REGISTERED SPEED POST AD

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/75/13-RA /5161 Date of Issue: 14.11.19

ORDER NO. 142/2019-CX (WZ) /ASRA/MUMBAI DATED 04.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Murli Exports
Mody Estate,
1st Floor, LBS Marg,
Ghatkopar(W),
Mumbai 400 086

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. US/718/RGD/2012 dated 29.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

These revision applications have been filed by M/s. Murli Exports, Mody Estate, 1st Floor, LBS Marg, Ghatkopar(W), Mumbai 400 086(hereinafter referred to as "the applicant") against OIA No. US/718/RGD/2012 dated 29.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. The applicant had filed four rebate claims dated 24.03.2006, 14.09.2006, 24.03.2006 and 26.09.2006 under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 for a total amount of Rs. 5,15,451/-. The Deputy Commissioner, Central Excise(Rebate), Raigad vide OIO No. 2261/11-12/DC(Rebate)/Raigad dated 27.02.2012 rejected these four rebate claims on various grounds. He held that the exported goods were fully exempt under Notification No. 30/2004-CE dated 09.07.2004, that in view of sub-section (1A) of Section 5A of the CEA, 1944 read with CBEC Circular No. 937/27/2010-CX. dated 26.11.2011 the applicant could not have paid duty and did not have the option to pay duty, that the chapter sub heading number and description as per Central Excise Tariff declared in the excise invoice and the corresponding shipping bills were not tallying, that the procedure prescribed for self-sealing and self-certification given in para 6 of Chapter 8 of the CBEC Manual had not been followed, duty payment certificates were not submitted and therefore conditions for grant of rebate under Notification No. 19/2004-CE(NT) had not been fulfilled, that since the applicant had admitted that their suppliers were tainted the onus was on them to prove that the credit accumulated was not tainted and that the applicant had failed to submit documentary evidence to prove the genuineness of the availment of CENVAT credit utilized for payment of duty on the exports.

3.1 Aggrieved by the OIO dated 27.02.2012, the applicant filed appeal before the Commissioner(Appeals). He found that the ARE-1's under which the goods had been exported clearly declared that the goods had been manufactured by availing facility of CENVAT credit under the provisions of

CCR, 2004. Therefore, it was clear that they could not have possibly been exempt under Notification No. 30/2004-CE and hence this ground for rejection of rebate claim could not be sustained. With regard to the rejection of the rebate claim on the ground that there was a difference in chapter heading number of central excise tariff declared in the excise invoice of export goods and the corresponding shipping bills, the Commissioner(Appeals) found that the proforma of shipping bills prescribed by the CBEC does not have a column for central excise tariff classification of the exported product, that what was required to be mentioned in the shipping bill was RITC Code number which was not necessarily the same as central excise tariff classification. Moreover, there was no requirement to give central excise tariff classification in the shipping bills and therefore the classification of the product in excise invoices cannot be held to be wrong merely on the basis of the RITC Code number mentioned in the corresponding shipping bills.

3.2 With regard to the ground that procedure required for self-sealing and self-certification given in para 6 of Chapter 8 of the CBEC Manual not having been followed and the applicants contention that the goods were sealed in the presence of Central Excise authorities, the Commissioner(Appeals) found that all exports are not under excise supervision and the provision of self-sealing/self-certification is a mandatory provision. He further held that the applicant had not followed the procedure as laid down in para 3(a)(xi) of the Notification No.-19/2004-CE(NT) dated 06.09.2004 and para 6.1 of Chapter 8 of the CBEC Manual and hence the adjudicating authority had rightly denied the rebate claims. With regard to the ground that the duty payment certificate had not been submitted by the applicant and that the applicant had failed to submit documentary evidence to prove the genuineness of input duty payment since they had admitted that their suppliers are tainted, the Commissioner(Appeals) observed that the applicant were manufacturer exporters and that the goods had been cleared on payment of duty by debit in CENVAT account. He further observed that at the material time, a number of processors had fraudulently

availed CENVAT credit on the basis of invoices issued by bogus/non-existent grey manufacturers and that it had been recorded by the adjudicating authority that the applicant in their reply had admitted that their suppliers were tainted and figuring in the Alert List issued by the Department. The Commissioner(Appeals) therefore averred that the applicant may also be party in the said fraudulent availment of CENVAT credit and that the bonafide of the transaction was imperative for admissibility of the rebate claim filed by the merchant manufacturer. In this regard, the Commissioner(Appeals) placed reliance on the judgment of the Hon'ble Bombay High Court in the case of Union of India vs. Rainbow Silks[2011(274)ELT 510(Bom)] and the decision in the case of Sheetal Exports[2011(271)ELT 461(GOI)]. In the light of these findings, the Commissioner(Appeals) vide OIA No. US/718/RGD/2012 dated 29.10.2012 upheld the OIO and rejected the appeal filed by the applicant.

