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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, Cuffe Parade,
Mumbai- 400 005

F.No.195/764-767/2013-RA / 1490

Date of Issue: 12/02/20

ORDER NO. ¹⁴⁹⁻¹⁵² /2020-CX (WZ)/ASRA/MUMBAI DATED 03.02.2020 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 Alok Industries Ltd.

Respondent : Commissioner (Appeals-I), Central Excise, Mumbai Zone-I

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. BR/183 to
186/Th-I/2012 dated 26.06.2013 passed by the Commissioner
(Appeals-I), Central Excise, Mumbai Zone-I.

ORDER

These four Revision Applications were filed by the M/s Alok Industries Ltd, Peninsula Towers, Peninsula Corporate Park, G.K. Marg, Lower Parel, Mumbai 400 013 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. BR/183 to 186/Th-I/2012 dated 26.06.2013 passed by the Commissioner (Appeals-I), Central Excise, Mumbai Zone-I.

2. In brief, the Applicant, is a manufacturer exporter and had procured the goods from M/s Sainath Enterprises, Bhiwandi, job worker of excisable goods falling under Chapter Heading 63 of the Central Excise Tariff Act, 1985 and cleared them under four ARE-1s for export. At the time of export the job worker paid the duty totally to Rs. 6,62,685/- under Rs 23A Part-II. Subsequently, the Applicant realized the error that the job worker wrongly paid the duty at 4.12% instead of 8.24% applicable to goods of other than 100% cotton. The Applicant voluntarily paid differential duty of Rs. 6,62,685/- in cash in PLA vide debit entry No. 13 dated 16.06.2008 and filed four rebate claims totally to Rs. 13,25,370/- under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER') read with Notification No. 19/04-CE(NT) dated 06.09.2004 (herein after as 'Notfn 19/04'). The Assistant Commissioner, Central Excise, Kalyan I Division vide Orders-in-Original Nos. R-356/08-09, R-357/08-09, R-358/08-09 and R-359/08-09 all dated 08.08.2008 sanctioned the rebate amount totally to Rs. 13,25,370/-. Against the said four Orders-in-Original, the Department filed appeal with the Commissioner(Appeals) on the grounds that the Applicant had declared the description of the export product as 100% cotton processed made ups, attracting Central Excise duty @ 4% Ad Valorem plus 2% + 1% Cess on the excise invoices and ARE-1s. However, each respective shipping bills, customs invoices of the ARE-1 mentioned the goods as 60% Cotton + 40% Polyester blended processed made ups, attracting duty @ 8% Adv plus 2% +1% Cess and at the time of clearance, the manufacturer had paid the duty @4% +3% Cess. Thereafter, they paid the differential duty and claimed the rebate for the whole amount. But, as per the ARE-1s and invoices, the

total duty payable was Rs. 6,62,685/-, however, the rebate claims had been erroneously granted in excess of Rs. 6,62,685/-. The Range Staff examined the goods at the time of clearance from the factory and found that same were 100% Cotton processed made ups. The manufacturer had also prepared and issued invoices and ARE1s showing export produce as 100% Cotton. Though the samples appears to be been drawn, but the same were not subjected to test as no reference about the same leading to change in description of the goods have been made in the Applicant's invoice and Shipping Bills. When the containers, duly sealed by the Central Excise Officers, where not opened for examination, as per the instruction contained in the Chapter 8 of CBEC's Central Excise Manual of Supplementary Instructions and the goods export were "100% Cotton processed made ups" only, therefore the rebate sanctioned does not appears to be correct. And to safe guard Government Revenue, the Department then issued protective demand i.e. four Show Cause Notices all dated 12.02.2009. The Commissioner(Appeals), Central Excise, Mumbai-I vide Order-in-Appeal No. TH-I/RKS/12/2011 dated 12.09.2011 set aside the four Orders-in-Original all dated 08.08.2008 so far as the same relate to erroneously sanction of rebate claim in excess of Rs. 6,62,685/- and accordingly, restricted the rebate claims sanctioned to Rs. 6,62,685/- instead of Rs. 13,25,370/-. The appeals filed by the department was allowed with consequential relief and the impugned Orders-in-Original were modified to that extent. Aggrieved, the Applicant then filed a Revision Application and the Revisionary Authority vide GOI Order No. 1292/13-CX dated 01.10.2013 set aside the Order-in-Appeal dated 12.09.2011 and restored the impugned Orders-in-Original. Meanwhile, the protective demand/SCNs were adjudicated and the Deputy Commissioner, Central Excise, Kalyan-I Division vide Orders-in-Original all dated 28.12.2012 confirmed the demand and ordered for recovery of interest. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals-I), Central Excise, Mumbai Zone-I who vide Orders-in-Appeal No. BR/183 to 186/Th-I/2012 dated 26.06.2013 upheld the Orders-in-Original and rejected all the four appeals.

