

REGISTERED SPEED POST



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. 195/1657/12-RA / 5235

Date of Issue:- 18.11.19

ORDER NO. 117/2019-CX(SZ)/ASRA/MUMBAI DATED 05.11.2019
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.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/1657 /12-RA	M/s R.J.Fashions, Surat	Commissioner, Central Excise, Belapur.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. US/524/RGD/2012 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision application is filed by M/s R.J. Fashions, Surat (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. US/524/RGD/2012 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The Brief facts of the case are that the applicants have filed 7 rebate claims during the period February-2005, October-2005 and December 2005 for Rs. 13,25,331/- (Rupees Thirteen Lakh Twenty Five Thousand Three Hundred Thirty One Only). The Deputy Commissioner, Central Excise (Rebate), Raigad vide Order in Original No. 2043/11-12/DC (Rebate)/ Raigad dated 13.02.2012 rejected all seven rebate claims on the ground that :

2.1 The exported goods were fully exempt under Notification No. 30/2004-CE dated 09/07.2004. It was alleged that the applicant should not have paid duty and did not have option to pay duty in view of the said notification and CBEC Circular No. 937/27/2010-CX dated 26.11.2011.

2.2 The adjudicating authority also found that the purchase in respect of RC No. 5019 and 5018 dated 28.02.2005 is from non-existing firm / fake firm and utilised the Cenvat Credit availed fraudulently on the bogus invoices.

2.3 In respect of RC No. 25530, the processor/s Kritida Silk Mills had not provided the copy of invoice of grey fabrics used for manufacture of exported goods; the duty payment certificate from the Central Excise authorities were not submitted; the self sealing and supervision certificate on ARE-1s are not given; Chapter Sub Heading number and description of the Central Excise Tariff declared in the Excise Invoice and in the corresponding shipping bills were not tallying; BRC not submitted etc.

3. The applicant being aggrieved by the said order in original filed appeal before Commissioner (Appeals-II), Mumbai. The Appellate Authority vide impugned order in appeal upheld the order in original. The appellate authority has observed that :

3.1 The ARE-1s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat Credit under the provisions of Cenvat Credit Rules, 2004. Therefore, it is clear that they could not have been possibly exempt under Notification 30/2004-CE. Accordingly, this ground for rejection of rebate claim cannot be sustained and has to be set aside.

3.2 In respect of BRC, the Appellate Authority found that the same were submitted by the applicant then.

3.3 The classification of the product in the Excise Invoices cannot be held as wrong merely on the basis of RITC Code number mentioned in the corresponding Shipping Bills.

3.4 The appellate authority also set aside the ground of rejection of rebate claims for not mentioning the authorised signatory and wrongly mention of refund sanctioning authority..

3.5 The appellate authority uphold the findings of the adjudicating authority in respect of RC No. 5019 and 5018 as the jurisdictional Superintendent has reported the purchase is from non-existing firm/fake firm and the Cenvat Credit availed and utilised fraudulently on the bogus invoices. Similarly in respect of RC No. 25530, the jurisdictional Superintendent reported that the processor M/s Kritida Silk Mills had not provided the copy of invoice of grey fabrics and for manufacture of exported goods and thus the necessary verification could not be conducted and hence the order of the adjudicating officer is upheld.

3.6 It is observed that the provision of self sealing / self certification is a mandatory provision and the applicant has not followed the procedure as laid-down in para 3(a) (xi) of the Notification 19/2004-CE (NT) dated 06.09.2004.

3.7 The applicant did not produce the evidence of the genuineness of the Cenvat Credit availed by the processors. The applicant are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. During material time a number of processors fraudulently availed Cenvat Credit on the basis of invoices issued by bogus / non-existent grey manufacturers. The appellant may also be a party in the said fraudulent availment of Cenvat Credit. The bonafide nature of transaction between the merchant-exporter and supplier-manufacturer is imperative

for admissibility of the rebate claim filed by the merchant exporter. So the duty paid character of goods exported is not prove. As such the rebate claim was rightly rejected.

