 24.11.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II
Applicant	:	M/s Kandoi Fabrics Pvt. Ltd., Mumbai
Respondent	:	Commissioner of Central Excise, Raigad Commissionerate, Navi Mumbai

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ORDER

This revision application is filed by M/s Kandoi Fabrics Pvt. Ltd., Mumbai against the order-in-appeal US/424/RGD/2011 dated 24.11.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to order-in-original passed by the Deputy Commissioner (Rebate) Central Excise, Raigad.

2. Brief facts of the case are that the applicant, M/s Kandoi Fabrics Pvt. Ltd., have filed rebate claim under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06-09-2004. The original authority issued a deficiency memo stating that the Bill of Lading does not bear name of the applicant but that of M/s Gold Rock Trade Ltd. and the number of the shipping bill was not mentioned in the Bill of Lading. The adjudicating authority rejected the rebate claim of Rs.95,172/- that the applicant had not exported the goods.

3. Being aggrieved by the impugned order-in-original the applicant filed appeal before Commissioner (Appeals) who upheld the same.

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

4.1 The Commissioner (Appeals) has rejected the appeal on the only ground that the Bill of Lading is not in the name of the applicant who is claiming the rebate. He has rejected the appeal stating that the Bill of lading should be in the name of the exporter which is not the case. However, he has failed to understand even though it had been clearly mentioned in the appeal that we, the claimant of the rebate had exported the goods through the Merchant Exporter M/s. Gold Rock World Trade Ltd., Noida, U.P. The Order for the said export was procured by M/s. Gold Rock World Trade Limited and the goods were manufactured and cleared directly by the applicant from their factory. Therefore, the ARE-1 and shipping bills mention the name of the applicant but the bill of lading is in the name of the said merchant exporter. Therefore, it is wrong on the

part of the Commissioner to come to the conclusion that the name of the applicant is not mentioned on the Bill of lading.

4.2 Since the Bill of lading is in the name of the exporter, the case laws cited and the instructions mentioned in the Manual has been followed and therefore the decision of the Commissioner (Appeals) that the instructions have not been followed and therefore the Departmental Officers cannot ignore the same is misconstrued and is not based on facts. Therefore, the case laws cited by the Commissioner (Appeals) are not relevant to the facts of the case.

4.3 The Assistant Commissioner (Rebate) had rejected the appeal on the ground that the goods cleared by us was in the nature of domestic sale and since a no objection certificate from the exporter/merchant is not submitted, no rebate can be sanctioned. The Assistant Commissioner had erred in holding that the sale made by us was in the nature of domestic sale because the goods were cleared under the cover of the ARE-1, which are documents for export of goods along with the Central Excise Invoice. These documents were verified by the Departmental Officers at the time of export. Further, the Shipping Bills, Bill of Lading and the Bank Realization Certificates clearly shows that the goods were exported directly on clearance from our factory and there was no domestic sale. Secondly, the Assistant Commissioner contradicts himself by stating that we had not submitted the No Objection Certificate/Disclaimer Certificate from the merchant exporter. However, from the Deficiency Memo cum Show Cause Notice, it is very clear that there is no mention of the lack of Disclaimer Certificate or No Objection Certificate. However, the Assistant Commissioner has denied us the credit mainly on the ground that the NOC is not submitted by us without offering us an opportunity to submit the same.

4.4 The Commissioner (Appeals) has erred in holding that we have not submitted a copy of the No objection Certificate. From the appeal memorandum, it is clear that we had submitted a copy of the No Objection Certificate/Disclaimer Certificate received from the merchant exporter along with the documents submitted with the Appeal

Memorandum. Therefore, the proper course of action for the Commissioner (Appeals) should be to either sanction the refund on receipt of the documents he says was lacking or send back the case to the Assistant Commissioner for re-consideration after taking into account the documents/disclaimer certificate submitted by us. This was not done by the Commissioner. Further, since the Assistant Commissioner had not given us the opportunity to submit the NOC, the Commissioner (Appeals) was wrong in rejecting the appeal only on the ground that NOC was not submitted by us, without even considering that at the first opportunity given to us, we had submitted the said NOC 'along with the Appeal.