4. The applicant has now filed for revision against the OIA No. US/718/RGD/2012 dated 29.10.2012 on the following grounds:

(a) With regard to the finding that self-sealing/self-certification is a mandatory provision and that they had not followed the procedure as laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and para 6.1 of Chapter 8 of the CBEC Manual, the applicant submitted that the said provision stipulated a procedure which is technical in nature, any lapse in this regard would be condonable and rebate claims cannot be rejected for this reason. They further submitted that it was settled law that substantive benefit cannot be denied for procedural lapses and placed reliance upon the decision in the case of Shrenik Pharma Ltd.[2012(281)ELT 477(GOI)].

(b) The applicant submitted that it was not the case of the Department that the goods shown in the ARE-1 and in the Shipping Bills were different and therefore the rebate claims had been rejected, that both the lower authorities had rejected the rebate claims for failing to adhere to a procedural condition of technical nature.

(c) In so far as the finding that the applicants supplies and credit accumulation were tainted, the applicant submitted that the observation of the Commissioner were presumptive in nature in as much as the Commissioner had inferred that the applicant "may" also be party in the fraudulent availment of CENVAT credit, that the Commissioner had failed to appreciate the copies of Central Excise Certificates submitted vide written submissions dated 10.09.2012 wherein it has been clearly certified that the applicant had paid the central excise duty and that if this fact is not in dispute then rebate claim cannot be denied by challenging accumulation of CENVAT credit.

(d) That the applicant had failed to appreciate that the lower authority had grossly erred in co-relating past cases with the ARE-1's in dispute and that rebate in respect of those old cases had been proportionately rejected by the rebate sanctioning authority.

5.1 The applicant was granted a personal hearing on 22.08.2019. Shri Vinay Ansurkar, Advocate and Ms. Bhakti Dresswala, CFO appeared on behalf of the applicant. They submitted that the input credits had been verified by the Department. They further submitted that to expedite the matter, they had foregone refund under Alert List as it was a low amount, that refunds relating to the said matter had been rejected and that the issue of tainted credits was being raised out of context.

5.2 In the written submissions dated 22.08.2019, the applicant made a two point submission. They pointed out that the Commissioner(Appeals) had at page 3, para 3 of the OIA recorded a finding that all the exports were not under central excise supervision and that the applicant had not followed the procedure laid down under para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and para 6.1 of Chapter 8 of the CBEC Manual. In this context, the applicant submitted that wherever the export consignment was in container, the container had been sealed under the supervision of central excise officer and in respect of LCL the same was sealed under the supervision of Customs at the port. They submitted that this procedure was

accepted for exports at the relevant time. They submitted that export goods cleared under ARE-1 No. 03/2005-06 dated 07.12.2005, ARE-1 No. 25/2005-06 dated 29.03.2006 and ARE-1 No. 41/2005-06 dated 07.10.2005 was under Customs Supervision whereas ARE-1 No. 18/2004-05 dated 12.01.2005 had been cleared under central excise supervision. With regard to the Commissioner(Appeals) rejecting the claims on the ground that the procedure under Notification No. 19/2004-CE(NT) had not been followed, the applicant placed reliance on the decision in the case of MET Trade India Ltd.[2014(311)ELT 881(GOI)] wherein it was held that denial of rebate claim for not following the procedure was improper and the claims were sanctioned on the ground that substantial requirement for rebate under Rule 18 of the CER, 2002 had been fulfilled.

