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**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, Cuff Parade,
Mumbai- 400 005

F. NO. 195/762/13-RA/5228

Date of Issue: 18.11.19

ORDER NO. 148/2019-CX (WZ)/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.

Applicant : M/s. Nagreeka Foils Ltd., Mumbai.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal
No.US/110/RGD/2013 dated 26.04.2013 passed by the
Commissioner of Central Excise (Appeals-II) Mumbai.

ORDER

This revision application is filed by M/s. Nagreeka Foils Ltd., 7 Kala Bhavan, 3 Mathew Road, Mumbai 400 004 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/110/RGD/2013 dated 26.04.2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to the Order-in-Original No. Raigad/ADC/98/12-13 dated 28.12.2012 passed by the Additional Commissioner of Central Excise, Raigad.

2. Brief facts of the case are that the applicant had filed 24 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E. (NT) dated 06.09.2004 amounting to Rs.33,69,289/-. The original authority viz. Deputy Commissioner, Central Excise (Rebate), Raigad sanctioned the said rebate claims vide Order in Original No. 987/11-12 dated 12.10.2011.

3. Being aggrieved by the Order-in-Original, Department filed appeal before the Commissioner (Appeals) on the ground that the applicant exported the goods by availing benefit under Notification No. 41/2001-CE(NT) dated 26.06.2001 as certified by them at Sr. No. 3(b) of ARE-1 in respect of Rebate claim Nos.9336 to 9342 dt.17.8.11, 9690, 9692 & 9694 dt.23.8.11 amounting to Rs.4,61,850/-. The Commissioner (Appeals) vide Order in Appeal No. US/338/RGD/2012 dated 22.05.2012 set aside Order in Original No.987/11-12 dated 12.10.2011 and allowed the Revenue's Appeal.

4. Being aggrieved by the Order in Appeal No. US/338/RGD/2012 dated 22.05.2012, the applicant filed revision application No.195/788/12-RA under Section 35 EE of Central Excise Act, 1944 before Central Government on the grounds mentioned therein.

5. In the meantime, protective demand vide SCN F.No. V/Adj(SCN)15-393/Reb/Appeal/Rgd/11-12 dated 22.03.2012 was issued to the applicant

proposing to recover an amount of Rs.4,61,850/- alongwith interest and penalty, in view of review of the said order by Commissioner.

6. In view of the Order in Appeal No. US/338/RGD/2012 dated 22.05.2012 which set aside Order in Original No.987/11-12 dated 12.10.2011 sanctioning rebate claim of Rs.4,61,850/-, the Additional Commissioner, Raigad vide Order in Original No. Raigad/ADC/98/12-13 dtd.28.12.2012 confirmed the demand of Rs. 4,61,850/- alongwith interest and also imposed penalty of Rs.5000/-on the applicant.

7. Being aggrieved by the Order in Original No. Raigad/ADC/98/12-13 dtd.28.12.2012, the applicant filed appeal before Commissioner (Appeals) who vide impugned Order in Appeal No. US/110/RGD/2013 dated 26.04.2013 upheld the Order in Original passed by the Additional Commissioner, Raigad.

8. Being aggrieved by the Order in Appeal No US/110/RGD/2013 dated 26.04.2013, the applicant filed the present revision application under Section 35 EE of Central Excise Act, 1944 before Central Government mainly on the following grounds that:-

- 8.1 the applicant have challenged Order in Appeal No,US/338/RGD/2012 dated 22.05.2012 by filing revision application before Government of India therefore ration of said Order in Appeal would not apply;
- 8.2 the Adjudicating authority should have awaited the decision of revision application filed by them against Order in Appeal No. US/338/RGD/2012 dated 22.05.2012.
- 8.3 the fact of the Applicants non-availment of facility under Notification No. 41/2001-CE (NT) dated 26.6.2001 gets substantiated from the verification report of the jurisdictional Supdt. to Additional Commissioner of Central Excise. However Commissioner (Appeals) did not take cognizance of the same.
- 8.4 the Commissioner (Appeals)'s findings that it is not open to the assessee to reassess the said 10 ARE-1's is incorrect and not sustainable as it is not the case of reassessment or change in assessments but it is a case of clerical error of striking "declaration at para 3(b) on ARE-1 "availing facility", they had

wrongly struck the expression "without availing facility" instead of striking "availing facility".

- 8.5 their non-availment of facility under Notification No. 41/2001-CE (NT) and succeeding Notification No. 19/2004-CE (NT) dated 6.9.2004 gets substantiated from 14 out of 24 ARE-1's where in the expression struck was "availing facility" and in 10 ARE-1 by mistake the expression struck was "without availing facility" giving an exactly opposite meaning of availing facility. This is a bonafide clerical mistake which Ld. Commissioner (Appeals) should have appreciated by invoking Ld. Supdt.'s verification report dated 16.5.2012.
- 8.6 above submissions would substantiate that their preparation of ARE-1 is correct as they have only claimed rebate of duty paid on Aluminums Foil Containers. As it is not the case of claim of rebate of duty paid on inputs, they were not required to prepare ARE-2 as erroneously observed by Commissioner (Appeals) and hence, preparation of ARE-1s for export is in order.
- 8.7 to make the matter clear they now have obtained certificate from Suptd. of Central Excise to the effect that during the period from March 2011 to August 2011, they have not at all claimed input stage rebate and also had not availed facility under Notification No. 41/20010E (NT) dated 26.6.2001 and succeeding Notification No. 21/2004-CE (NT) dated 6.9.2004.
- 8.8 for imposing penalty, presence of mens-rea is a mandatory requirement and in the absence of it imposition of penalty is unjustified;
- 8.9 since they are not liable to pay any duty, as explained above, the question of charging retrospective interest under Section 11AB of Central Excise Act,1944 does not arise.

In view of their above submissions the applicant prayed for setting aside impugned Order in Appeal.

9. A Personal hearing in this case was held on 23.08.2019 and Shri Dinesh Kumar Mishra, Sr. AGM, Commercial and Finance appeared for hearing on behalf of the applicant and reiterated the submission filed through Revision Application and referred to earlier GOI Order No.31/2017 dated 29.12.2017 in which relief was granted to them. He also filed additional submissions on the date of hearing.

10. In their additional submissions dated 23.08.2019 the applicant contended that their earlier Revision Application (RA 195/788/12) filed against Order in Appeal No. US/338/RGD/2012 dated 22.05.2012 has been decided by Principal Commissioner vide Order No.31/2017-CX(WZ)/ASRA/Mumbai dated 29.12.2017 by setting the said Order in Appeal. He also enclosed the copy of the said GOI order to their submissions. Since the present Revision Application was similar and relevant to the Revision Application No. 195/788/12-RA which was decided, the applicant also prayed for setting aside Order in Appeal No. US/110/RGD/2013 dated 26.04.2013.

11. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal and also GOI Order No.31/2017-CX(WZ)/ASRA/Mumbai dated 29.12.2017.

12. On perusal of records, Government observes that a protective demand cum Show Cause Notice dated 22.03.2012 was issued to the applicant (as detailed at para 5 supra) demanding an amount of Rs. Rs.4,61,850/-, of erroneously sanctioned rebate claims. The Additional Commissioner, Central Excise, Raigad decided the said Notice wherein he confirmed the demand of Rs. 4,61,850/- alongwith interest and also imposed penalty of Rs.5000/- on the applicant vide Order in Original No. Raigad/ADC/98/12-13 dated 28.12.2012. The applicant challenged the same before the Commissioner (Appeals) who rejected applicant's appeal vide Order in Appeal No. US/110/RGD/2013 dated 26.04.2013 (impugned order).

13. Government further observes that while upholding the Order in Original NO. Raigad/ADC/98/12-13 dated 28.12.2012, Commissioner (Appeals) in his impugned Order relied on Order in Appeal No. US/338/RGD / 2012 dated 22.05.2012 (referred to in para 3 supra) against which the applicant had filed revision application No.195/788/12-RA.

14. Government notes that the aforesated Revision Application filed by the applicant against Order in Appeal No. US/338/ RGD / 2012 dated 22.05.2012 has since been decided by the Principal Commissioner & ex-


officio Additional Secretary to the Govt. of India vide Order No.31/2017-CX(WZ)/ASRA/Mumbai dated 29.12.2017 by setting aside the Order in Appeal No. US/338/ RGD / 2012 dated 22.05.2012 and restoring the Order in Original No. 987/11-12/DC(Rebate)/Raigad dated 12.10.2011 which had sanctioned rebate claim of Rs. Rs. 4,61,850/-.

15. Government, therefore, observes that as the basis of the impugned order has been set aside by the GOI vide its Order No.31/2017-CX(WZ)/ASRA/Mumbai dated 29.12.2017 (supra), the entire impugned order which had upheld Order in Original No. Raigad/ADC/98)/12-13 dated 28.12.2012 confirming protective demand of Rs. 4,61,850/- alongwith interest and penalty also falls.

16 In view of above circumstances, Government sets aside the impugned Order-in-Appeal No. US/110/RGD/2013 dated 26.04.2013.

17. Revision Application thus succeeds in above terms.

18. So ordered.


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

ORDER No. \148/2019-CX (WZ) /ASRA/Mumbai DATED 05.11.2019

To,
M/s. Nagreeka Foils Ltd.,
7, Kala Bhavan, 3
Mathew Road,
Mumbai - 400 004.

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5thFloor,CGO Complex, Belapur, Navi Mumbai, Thane..
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur Commissionerate.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.