4.5 Since the Commissioner (Appeals) has accepted the fact that the goods cleared by us was not in the nature of domestic clearance but export and the only lacuna he found out was that one disclaimer certificate was not submitted by us, which was submitted with the appeal, he should have treated it as a procedural lapse and allowed the appeal. Instead, he has rejected the appeal without applying his mind.

4.6 It is a well settled position in law that rebate is an exported oriented scheme and unduly restricted and technical interpretation of procedures etc., is to be avoided in order not to defeat the very purpose of such schemes which serve as export incentive to boost export and earn foreign exchange and in case the substantive fact of expert having been made is 'not in doubt, a liberal interpretation is to be given in case of any technical breaches.

4.7 We rely upon the judgement of the Hon'ble Supreme court in the case of Formica India Vs. collector of Central Excise 1995 (77) ELT 51 (S) wherein it is held that once a view is taken that the party would have been entitled to the benefit of the notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed.

5. Personal hearing scheduled in this case on 27.9.2013 was attended by Shri M.S. Bijodar, General Manager of company on behalf of the applicant, who re-iterated grounds of revision application. Nobody attended hearing on behalf of department. The applicant further vide letter dated 30.9.2013 reiterated the contents of revision application.

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

7. Government observes that the instant rebate claim was rejected by the original authority on the ground that the Bill of Lading does not bear name of the applicant but that of M/s Gold Rock Trade Ltd. and the number of the shipping bill was not mentioned in the Bill of Lading who had not given any No Objection Certificate to applicant to claim the rebate. Commissioner (Appeals) has upheld the impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the impugned goods were cleared from factory under ARE-1 No.SDMN/R-III/R-202/2010-11 dated 20.5.2010. The said ARE-1 mentioned the name of applicant as exporter. This ARE-1 also mentions the INV.No.E/021 dated 20.5.2010. On perusal of said Invoice No.E/021 dated 20.5.2010, the name of exporter found as under:

M/s Kandoi Fabrics Pvt Ltd.
Office: 406, Lotus House, 4th Floor,
33A, New Marine Lines, Mumbai 400020, India

Factory: Survey No.51, Kuvavalu, Near Ganga Garden
Kachigam, Daman-396210, India
Tel No.+91 2266338751 FAX No.+912222072660
A/c: Gold Rock World Trade Ltd.
C-21, Sector 58, NOIDA, UP, India

The name of merchant exporter in this case has been mentioned in the said invoice. Further, in shipping bill, the above said ARE-1 No. is also mentioned. As such the

goods which has been cleared from factory vide said ARE-1 matches with the impugned shipping bill. The applicant submitted that the merchant exporter arranged for export to foreign buyer M/s A.M.Arizot Hatzafor Ltd., Israel and they only received foreign remittance from the foreign buyer.

8.1 Government observes that details such as name of foreign buyer, gross weight, net weight, value in Rs. etc. is tallying in ARE-1 and impugned shipping bill. Further container number and seal number also found tallying in impugned ARE-1 and shipping bill. There is reference of ARE-1 number in shipping bill. The goods were cleared under Central Excise Supervision and the certification by Custom Officer on ARE-1 form as well as shipping bill that goods are exported is not disputed by original authority. The duty paid character of goods exported is also not disputed. Applicant has also submitted a copy of disclaimer certificate which was submitted before lower authorities which cannot be ignored. The only lapse that Bill of Lading is not issued on the name of exporter can be condoned if the export of duty paid goods is otherwise established.

9. In view of above discussions, Government set aside impugned order-in-appeal and remands the case back to the original authority, for considering the rebate claims for sanction in the light of above observations if the claim is otherwise in order. A reasonable opportunity of hearing will be afforded to the parties.

10. Revision application is disposed off in above terms.

11. So, ordered.

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

M/s Kandoi Fabrics Pvt. Ltd.,
406, Lotus House, 4th Floor,
33A, New Marine Lines,
Mumbai 400020.

Attested
28/10

(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

Order No. 1338 /2013-Cx dated 28.10.2013.

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai- 410206.

2. The Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

3. The Assistant Commissioner of Central Excise, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai 410206.

4. PS to JS(RA)

5. Guard File

6. Spare Copy

ATTESTED

28/10

(B.P.Sharma)
OSD (Revision Application)