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**F.No. 195/280/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 31/12/12

ORDER NO. 1637 /12-Cx DATED 30-11 -2012 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE,
1944 AGAINST THE ORDER-IN-APPEAL No.
52(DKV)CE/JPR-I/11 dated 20-02-2011 passed by
Commissioner of Customs & Central Excise (Appeals),
Jaipur-I.

APPLICANT : M/s. Ginni International Ltd.,
Neemrana.

RESPONDENT : Commissioner of Central Excise,
Jaipur.

ORDER

This revision application is filed by M/s. Ginni International Ltd., Neemrana against the Orders-in-Appeal No. 52(DKV)CE/JPR-I/11 dated 20-02-2011 passed by Commissioner of Customs & Central Excise (Appeals), Jaipur-I with respect to Order-in-Original passed by Deputy Commissioner of Central Excise, Division-II, Alwar.

2. Brief facts of the case are that M/s. Ginni International Ltd., Neemrana are engaged in the manufacturing of 100% Cotton Woven Fabrics i.e. grey as well as blended woven fabrics w.e.f. 01-10-2005, they have opted for zero duty option on the blended woven fabrics segment under Notification No. 30/2004-CE dt. 09-07-2004, without availing Cenvat Credit on input used in the manufacture of blended woven fabrics. The applicant vide their letters dt. 14-12-2005 and 28-07-2006 (revised) had filed a declaration under Notification No. 21/2004-CE (NT) dt. 06-09-2004, issued under Rule 18 of the Central Excise Rules, 2002 for claiming rebate of duty paid on excisable materials used in the manufacturing of goods exported declaring therein all the details like rate of duty of the goods, input-output ratio etc. They have further stated that as per declaration, consignments of such blended woven fabrics and 100% cotton woven fabrics grey have been exported in which duty paid inputs were used. Therefore, they have filed input stage rebate claim of duty amounting to Rs. 10,04,199/- against excise duty paid on inputs used in the manufacture of excisable goods, which had been exported out of India. The original authority after following due process of law rejected the rebate claims.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 One of the grounds on which the rebate in the present case has been denied is that the applicants availed duty drawback in respect of certain consignments exported. The applicants have admittedly claimed rebate to the extent of Rs. 10,04,199/- due to an inadvertent error and hence reduced the amount of rebate pertaining to those shipping bills where drawback was availed and submitted a revised claim of rebate to the extent of Rs. 8,20,125/-. Therefore, the Commissioner (Appeals) has observed that no discussion is required to be made since the applicants have accordingly reduced the rebate to the extent of Rs. 1,84,074/- from the original claim pertaining to few shipping bills where drawback had been claimed.

4.2 The main ground taken by the Commissioner (Appeals) to reject the claim of Rs. 8,20,125/- that the applicants did not export the goods under form ARE2 prescribed under Notification No. 21/2004-CE (NT) and accordingly to the Commissioner (Appeals), the conditions of Notification No. 21/2004-CE (NT) have not been fulfilled. The applicants submit that it is not the case of the department that the goods were not exported under claim of rebate on inputs. The applicants further submit that for availing the input stage rebate, they had filed necessary declaration with the Assistant Commissioner as early as on 14-12-2005 and subsequently on 26-07-2006 whereas the exports were effected under ARE-1 during August and September 2006. While making observation that the ARE-2 procedure was not followed, there is no whisper about the declarations filed by the applicants in respect of the input output ratio etc. In fact, the Commissioner (Appeals) has brushed aside the above documentary evidences while rejecting the rebate claim in respect of duty paid on inputs.

4.3 The applicants have admittedly used ARE 1 format instead of ARE 2 which they ought to have used. The applicants have submitted that all the details required under ARE 2 are already available in ARE 1 also and substantial requirements of filling declaration with regard to input output ratio as required under Notification No. 21/2004-CE (NT) have been fulfilled. Non-use of format ARE 2 is a lapse on the part of the applicants which is purely procedural in nature and that cannot be a ground to deny the substantive benefit of rebate to the applicants. The use of ARE 1 in

place of ARE 2 form has not caused any difficulty in sanctioning rebate claim of the applicants in as much as all the requirements of ARE 2 as discussed above have been fulfilled. It may also be pointed out that endorsements have been made by both Central Excise Officer and Customs Officers in part A and Part B of ARE 1. At the time of passing the goods for export, no objection was raised by the Central Excise with regard to the procedure being followed under ARE 1 instead of ARE 2. Thus, having fulfilled all the requirements contained in ARE 2, the benefit of rebate cannot be denied to the applicants. The Commissioner (Appeals) has observed that the procedure prescribed under ARE 1 and ARE 2 are different and they are not merely procedural but substantive. In order to substantiate the aforesaid observation, the Commissioner (Appeals) has only cited the illustration that drawback is not admissible for exports made against ARE 2, different colours for quintuplicate copies of both ARE 1 and ARE 2 are prepared etc. It is an admitted position that the applicants exported under ARE 1 forms instead of are 2.