3. Being aggrieved, the Applicant have filed the Revision Applications on the grounds that they had correctly discharged the duty payment totaling to Rs. 6,62,685/- as the made ups exported from the job worker viz M/s Sainath Enterprises was of composition of 60% Cotton + 40% Polyester attracting 8.24% duty, whereas the job worker inadvertently declared the same as 100% Cotton and originally paid duty of only 4.12%. On realizing the lapse, the Applicant themselves approached the department and paid the differential duty of Rs. 6,62,685/- and then filed rebate claims. The Asstt. Commissioner, Division-I, Kalyan correctly sanctioned the four rebate claims totally to Rs. 13,25,370/-. The Commissioner(Appeals) illegally confirmed the demand without considering the Applicant's various submissions and simply by relied upon the illegal-Order-in-Appeal No. TH-I/RKS/12/2011 dated 12.09.11 passed by the Commissioner(Appeals). Further, the Commissioner(Appeals) also erred in demanding interest which is not applicable in this case. As there is no dispute that the Applicant paid the entire disputed demand in cash which is required to be refunded to the Applicant either as the export rebate or towards excess payment on exports, therefore under no circumstances, the amount can be retained by the department. Further the issue involves revenue neutrality situation and under no circumstance the amount can be retained by the Department. The Applicant prayed that the Order-in-Appeal dated 28.12.2012 be set aside fully.

~~4. A personal hearing in the case was held on 03.10.2019 and was attended by Shri A.R. Shaikh, Authorized Representative of the Applicant. The letter dated 03.10.2019 was also submitted by the Applicant outlining the chronology of events.~~

5. 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.

6. On perusal of the records, it is observed that the Applicant had effected exports of made ups of fabrics having blending composition of 60% cotton +40% Polyester from the premises of the job worker M/s Sainath Enterprises, Bhiwandi. At the time of export, the job worker inadvertently declared the same as 100% Cotton and while preparing 04 ARE-1s and Excise invoices paid the duty at @4.12% totally to Rs. 6,62,685/- under RG 23A Part-II. However, in the respective Shipping Bills and Custom Invoices, the Applicant correctly reflected the goods as 60% cotton + 40% Polyester blended made ups. On realizing the error, that the duty for blended made ups was @8.24%, and they had paid only duty @4.12%, the Applicant intimated the department and paid the differential duty totally to Rs. 6,62,685/- in PLA. Subsequently, the Applicant then filed 4 Rebate claims for total duty amounting to Rs 13,25,370/- which was sanctioned by the Original Authority vide four Orders-in-Original all dated 08.08.2008. However, the Department then filed appeal with the Commissioner(Appeals) and also to safe guard Government Revenue, issued 4 Show Cause Notices which have resulted in the current Revision Applications. The details of the case are as given below:

Sl.No.	Rebate amount claimed (Rs)	ARE-1 No & date	S/B No & Date	Duty paid vide RG23A Part-II dt 2.1.08 (Rs)	Duty paid in cash/PLA dt 16.6.08 (Rs)	OIO No. & dated	Sanctioned rebate amount (Rs)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	3,57,724	66 dt 2.1.08	5906262 dt 2.1.08	1,78,862	1,78,862	R-356/08-09 dt 8.8.08	3,57,724
2	1,82,090	67 dt 2.1.08	5906514 dt 2.1.08	91,045	91,045	R-357/08-09 dt 8.8.08	1,82,090
3	4,32,546	64 dt 2.1.08	5906517 dt 2.1.08	2,16,273	2,16,273	R-358/08-09 dt 8.8.08	4,32,546
4	3,53,010	65 dt 2.1.08	5906213 dt 2.1.08	1,76,505	1,76,505	R-359/08-09 dt 8.8.08	3,53,010
Total	13,25,370			6,62,685	6,62,685		13,25,370

