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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.195/405/2013-RA

Date of Issue: 12/02/20

ORDER NO. 162/2020-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 Geekay International

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

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BR(350)TH-1/2012 dated 29.11.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by M/s Geekay International Co., Mittal Industrial Estate, 1st floor, 139, M.V. Road, Andheri(East), Mumbai 400 067(hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BR(350)TH-1/2012 dated 29.11.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The issue in brief is that the Applicant, exporter had exported Man Made Fabrics (MMF) and had filed 02 rebate claims total amounting to Rs. 1,11,540/- (Rupees One lakh Eleven Thousand Five Hundred and Forty Only) under Notification No. 19/2004-CE(NT) dated 06.09.2004 under Rule 18 of the Central Excise Rules, -2002 read with Section 11B of the Central Excise Act, 1944. The department then issued letter F.No. V/Reb/Geekay/681 & 682/C.Ex./K.I/06/5703 dated 13.09.2006 requesting the Applicant to submit the copies of input invoices against which their manufacturer had availed the Cenvat credit and relevant pages of RG 23A Part I & II and personal hearing was also granted to the Applicant on 21.09.2006. However, the Applicant did not appear for the personal hearing nor submitted a written submission against the proposed rejection. The Assisstant Commissioner, Central Excise, Kalyan-I Dn Vide Order-in-Original No 941/06-07 dated 12.01.2007 rejected the two rebate claims amounting to 1,11,540/. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Mumbai-I who vide his Order-in-Appeal No. BR(350)TH-1/2012 dated 29.11.2012 rejected their appeal and upheld the Order-in-Original dated 12.01.2007.

3. Being aggrieved, the Applicant then filed the current Revision Application on the grounds that they had neither received the show cause notice nor received the PH letter, hence could not submit their reply and also could not appear for personal hearing before the adjudicating authority. Notification No. 11/2004-CE(NT) dated 09.07.2004 omits Section 12B-Deemed manufacturer from 08.07.2004 and all the units working under

Section 12B was barred from taking any Cenvat credit from 09.07.2004 if they are not manufacturers and only trading . However, they were allowed to give their option either to reverse the credit taken on the fabrics in stock and clear such fabrics without payment of duty or keep their registration and clear the fabrics in stock in balance as on 09.07.2004 till the same is exhausted and pay the duty on these fabrics at the time of clearance till the stock lasts. In their case, the grey manufacturer who supplied the fabrics was working under 12B working under second option and was paying duty. Hence the majority of invoices were issued prior to 08.07.2004. Therefore the duty payment is valid and in order. The Applicant had along with the rebate application, filed the duty payment certificate received from their manufacturer M/s Shivkripa Synthetics Pvt Ltd, Bhiwandi who was falling ~~under the jurisdiction of the Kalyan-I Dn.~~ Both the manufacturer and the Range Office both were under the jurisdiction of the Adjudicating Authority. In such circumstances, the Adjudicating Authority instead of rejecting the genuine rebate claim could have directed the Range Officer to get the Form 11B verified from the Grey Fabrics suppliers end. Instead of writing to the Applicant, Merchant exporter to submit the record of manufacture which is very difficult to get and the Input Central Excise Invoice under which credit had been availed could have been called for from the manufacturer. The Applicant had filed all the Grey Purchase Central Excise Invoice with their appeal, however the Commissioner(Appeals) neither got them verified nor passed any order on the grey bills submitted by them. The physical export of fabrics was certified by the Customs and Central Excise Officers and they have received the remittances from abroad. There is no allegation that the finished goods cleared is not duty. Only allegation is that verification of duty paid on the grey fabrics is doubtful. The credit is availed by the Central Excise registered unit/manufacturer and a genuine one. They had filed all the documents along with the rebate claim for correlation with other documents. The Applicant prayed that the rebate claim of Rs. 1,11,540/- be sanctioned and refunded to them.


4. A personal hearing in the case was held on 09.10.2019 which was attended by Shri R.V. Shetty and Shri Sharad Shetty, Advocates on behalf of the Applicant. The Applicant stated that the Order-in-Original and Order-in-Appeal have been rejected on different grounds and all documents have been submitted by them.

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. In the instant case, the Applicant, Merchant exporter had exported Man Made Fabrics (MMF) and had then filed 02 rebate claims total amounting to Rs. 1,11,540/-. The claims were then rejected by the Assisstant Commissioner, Central Excise, Kalyan-I-Dn Vide Order-in-Original No. 941/06-07 dated 12.01.2007 as the Applicant had not submitted the input invoices against which their manufacturer had availed the Cenvat credit and relevant pages of RG 23A Part I & II. The Applicant submitted that they had neither received the show cause notice nor received the PH letter, hence could not submit their reply and also could not appear for personal hearing before the adjudicating authority. Applicant further submitted that they had filed all the Grey Purchase Central Excise Invoice along with their appeal before the Commissioner(Appeals). They had also received the remittance from abroad for this export. Government notices that the impugned Order-in-Original dated 12.01.2007 was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice.

7. In view of the above, Government sets asides the impugned Order-in-Appeal No. BR(350)TH-1/2012 dated 29.11.2012 and Order-in-Original No. 941/06-07 dated 12.01.2007. Government remands back the instance case to the original authority for fresh consideration, who shall consider and pass appropriate orders on the rebate claim and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

8. The Revision Application is disposed off in terms of above.
9. So, ordered.


(SEEMA ARORA)

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

ORDER No. \62 /2020-CX (WZ)/ASRA/Mumbai DATED 03.02.2020.

To,
M/s Geekay International Co.,
Mittal Industrial Estate,
1st floor, 139, M.V. Road,
Andheri(East),
Mumbai 400 067.

Copy to:

1. The Commissioner of Central Goods & Service Tax, Thane, Navprabhat Chambers, 4th floor, Ranade Road, Dadar, Mumbai 400 028
 2. Sr. P.S. to AS (RA), Mumbai
 3. Guard file
 4. Spare Copy.
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