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SPEED POST

F.No.195/1206-1215/11-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 25.2.13

~~ORDER NO.~~ 142-151/2013-CX DATED 22.2.2013 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 No. CMB-cex-000-APP-125 to 133-11 dated 29.8.11 passed by Commissioner of Customs & Central Excise (Appeals), Coimbatore

APPLICANT : M/s K.P.R.Mill Ltd., Coimbatore-641014

RESPONDENT : Commissioner of Customs & Central Excise, Coimbatore

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ORDER

These revision applications are filed by the applicants M/s K.P.R.Mill Ltd., Neelambur post, Coimbatore against the order-in-appeal CMB-CEX-000-APP-125 to 133-11 dated 29.8.11 passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore with respect to orders-in-original No. 417-425/2010 dated 26.10.10 passed by Assistant Commissioner of Central Excise, Coimbatore-IV Division.

2. Brief facts of the case are that the applicants are manufacturers of cotton yarn and fabrics falling under Central Excise Tariff heading No.52 of the Central Excise Tariff Act 1985. They are having factories at Neelambur, Arasur, Anupparpalayam/Tirupur. Applicants have filed rebate claims by preparing Central Excise invoices and debiting excise duty in their cenvat credit accounts for export of goods manufactured at their other units. It appeared that the amounts claimed as rebate by the applicant is not admissible since the duty paid by applicant from its accumulated Cenvat credit for the goods manufactured and exported by other unit cannot treated as duty paid in terms of Central Excise Law. Hence show cause notices were issued proposing to reject the rebate claims under Section 11B read with Rule 4, 18 of Central Excise Rules 2002 and Notification No.19/2004-CR(NT) dated 6.9.2004. After due process of law, the original authority rejected all the nine claims under the provisions of 11B of Central Excise Act 1944.

3. Being aggrieved by the said orders-in-original, applicants filed appeal before Commissioner (Appeals) who upheld the impugned orders-in-original and rejected the appeal.

4. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicants submit that the orders passed by the First Appellate Authority is against the intended purpose of the provisions of law governing the subject and without appreciating the facts of the case. It is also submitted that the orders have been passed by stretching the interpretation of the notification beyond the required position and therefore, the same is liable to be set aside.

4.2 The applicants have various units situated at Neelambur, Arasur and Tirupur etc.engaged in the manufacture and export of Cotton Yarn and Knitted Garments and all these are falling within the jurisdiction of Coimbatore Central Excise Commissionerate, and they are all registered with the Central Excise department. The rebate under dispute pertains to manufacturing units situated at Arasur and Neelambur. Both the above manufacturing facilities are registered with the department and fall under the jurisdication of a single range namely "IV A Range". The instant case, the applicants exported the goods manufactured at their Neelambur unit. For the sake of consolidation of export cargo, they had taken the goods to their Arasur/Tirupur units, from where the goods were consolidated in a single container for onward export to various countries. It is pertinent to note that all these three units belong to one entity viz., KPR Mills Ltd. and exports as well as payment of duty have been made by the same entity but from different units. The contention of the First Appellate Authority is that as per the provisions of Notification No.19/2004-CE(NT) dated 6.9.2004, the payment of duty should be made by the same unit from where the goods were removed for export. This fact is not in dispute, that 'the unit had paid duty under the Neelambur unit, but the removal of goods had taken place from the factory premises of other units. This fact has been explained by the applicants but the same was not taken into consideration by the First Appellate authority while passing the impugned order in appeal.

4.3 In terms of condition (a) in Para 2 of the said notification, the excisable goods shall be exported after payment of duty, directly from a factory or its warehouse, except as otherwise permitted by the CBEC by general or special order. In the instant case also, the goods were exported only from a factory duly registered under Central Excise law and duty was also paid by another unit of the same entity. Hence the applicants are of the firm view that the action of the applicants is well within the ambit of the provisions of said notification.

