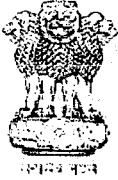


**REGISTERED
SPEED POST**



**F.No. 195/738/11-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.....07/1/13

ORDER NO. 14 /13-CX DATED 07-01-2013 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,
1944 AGAINST THE ORDER-IN-APPEAL No.
IND/CE/000/APP/197/11 dated 24-05-2011
passed by Commissioner of Central Excise,
(Appeals), Indore

APPLICANT : M/s CIL Textiles Pvt. Ltd.,
Indore.

RESPONDENT : Commissioner of Central Excise,
Indore.

ORDER

This revision application is filed by M/s CIL Textiles Pvt. Ltd., Indore against the Order-in-Appeal No. IND/CE/000/APP/197/11 dated 24-05-2011 passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise Division, Pithampur.

2. Brief facts of the case are that M/s CIL Textiles Pvt. Ltd., Indore are engaged in the export of stretched canvas, textile made ups grey and processed Fabrics. The applicant filed rebate claims of Rs. 1,20,934/- and of Rs. 3,46,475/- towards duty paid vide Cenvat Credit on the inputs used in the export goods under Rule-18 of the Central Excise Rules, 2002. After scrutiny of the claims, Show Cause Notices were served upon the applicant alleging non-compliance of certain conditions of Notification No. 21/2004-CE (NT) dt. 06-09-2004, issued under Rule-18 of Central Excise Rules, 2002. The Assistant Commissioner, Central Excise, Div-Pithampur vide impugned Order-in-Original rejected both the rebate claims of Rs. 1,20,934/- and Rs. 3,46,475, on the ground that certain conditions/procedures of the Notification No. 21/2004-CE (NT) were not fulfilled and also on the ground that the rebate claims do not fall under jurisdiction of the original authority.

3. Being aggrieved by the said Order-in-Original, 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 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 As per para 6 of Notification No. 21/2004-CE (NT) dt. 06-09-2004, as amended, the claim for rebate of duty paid on materials used in the manufacture of processing of goods shall be lodged only with the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction of the place approved for manufacture or processing of such goods. In this case, the applicant

got the export goods manufactured/processed from M/s. Jyoti Overseas Ltd., Sejwaya, Ghatabillod, on job-work basis. The unit of said M/s. Jyoti Overseas Ltd. is covered under Range-VII Pithampur which falls under the jurisdiction of Assistant/Deputy Commissioner of Central Excise, Pithampur. It is envisaged in para 8.2 of part V of chapter-8 of CBEC Supplementary instructions, that rebate of input stage duty shall be allowed to manufacturer (processor)-Exporter, as the case may be where such inputs are used in the manufacture/processing of export goods and cleared directly from the factory of manufacture/processor. The manufacturer/processor may export the goods directly himself or through merchant exporter where the goods are exported by merchant exporter, his name shall be mentioned on ARE-2 and other conditions prescribed in Notification No. 21/2004-CE (NT) dt. 09-09-2004 should be followed. In the instant case the input against which the rebate claim has been filed are used by the job-worker/ processor, namely M/s. Jyoti Overseas Ltd. located at Sezwaya, Ghtabillod, which is covered under the jurisdiction of Assistant/Deputy Commissioner of Customs & Central Excise Div.- Pithampur and the applicant filed their declaration in Annexure-24 i.e. input-output norms with the Customs & Central Excise Division, Pithampur and the instant rebate claims were also accordingly filed with the same authority. Moreover, the applicant under their letter dated 20-05-2009, disclosing all the facts of getting 'Acrylic' coated Fabrics being manufactured on job-work basis from M/s. Jyoti Overseas Ltd. for export filed declaration on input-output norms with the Deputy Commissioner, Central Excise & Customs Division Pithampur, in terms of Notification No. 21/2004-CE (NT) dt. 06-09-2004 which was acknowledged on 25-05-2009. The applicant also mentioned that the input-output norms of the afore said export goods, is prescribed under SION No. J359 of Export Policy. However, the applicant neither received any permission order nor the declaration was returned pointing out that he is not the proper authority in this case. Therefore, the applicant had a firm belief that the Deputy Commissioner, Central Excise & Customs Div-Pthampur was satisfied that the input-output norms of the said export goods i.e. 'Acrylic Coated Fabrics' is prescribed in SION No. J359 under Export Policy, hence the declaration was not mandatory.