Order-in-Appeal		GOI Order No. & date	Protective SCN dt & Amount (Rs)	Order-in Original		OIA No. & date	Four Revision Applications
No. & date	Restricted the sanctioned amount			No. & dated	Confirmed demand amount (Rs)		
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Commr(A) OIA No. TH-1/RKS/12/2011 dated 12.09.11	1,78,862	GOI Order No. 1292/13-CX dated 01.10.13 restored the impugned Orders-in-Original at Col.(7)	dt12.1.09 1,78,862	10/2012-13 dt 28.12.12	1,78,862	OIA No. BR/183 to 186/Th-1/2012 dt 26.06.13 upheld the Orders-in-Original at Col. No. (14)	F.No.195/764 - 767/2013-RA
	91,045		dt12.1.09 91,045	11/2012-13 dt 28.12.12	91,045		
	2,16,273		dt12.1.09 2,16,273	12/2012-13 dt 28.12.12	2,16,273		
	1,76,505		dt12.1.09 1,76,505	13/2012-13 dt 28.12.2012	1,76,505		
	6,62,685		6,62,685		6,62,685		

7. Government notes that all the points of issues raised by the Applicant in the current Revision Applications has already been decided by this authority vide GOI Order No. 1292/13-CX dated 01.10.2013

"7. On perusal of records, Government observes that in the instant case, as per ARE-1 the 100% Cotton made up were cleared for export on payment of duty @4% +E.Cess of Rs. 6,62,685/-. The description of goods given in Shipping Bills was 60% Cotton + 40% Polyester blended processed fabrics made ups which attract the duty @ 8% + E.Cess. The manufacturer paid the differential duty of Rs. 6,62,685/- through PLA on realizing the mistake. The applicant has claimed the rebate of Rs 13,25,370/- on the grounds that Job worker had committed mistake in declaring the said goods as of 100% Cotton and paying duty @4%. Since the duty was paid in PLA/Cash, and goods were claimed to be as declared in the Shipping-Bill and commercial invoice. Department has not got the goods tested and the visual examination can not confirm whether goods are 100% Cotton made ups or 60% Cotton + 40% Polyester made ups. As such the differential duty of Rs. 6,62,685/- paid subsequently from PLA cannot be faulted with. There is no reason to deny the rebate of total duty paid on the excisable goods exported since the actual goods exported are claimed to be 60% Cotton + 40% Polyester blended processed fabrics made ups. The original authority was right in sanctioning rebate claim of total duty paid, under rule 18 of Central Excise Rule 2002 read with Notification No. 19/04-CE(NT) dated 6.9.04. In view of this position, Government set aside the impugned order-in-appeal and restores the impugned order-in-original.

Thus Government thus finds that the case/ issue is Res-Judicata as the same has already been decided and the impugned Orders-in-Originals all dated 08.08.2008 have been upheld.

8. In view of above, Government finds no infirmity in the four Orders-in-Original all dated 08.08.2008 and the same is upheld and Orders-in-Appeal No. BR/183 to 186/Th-I/2012 dated 26.06.2013 passed by the Commissioner (Appeals-I), Central Excise, Mumbai Zone-I subsequently are set aside.

9. Revision applications are accordingly allowed.

10. So, ordered.


(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. ¹⁴⁹⁻¹⁵² /2020-CX (WZ)/ASRA/Mumbai DATED 03.02.2020.

To,
M/s Alok Industries Ltd,
Peninsula Towers,
Peninsula Corporate Park,
G.K. Marg, Lower Parel,
Mumbai 400 013.

Copy to:

- ~~1. The Commissioner (Appeals-I), Central Excise, Mumbai Zone-I,~~
- ~~2. The Commissioner of GST & CX, Mumbai Central, 115, M.K. Road, Opp. Churchgate Station.~~
- ~~3. Sr. P.S. to AS (RA), Mumbai~~
- ~~4. Guard file~~

5 Spare Gpy