5.3 With reference to the finding of the Commissioner(Appeals) on page 3, para 4 of the OIA that the applicant had admitted in their reply that the supplies were tainted and were figuring in the alert list of the Department, the applicant submitted that these findings were a reproduction of the contents of para 19 of OIO dated 27.02.2012. They submitted that the factual position was that the applicant had vide letter dated 20.02.2012 stated at para 6 thereof that few of their suppliers were found in the alert list in respect of which the claims had been disallowed as per Order dated 21.05.2008. They stated that the amount of the claim disallowed was only Rs. 34,764/- and were pertaining to 27 claims out of Rs. 20,64,526/- and the present claims were not part of the said order. It was therefore averred that the rejection of the rebate claims on the basis of their letter was grossly erroneous. In this regard, they submitted a copy of the OIO No. 1065/08-09 dated 21.05.2008. In the light of these submissions, the applicant prayed that their Revision Application be allowed and their rebate claims amounting to Rs. 5,15,451/- be sanctioned alongwith interest.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal. The issue involved is that the applicant had not followed the procedure laid down in para 3(a)(xi) of Notification No. 19/2004-CE(NT) dated 06.09.2004 read with

para 6.1 of Chapter 8 of the CBEC Manual, that the supplies to the applicant were tainted and figured in the alert list of the Department and therefore the applicant may also be a party to the fraudulent availment of CENVAT credit.

7.1 Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 provides that where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods. Government notes that in the instant case the Department has claimed that the goods were cleared without central excise supervision whereas the applicant has claimed that export goods under ARE-1 No. 18/2004-05 dated 12.01.2005 had been cleared under central excise supervision.

7.2 Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a)-(xi)-of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to the effect that goods were actually exported etc. If the correlation is established between export documents and Excise document, then export of duty paid goods may be treated as

completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004. The contentions of the Department are inclined towards procedural infractions of Notification No. 19/2004-C.E. (N.T.), dated 06.09.2004 on the part of the applicant. Export oriented schemes like rebate/drawback are not deniable by resorting to technical interpretation of procedures, etc.

7.3 Government observes that there has been no attempt by the original authority in Order-in-Original No.2261/11-12/Dy. Comm (Rebate)/Raigad dated 27.02.2012 to co-relate Excise documents and export documents submitted by the applicant in respect of the rebate claims submitted by the applicant. This verification by the original authority is also necessary to establish that the goods cleared for export under the aforesaid ARE-I applications were actually exported. Government further holds that if the documentary evidences submitted by the applicant could establish co-relation between goods cleared from the factory for export and goods exported then the substantial benefit of rebate cannot be denied for such procedural lapse; if other conditions of notification are complied with.

8.1 As regards rejection of rebate claim on account of failure on the part of the applicant to prove that that they had made duty payments through credits accumulated out of genuine duty payments of inputs; viz. grey fabrics/yarn and their actual receipt, Government observes that these observations are entirely based on an alleged admission by the applicant that their suppliers are tainted. This allegation has been controverted by the applicant stating that the so called admission on their part of supplies figuring in the alert list of the Department were covered under an Order dated 21.05.2008 and involved claims amounting to Rs. 34,764/- and which were not part of the claims involved in the present case. Government observes that the OIO and the OIA do not even mention the names of the tainted suppliers. Government further observes that the rebate claims were rejected as the applicant did not produce evidence of the genuineness of the CENVAT Credit availed by the processors; that the goods had been 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 may also be a party in the said fraudulent availment of CENVAT Credit; that the rebate sanctioning authority was apparently not satisfied about the bona fide/duty-paid character of the exported goods.

8.2 Government, in this case notes that there is nothing on record to show that there was any further investigation/issuance of show cause notices, confirmation of demand of irregular CENVAT Credit etc. by the concerned Commissionerate against these unnamed suppliers. It would go without saying that unless the original supplier has been acted against for the duty paid being fraudulent, there cannot be any basis for denying the CENVAT credit at the end of the recipient. It appears that no such verification has been done by the original authority or the Commissioner(Appeals). This verification is imperative to establish whether the CENVAT credit availed & subsequently utilized by the processor/manufacturer for payment of duty towards the above exports was genuine or otherwise. Government therefore, is of the considered opinion that the Order in Original No.2261/11-12/Dy.Comm (Rebate)/Raigad dated 27.02.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate lacks appreciation of evidence and hence is not legal and proper.

9. In view of above discussion, Government modifies impugned Order-in-Appeal to the extent discussed above and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRC, duty paying documents etc. for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the principles of natural justice.

10. Revision application is disposed off in above terms.

11. So ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 142/2019-CX (WZ) /ASRA/Mumbai DATED 04.11.2019

To,

M/s. Murli Exports
Mody Estate,
1st Floor, LBS Marg,
Ghatkopar(W),
Mumbai 400 086

Copy to:

1. The Commissioner of CGST & CX, Belapur Commissionerate.
2. The Commissioner of CGST & CX, (Appeals), Belapur.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy