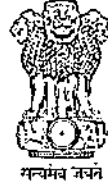


REGISTERED SPEED POST AD



**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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/1655/12-RA/5490

Date of Issue: 27.11.19

ORDER NO. 152/2019-CX (WZ) /ASRA/MUMBAI DATED 15.11.2019 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. Vishnulene Polyfab Ltd.  
114/3, Old Hanuman Lane,  
Ground Floor, Kalbadevi Road,  
Mumbai 400 002

Respondent : Commissioner, Central Excise, Raigad

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. US/504/RGD/2012 dated 22.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

**ORDER**

The revision application has been filed by M/s. Vishnulene Polyfab Ltd., 114/3, Old Hanuman Lane, Ground Floor, Kalbadevi Road, Mumbai 400 002(hereinafter referred to as "the applicant") against OIA No. US/504/RGD/2012 dated 22.08.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2.1 The applicant is a merchant exporter had procured excisable goods from M/s Shantinath Sythetics Pvt. Ltd., 227/202, Ward No. 18 Ind. Estate, Ichalkaranji(M/s SSPL) who are registered with central excise for manufacture of excisable goods falling under chapter sub-heading 5511, 5512, 5514, 5207, 5208, 5209 of the CETA, 1985. The applicant had exported the goods so procured and filed the following two rebate claims amounting to Rs. 1,59,806/- . The details of the claims are given below.

Sr. No.	RC No./Date	ARE-1 No./Date	Invoice No./Date	Amount claimed
1	32435/08.02.06	11/10.09.05	15/10.09.05	80786/-
2	32642/13.02.06	02/06.04.05	2/06.04.05	79020/-
			Total	159806

The Deputy Commissioner(Rebate), Raigad vide OIO No. 1759/11-12/DC(Rebate)/Raigad dated 12.01.2012 rejected the two claims on the ground that the exported goods were exempted under Notification No. 30/2004-CE dated 09.07.2004 and the payments made by the processor/manufacturer cannot be considered as payment of duty in terms of Section 3 of the CEA, 1944. It was further held that the genuineness of duty payment at the processors end and at the grey manufacturers end and the existence and functioning of grey fabrics supplier was not proved. Thus the conditions and procedures as laid down in Notification No. 19/2004-CE(NT) read with Chapter 8 of the CBEC Manual of Supplementary Instructions on export had not been fulfilled.

2.2 Aggrieved by the OIO dated 12.01.2012 passed by the Deputy Commissioner(Rebate), Raigad, the applicant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) found that the proviso to Notification No. 30/2004-CE makes it clear that the exemption contained in the notification is not applicable to goods in respect of which credit of duty on inputs has been taken under the provisions of the CCR, 2004. In the present case, the ARE-1's under which the goods had been exported clearly declare that the goods have been manufactured by availing the facility of CENVAT credit under the provisions of the CCR, 2004. Therefore, he held that this ground for rejection of rebate claim was untenable. With regard to the ground of non-submission of duty payment certificate taken by the Deputy Commissioner(Rebate) for rejection of rebate claim, the Commissioner(Appeals) referred para 8.4 of the CBEC Manual of Supplementary Instructions and observed that although the paragraph mentions only the triplicate copy of ARE-1 duly certified by and received from the jurisdictional Superintendent of Central Excise from which the goods were cleared for export as evidence of duty payment, there were no fetters on the powers of the rebate sanctioning authority to conduct or cause further verification in this regard. He further observed that the Commissioner, Central Excise, Raigad had also issued instruction No. 1/2006, 2/2006 and 1/2008 for proper verification of the rebate claims and that he had called upon the applicant to produce duty payment certificate which was not submitted. The Commissioner(Appeals) therefore held that the rejection of the rebate claim for want of duty payment certificate could not be faulted and therefore upheld the OIO vide OIA No. US/504/RGD/2012 dated 22.08.2012.

3. Aggrieved by the impugned OIA dated 22.08.2012, the applicant has filed revision application on the following grounds.

- (i) There is no dispute about the duty payment on the finished goods which have been exported and that the rebate claim was supported with the certificate issued by the Range Superintendent and also supported with a

copy of the CENVAT account establishing debit of duty. Therefore, they claimed to have satisfied the requirement of export of duty paid goods. It was submitted that the Commissioner(Appeals) had travelled beyond the requirement and rejected the rebate claim on the ground that the duty paid character of raw materials used by the manufacturer is not proved.