4.2 The applicant while filing their declaration under their letter dated 20-05-2009 have categorically stated that they are getting 'Acrylic Coated Fabrics' manufactured on job-work basis from M/s. Jyoti Overseas Ltd. located at Sejwaya, Ghatabillod. It was emphasized that the applicant shall be providing the job-worker, the required raw material such as 'Acrylic Emulsion, Titanium' Di Oxide and other Chemicals and Fabrics. The job-worker shall be coating the fabrics with the chemicals. After the above processing/manufacturing in the job-workers premises, the goods would be sent to the factory of the applicant for cutting into piece and then stapling the same on wood frames to make it 'stretching canvas frames' for export. Thereby the requirement of condition No. (4) of Notification No. 21/2004-CE (NT) was fulfilled by the applicant.

4.3 As regards the allegation on input invoices and the proof of their transfer to the job-workers premises, the applicant humbly submit that they have clearly intimated the jurisdictional Deputy Commissioner as to what are the inputs being sent to the job-worker and for what purpose. Moreover with the application for rebate claim, the applicant have submitted the details of inputs used in the export goods and their corresponding shipping bills. Importantly when the input-output norms is undoubtedly covered under serial No. J359 of SION in Import Export Policy, the allegation made on this count does not have any weight. Moreover it is on record that the applicant have submitted all the copies of duty paid purchase invoices alongwith the rebate claim.

4.4 The applicant has relied upon following case laws in favour of their contentions:

- i) Alpha Garments Vs. Collector of Central Excise, New Delhi.
- ii) 2010 (259) ELT 191 (Mad.) Tablets India Ltd., Vs. Jt. Secy., Ministry of Finance, Department of Revenue.
- iii) 2005 (183) ELT 277 (Tri. Del) Murli Agro Products Ltd, Vs. Commissioner of Central Excise, Nagpur.
- iv) 2001 (136) ELT 467 (Tri. Del) Kansal Knitwears Vs. Commissioner of Central Excise, Chandigarh.

v) 2009 (240) ELT 161 (S.C.) Sambhaji Vs. Gangabai

5. Personal hearing scheduled in this case on 07-12-2012 was attended by Shri Ramesh Nair, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that input stage rebate claims filed by the applicant under rule 18 of the Central Excise rules, 2002 r/w Notification No. 21/2004-CE (NT) have been rejected by the original authority on the ground that the applicant failed to comply with certain conditions of the Notification No. 21/2004-CE (NT) and also that the rebate claims do not fall within his jurisdiction. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that relevant provisions regarding Jurisdiction as contained in part V of chapter 8 of the CBEC manual of supplementary instructions reads as under:

" para 2.1 The manufacturer or processor shall file a declaration with the Deputy/Assistant commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported. Where there are more than one export product, separate statement of the input-output ratios may be furnished for each export product. The consumption should be net of recycled materials. Where recoverable wastage are generated but not recycled but sold on account of its unsuitability, the same should be clearly reflected in the declaration. The declarant should also enclose, in case of a new product or in case where the manufacturer is not regularly manufacturing the export goods and clearing for home consumption or export, a writ up of manufacturing process. "

" Para 8.2 Rebate of input stage shall be allowed to manufacturer (Processor)-Exporter, as the case may be, where such inputs are used in the manufacture/processing of export

goods and cleared directly from the factory of manufacture/processor. Any officer duly empowered by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise in this behalf shall have access at all reasonable times to any premises indicated in the application. The applicant shall also permit the officer of Central Excise access to any records relating to the production, storage and export of goods. "