4. Being aggrieved, applicant has filed the instant revision application before Central Government under Section 35EE of Central Excise Act, 1944, on the grounds that:-

i) The appellate authority have not decided the vital points of the law that the show cause notice dated 15.11.2011 issued for the rebate claims field in 2005 were beyond the period of five years and therefore the said notice is not sustainable.

ii) The findings of the Appellate Commissioner on the basis of Bombay High Court in the case of Rainbow Silk and Revision authority in the case of Sheetal Exports are not applicable at all as the appellate is manufacturer exporter and have exported goods beyond doubt on payment of duty and the invoices of the exporter and ARE-1s are not under challenge.

iii) The BRCs for export of the goods have been received and accepted by the adjudicating authority as well as Commissioner (Appeals). This clearly shows that the goods indicated in the duty paid invoices have been exported.

iv) The rejection of the claim on the grounds that the jurisdictional Superintendent reported that the purchase is from non-existent firms / fake firms and the Cenvat Credit availed and utilised fraudulently on the bogus invoices. This is totally incorrect since they have not been issued any show cause notice for denying the Cenvat Credit taken on the basis of non existing firms / fake firms.

5. A Personal Hearing was held in matter on 12.12.2017, 08.02.2018, 13.12.2018 and 23.08.2019. Neither the applicant nor respondent attended the same. Neither the applicant nor the respondent attended any of the personal hearings so granted to them. In the event, the revision application is taken up for decision on the basis of documents and evidences available on record.

6. The Government observes that the Appellate Authority has set aside some of the grounds of rejection of the rebate claims by the Adjudicating Authority. Therefore, the findings in respect of remaining issues upheld by the Appellate Authority and appealed by the respondent are discussed below.

7. The Government observes that the Commissioner (Appeals) vide impugned order upheld the rejection in respect of rebate claims holding that the provision of self sealing / self certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is a mandatory provision and the applicant has not followed the procedure. The Commissioner (Appeals) also upheld the rejection of the rebate claims as the applicant did not submit any document to prove the genuineness of the Cenvat Credit from which the duty payment had been made. In this regard, Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 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 impugned goods were cleared from the factory without sealing by Central Excise officers and without certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed.

8. 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 correlatable 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 effect that goods 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 6-9-2004. The contention of the department had been inclined towards procedural infractions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 on the part of applicant. Export oriented schemes like rebate/drawback are not deniable by merely technical interpretation of procedures, etc.

9. Government observes that the ARE-1s No. 61/04-05 dated 05.07.2004, 62/04-05 dated 05.07.2004, 236/04-05 dated 26.10.2004 bear remarks "The goods packed in my presence" and duly endorsed by the applicant. It is also observed that there are no finding of original authority in Order in original No. 2043/11-12/Dy. Comm (Rebate)/Raigad dated 13.02.2012 regarding correlation between Excise documents and export documents submitted by applicant in respect of impugned Rebate claims. This verification from 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.

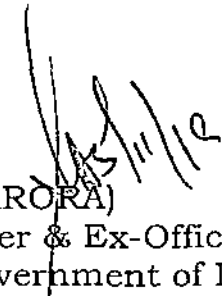
10. As regards rejection of rebate claims No. 5019 & 5018 dated 28.02.2005 on account of failure on the part of the applicant to produce documents to prove the genuineness of the Cenvat credit from which duty payment had been made since the goods exported by the applicant in the instant case were procured from non-existing firms / fake firms, the Government observes that in respect of RC No. 25530 dated 28.10.2005, the processors, M/s Kritida Silk Mills did not provide the copy of the invoice of grey fabrics used for manufacture of exported goods. Government, therefore, observes that the rebate claims were rejected mainly for the reason that 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 from the certificate given on the triplicate copy of A.R.E. 1 received from the Jurisdictional Superintendent of Central Excise (Range Office).

11. 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 the applicant or the processors supplying grey fabrics to them. This verification from the original authority was also necessary, 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 considered opinion that the Order in Original No. 2043/11-12/Dy.Comm (Rebate)/Raigad dated 13.02.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate lacks appreciation of evidence and hence is not legal and proper.

12. 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 after receipt of said documents from the respondent and following the principles of natural justice.

13. Revision application is disposed off in above terms.


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

To,

M/s R.J. Fashions,
5101, B-Wing, 3rd Floor,
Raghukul Textile Market, Ring Road,
Surat – 395 002.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Belapur, 1st floor, CGO Complex, Sector 10, C.B.D. Belapur, Mumbai – 400 614.
2. The Commissioner of CGST (Appeals), Raigad, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai – 400 614.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX, Raigad.
4. Sr. P.S. to AS (RA), Mumbai.
5. ✓ Guard file
6. Spare Copy.