4.4 The Commissioner (Appeals) has not controverted the fact that the goods have indeed been exported and that the applicants have filed declarations with the Assistant Commissioner with regard to input output ratio as required under Notification No. 21/2004-CE (NT). The Commissioner (Appeals) has merely concluded that the declaration filed by the applicants is not admissible without giving any reasons whatsoever. Further, against the declaration the Commissioner (Appeals) has not even discussed about the inaction on the part of the departmental authorities where the departmental authorities could have pointed out the procedural requirements when the declaration was filed as early as in Dec. 2005. It is well settled legal position that substantive benefit of rebate cannot be denied on the procedural infractions, so long as the fact that the goods have been exported is not disputed. Reliance has been placed upon following case laws:-

- a) Tablets India Ltd., Vs. Joint Secretary, MOF-2010 (230) ELT 191 (Mad.).
- b) STI India vs. CC & CE, Indore-2010 (19) STR 614 (MP).
- c) In re CCE, Bhopal -2006 (205) ELT 1093 (GOI).
- d) In re Modern Process Printers-2006 (202) ELT 632.

- e) In re CC & CE Nagpur-2006 (200) ELT 175.
- f) In re Akanksha Metals P. Ltd.-2003 (158) ELT 797.
- g) Upkar International V. CCE Rajkot-2004 (169) ELT 240.
- h) Mangalore Chemicals and Fertilisers- 1991 (55) ELT 435 (SC).

4.5 In the present case, the exports were effected in August 2006 and September 2006, yet the applicants have not been sanctioned rebate by raising dispute on procedural lapses. The applicants would be entitled to cash rebate along with interest for the delayed refund in terms of section 11BB of the Central Excise Act, 1944. The applicants respectfully pray accordingly to grant interest on delayed refund.

5. Personal hearing was scheduled in this case on 09-10-2012. Shri Ganesh Bapu TR, advocate attended hearing on behalf of applicant and re-iterated grounds of revision application. Shri K. K. Jain, Superintendent appeared for hearing on behalf of respondent department and stated that Order-in-Appeal being legal and proper, may be upheld.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicants exported 100% cotton woven fabrics at zero rate of duty under Notification No. 30/2004-CE (NT) without availing Cenvat Credit on inputs. They filed rebate claim on duty paid on inputs used in such final export products under rule 18 r/w Notification No. 21/2004-CE (NT). The original authority observed that the applicant exported the goods under ARE-1 instead of ARE-2, as required under the Notification No. 21/2004-CE (NT) dt. 06-09-2004 and also that the goods have been exported under drawback scheme and hence input stage rebate is not available. Accordingly, vide impugned Order-in-Original, the original authority rejected the rebate claim. Commissioner (Appeals) also rejected applicant's appeal. Now, applicant has filed this revision application on grounds mentioned in para (4) above.

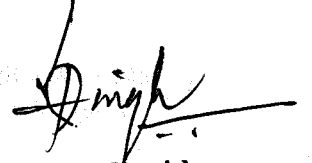
8. The original authority observed that the applicant exported their goods under claim of drawback and hence, input stage rebate is not available to them. The applicant admitted that they had availed drawback in r/o three ARE-I and they have reduced their rebate claim in r/o said 3 ARE-I to the extent of Rs. 1,84,074/-. They have claimed rebate of Rs. 8,20,125/- in r/o duty paid on goods exported vide remaining 7 ARE-I. This contention of applicant has been accepted by the commissioner (Appeals).

9. The Government observes that the original authority had further rejected the rebate claim on the ground that the applicant exported their goods under form, ARE-1 instead of ARE-2. The applicants had submitted prior declaration and ratio of consumption of input in the final product. They intimated the jurisdictional Assistant Commissioner regarding purchase and receipt of input listed vide letter dated 14-12-2005 and 26-07-2006. The goods are cleared for export under Central Excise supervision. Part I of ARE-I form is signed by Central Excise Officer. The Customs Officers have endorsed in part II of said form that goods have been exported vide relevant Shipping Bill. Therefore the export of said goods cannot be disputed. There is no allegation that duty paid inputs were not used in the manufacture of exported goods. The use of ARE-I form instead of ARE-2 can be treated as procedural lapse which is condonable. There are catena of judgments for the proposition that substantial benefit of rebate cannot be denied for procedural infractions. Similar view is taken by Government in the cases of M/s. Modern Process Printers 2006 (204) ELT 632 (GOI). M/s. Sidhartha Soya Products Ltd. 2006 (205) ELT, 1093 (GOI), M/s. Cotfab Exports 2006 (205) ELT 1027 (GOI) and M/s. Barot Exports 2006 (203) ELT 321 (GOI).

10. In this case there is substantial compliance of procedure laid down in Notification no. 21/2004-CE (NT), dated 06-09-2004 and therefore the input rebate claim is admissible to the applicant under rule 18 of Central Excise Rules 2002 provided the use of duty of paid inputs in the manufacturing of exported goods, is proved. Government sets aside the orders and remands the case back to original authority for fresh consideration in the light of above observations.

11. The revision application is disposed off in above terms.

12. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Ginni International Ltd.,
(Weaving Div.), SP-2 & (1A) & (2),
RIICO Industrial Area,
Delhi-Jaipur NH 8,
Neemrana- 301705 (Raj.)

(शाग्वत शर्मा/Shagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
Govt. of India
New Delhi

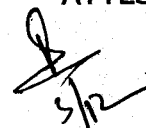
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Order No. 1637 /12-Cx dated 30.11.2012

Copy to:

1. The Commissioner, Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
2. The Commissioner (Appeal-I), Customs & Central Excise, New Central Revenue Building, Statue Circle, C-Scheme Jaipur.
3. The Deputy Commissioner of Central Excise, Division-II, Jaipur.
4. Guard File.
5. PS to JS (Revision Application)
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)