8.1 Provisions of above quoted para 2.1 of supplementary instructions provides that the manufacture or processor shall file declaration in with Dy./Assistant Commissioner hearing jurisdiction over the factory of manufacture. 'Factory of manufacture' can not have essentially meaning of 'factory of manufacturer'. 'Factory of manufacture' may be a place where goods are manufactured. In the instant case, the applicant got the goods processed from a job worker/processor, whose factory falls within jurisdiction of original authority. Further, the applicant vide letter dated 20-05-2009, filed the declaration, including details of input-output norms and disclosing the fact they are getting their goods manufactured on job-work basis from processor M/s. Jyoti Overseas Ltd. Government also observes that if the goods is being processed at job-worker's place, then any verification of input-output ratio if required to be caused, can be caused by the jurisdictional authority only. In this case, the processors factory premise fall within jurisdiction of original authority. Under such circumstances, it is not logical to hold that input stage rebate cannot be filed by the applicant with the authority under whose jurisdiction job work's unit falls.

8.2 Further, in terms of para 8.2 of part V of chapter 8 of CBEC's Manual of supplementary instruction, the rebate of input state, duty shall be allowed to manufacture exporter, who may exports the goods directly himself or through merchant exporter. In this case the applicant exported the goods directly from their factory and factory of applicant as well as job worker are located in the jurisdiction of same Central Excise Division. Therefore, rebate claim are rightly filed with said Assistant Commissioner of Central Excise.


9. Government observes that the original authority had rejected rebate claim of duty paid on inputs used for manufacturing of final export product also on the ground that the applicant failed to get input output ratio approved in r/o duty paid

materials used in the manufacture of final product before its export and hence, violated the provisions of the Notification No. 21/2004-CE(NT) dated 06-09-2004. In this regard, it is observed that as per the Notification No. 21/2004-CE (NT) read with Chapter 8 of CBEC's Excise manual of supplementary instructions, a manufacturer intending to claim input rebate should file a declaration with the jurisdictional Deputy/ Assistant Commissioner of Central Excise for verification and approval of input-output ratio prior to export of the goods and obtain the permission of the Deputy /Assistant Commissioner of Central Excise for manufacture or processing and export of finished goods. Government notes that applicant had earlier filed declaration on 20-05-2009, decision on which was not taken by the jurisdictional authority. There is no allegation that any other condition of the said Notification was also not complied with. The department neither approved or rejected the said declaration. Further, it has been laid down in the CBEC Central Excise Manual, chapter 8, part V para 3.2 that for the sake of transparency and convenience input output norms notified under the Export Import Policy may be accepted by the department unless there are specific reasons for variation, w.r.t. declaration dated 20-05-2009 filed by the applicant. The input rebate claim can therefore be considered for sanction as per relevant SION norms notified in the FTP.

10. In view of above circumstances, Government sets aside the impugned orders and direct the original authority to sanction the rebate claim as directed above if all other condition of the Notification No. 21/04-CE(NT) dated 06-09-2004 are satisfied.

11. The revision applications are disposed off in above terms.

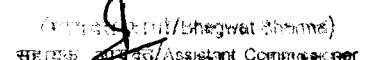
12. So, ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s CIL Textiles Pvt. Ltd.,
302, Oasis Trade Centre,
22/20, Y.N. Road,
Indore (M.P.)

ATTESTED


सहायक आसि/Assistant Commissioner
C B E C - 095 D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)

Order No. 14 /13-Cx dated 07-01-2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manikbagh Palace, Indore (MP) 452001.
2. The Commissioner (Appeals-I), Customs and Central Excise, 4, Inderlok Colony, Kesar Bagh Road, Indore (MP).
3. The Asstt. Commissioner of Central Excise, Division-Pithampur.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)