- (ii) The applicant submitted that in the present case, the manufacturer was M/s SSPL, Mumbai from whose premises they had exported the processed fabrics under the cover of ARE-1 & Excise Invoice and that the said manufacturer had paid duty on the export goods cleared from the factory. As per the provisions contained in chapter 8 of the Supplementary Manual, the exporter was only required to satisfy about the duty payment on the exported goods. They therefore averred that the Commissioner(Appeals) ought to have appreciated that the SCN issued by the rebate sanctioning authority demanding duty payment certificate of the inputs used by the manufacturer was beyond the provisions contained in chapter 8 of the supplementary manual which explains the procedure regarding submission of documents and sanction of rebate claim.
- (iii) The applicant contended that it was open to the Department to conduct verification about genuineness of duty credit availed by the manufacturer but such an exercise would have no relevance to duty payments made by the manufacturer and if the manufacturer had availed any inadmissible credit then the Department could recover it only from the said manufacturer but the rebate claim legally due to the exporter cannot be withheld.
- (iv) The applicant further submitted that in any case, there was nothing on record to show that the manufacturer M/s SSPL had availed any inadmissible credit and utilized such credit for debiting duty against the export clearances effected towards the subject rebate claims. There was

also nothing on record to show that the name of the said manufacturer was appearing in an alert notice.

(v) The applicant averred that the Commissioner(Appeals) had rejected the rebate claims on vague and baseless findings that during the relevant time various alert notices had been issued without specifically dealing with the manufacturers case. Therefore, the findings of the Commissioner(Appeals) were not supported by any evidence to prove that the manufacturer was availing any inadmissible credit and that the same was used for the subject export clearances.

4. The applicant was granted personal hearings on 19.12.2017, 08.02.2018, 13.12.2018, 14.12.2018 and 20.08.2019. However, none appeared on their behalf. They have also not filed any request for adjournment of hearing. Alongwith the intimations communicating the grant of personal hearing, the applicant had also been requested to file application for condonation of delay. However, they have not filed any such application for condonation till date.

5. Government observes that there is a delay of 15 days in filing revision application. The applicant had requested for time for filing application for condonation of delay. However, they are yet to file any such application. Albeit, Government in the interest of justice condones the delay in filing revision application since it is well within condonable limits.

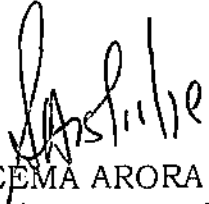
6. The Government has gone through the case records, the impugned Order-in-Appeal and the Order-in-Original. The issue involved in the revision application is that the applicant who is a merchant exporter had exported goods falling under chapter 52/55 of the CETA, 1985 from the factory of another manufacturer and had allegedly not submitted duty payment certificate as called upon by the rebate sanctioning authority. The applicant has emphasized the duty paid character of the exported goods and argued that the rebate should be sanctioned to them.

7.1 In this regard, Government finds that there is no mention of any show cause notice having been issued to the said processor or any direct allegation that the said processor had availed fraudulent and inadmissible CENVAT Credit on the strength of invoices issued by units which have been declared fake/fictitious units as per the various Alert Circulars issued by the Central Excise authorities. The finding recorded by the Appellate Authority is purely based on conjecture without any factual basis to arrive at such a conclusion. Admittedly, the bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer. However, there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original in this case.

7.2 Government therefore directs that detailed verification by original authority after examining the alert circulars and ascertaining whether the name of the manufacturer/supplier finds mention therein is required to be carried out. It may also be ascertained whether any investigation was carried out and SCN's issued for fraudulent availment of CENVAT credit. Government holds that verification by the original authority is necessary to establish the genuineness of the CENVAT credit availed & subsequently utilized by the processor for payment of duty towards the above exports. The impugned order is unsustainable in the absence of such verification by the Adjudicating Authority.

8. In view of the above facts, Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for adjudication on the basis of the observations recorded above. The applicant is also directed to submit all the requisite documents relating for verification. The adjudicating authority will complete the requisite verification expeditiously and pass a speaking order after following the principles of natural justice.

9. Revision application is disposed off in above terms.

  
( SEEMA ARORA )

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

ORDER No. 152/2019-CX (WZ) /ASRA/Mumbai DATED 15.11.2019

To,

M/s. Vishnulene Polyfab Ltd.  
114/3, Old Hanuman Lane,  
Ground Floor, Kalbadevi Road,  
Mumbai 400 002

Copy to:

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