4.4 It is respectfully submitted by interpreting the notification in the above manner, the First Adjudicating Authority has traversed beyond the scope of the notification in order to defeat the very purpose of the notification. The applicants respectfully submits that the primary conditions of the notifications have been met in the case of applicants viz., the goods have been manufactured in a factory, the goods were also exported from a factory, duty has also been paid by a factory and the claim of rebate has been filed only by the factory who had paid the duty on the goods exported. None of the above points have been disputed by either the Adjudicating Authority or the First Appellate Authority. Therefore, the applicants submit that the applicants are eligible for the rebate.

4.5 It is submitted respectfully that the crux of the allegation is that as per Notification No.19/2004-CE (N.T) dated 6.9.2004 as amended; we have not exported the goods after payment of duty directly from a factory. The allegation is not correct as in the case of appellants, these two conditions have been met viz., the goods have been exported from a factory viz., Arasur Unit of M/s. K.P.R. Mills Limited where the manufacture of exported goods was completed and the duty has been paid from the Neelambur Unit of M/s. K.P.R. Mills Limited, where the primary/predominant and major input of Cotton Yarn is manufactured which were used in the exported goods of Knitted Garments. It is also submitted that the appellants are exporters of various products of Cotton viz., Yarn and Garments, having manufacturing units at Arasur, Tirupur and Neelambur. They

are also holding the status of "Star Trading House". It is also to be noted that all these units belong to the appellants and "Star Trading House" status holds good for all these units wherever they are. The status was conferred for the group and not for the individual unit. It is also to be noted that the export has been made in the name of "K.P.R Mill Limited" only.

4.6 The Order in original certifies the following facts beyond all doubts:

- The goods were manufactured by a unit belonging to M/s. K.P.R.Mill Limited
- The goods were exported from a unit of M/s. K.P.R. Mill Limited
- Appropriate duty has been paid by a unit of M/s. K.P.R. Mill Limited
- The rebate has been claimed by M/s. K.P.R. Mill Limited
- Only one claim has been filed and no one else has claimed the rebate
- The claim has been filed before the proper officer within the time limit and with all documentary proof as required
- The eligibility or accumulation of credit under Cenvat Account from which the duty, has not been disputed or denied
- The appellants are in a position to prove the realization of sale proceeds which is one of the main objective and purpose of exports to other countries. In view of the above undisputable facts, it is respectfully submitted that the applicants are eligible for the rebate.

4.7 It also submitted that one of the Condition stipulated in the notification is that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except otherwise as permitted by the CBEC by general order or special order. Therefore it is incorrect to state that the rebate can be allowed only if the goods are exported from the factory alone. Even the same can be exported from a warehouse or any other place duly permitted for the purpose. As per the Central Excise Law, all the registered factories are warehouses catering the need of manufacture, warehousing and clearing the excisable goods. In some cases, the same could be undertaking job work also. All these places are the authorized places for removing the goods for export and there is no bar on this account. In the instant case, the unit from where the goods have been

removed and the unit from where the duty has been paid are belonging to the appellants only and all these units have been duly registered by the department.

4.8 It is also submitted that the Merchant Exporters are also exporting goods on procurement of the same from the factory and in some cases; the goods are warehoused and then exported. Even in such situation the rebate is admissible irrespective of the fact whether they were exported from the factory or warehouse. Therefore, the stipulation that the goods should be removed from the factory is not absolute but flexible as alternative provisions are also available in the provisions of law governing the subject.

4.9 It is also not out of place to mention here even the allied rules viz., Cenvat Credit Rules, 2004 allows clearance of goods for job work and further clearance for export there-from on payment of duty or under bond. When such relaxation is extended even in Cenvat Credit Rules, 2004, there is no justification in denying the rebate of duty paid by the appellant in respect of the exports made from one of their unit by discharging duty from the other units, especially when the facts of export, realization of sale proceeds, payment of duty and complying other formalities are undisputable.

4.10 In this regard it is submitted respectfully that the department had denied the rebate on a narrow ground of non-compliance of procedural requirement. In this regard, the Honourable Revisionary Authority in the case of Barot Exports reported in 2006(203) ELT 321 has held that payment of duty and export of goods ___ the fundamental requirement is met, other procedural requirement can be condoned.

5. Personal hearing was scheduled in this case on 14.12.12. Shri R.Arumugam, Consultant appeared on behalf of the applicant who reiterated the grounds of revision application. They added vide their letter submitted during personal hearing that as per para 3(ix) of the Notification No.19/2004-CE(NT) even if goods are exported from some other location (arguing and not accepting) in that case also the rebate is allowable.

When they had complied with the substantive part of law, the claim need not be rejected on non-observation of procedures. He further stated that in case rebate is not allowed the said amount may be allowed as recredit in the cenvat credit account.

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

7. In the instant case the original authority observed that the impugned goods were manufactured by M/s K.P.R.Mill Ltd. at Anupparpalayam Unit, Tirupur and Arasur Unit but duty was debited by M/s K.P.R.Mills, Neelambur, a separate registered Unit and rebate has been claimed by KPR Mills, Neelambur Unit. The original authority rejected the rebate claims on the ground that goods were manufactured at Tirupur and Arasur Unit and no duty was paid by said unit. Duty said to be paid by Neelambur Unit cannot be treated as duty paid against said export clearances. It was further seen that the Neelambur unit did not manufacture readymade garments which have been cleared for export & both the units are having separate Central Excise registrations manufacturing their own products. He held that it was not proper to debit duty at one place and prepare document in the name of another unit and hence rejected the claim of rebate. The Commissioner (Appeals) upheld the orders of the original authority. Now the applicants have filed this revision applications on the grounds stated at para (4) above.

8. Government notes that as per Central Excise procedures, separate registration required in respect of separate premises and therefore the accountal of goods (input and manufactured goods & their removal) maintenance of records, payment of duty, filing of returns and all the Central Excise procedures has to be done separately in each of the registered unit, irrespective of their ownership and central excise jurisdiction in the given circumstances. Hence the availment and utilization of accumulated cenvat credit of one unit against payment of duty liability of another unit cannot said to be proper payment of duty as held by the lower authorities. Alternatively, the applicants

had option to clear goods without payment of duty under Rule 19 of Central Excise Rules 2002 instead of Rule 18 of the said Rules. In this factual background of the case, it become quite clear that no duty was paid on the exported goods in the factory of their manufacture. The duty said to be paid by applicant at their Neelambur Unit by issuing Central Excise invoice for goods manufactured and exported from other units cannot be treated as duty paid on the exported goods.

9. The fundamental condition for determining admissibility of rebate claim is that duty paid goods are exported out of India. In this case the duty paid nature of goods is not established. Therefore, rebate claim are not admissible under rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE (NT) dated 6.9.04. In view of this position, the rebate claims are rightly rejected by the lower authorities.

10. Applicant has contended that in case rebate is held inadmissible then cenvat credit debited may be allowed to be recredited. In this regard, Government observes that applicant's Neelambur Unit has not manufactured the said goods. So the payment of duty by debiting their cenvat credit account has become an excess payment which has to be treated as voluntary deposit with Government. There is no authority to retain said excess paid amount. Therefore, Government directs that said excess paid amount may be allowed to be recredited in their cenvat credit account.

11. The impugned orders-in-appeal are partially modified to above extent and revision application also succeed partially to above extent.

12. The revision applications are disposed of in terms of above.

13. So ordered.

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

M/s K.P.R.Mill Ltd.,
S.C.No.525, 526, 527, 3A, 3B,3C and 528,
Neelambur Post,
Coimbatore-641014

GOI Order No. 142-151 **/13-CX dated** 22.02.2013

Copy to:

1. The Commissioner of Central Excise, 6/7, ATD Street, Race Course Road, Coimbatore-641 018.
2. Commissioner of Customs, Central Excise & Service Tax (Appeals) 6/7, ATD Street, Race Course Road, Coimbatore- 641 018.
3. The Deputy Commissioner of Central Excise, Coimbatore-IV Division, 1237, Elgi Building, 1st Floor, Trichy Road, Coimbatore-18, Tamilnadu.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED

(P.K.Rameshwaram)
OSD (Revision Application)