F. NO. 195/808/12-RA

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GOVERNMENT OF INDIA
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Mumbai- 400 005

F. NO. 195/808/12-RA /1058 Date of Issue: 05.02.2018

ORDER NO. 16/2018-CX (WZ) /ASRA/MUMBAI DATED 31.01.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Micro Inks Ltd., Vapi.

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

Subject : Revision Applications filed, under section 35EE of the CentralExcise Act, 1944 against the Orders-in-Appeal No.US/ 154/RGD/2012dated 29.02.2012 passed by the Commissioner of Central Excise (Appeals-II).

ORDER

This revision application is filed by M/s. Micro Inks Ltd., Vapi.. (now known as M/s Hubergroup India Pvt.Ltd in terms of Fresh Certificate of incorporation issued on 29.05.2015 by Registrar of Companies, Ahmedabad)(hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/154/RGD/2012dated 29.02.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II with respect to the Order-in-Original No. 1827/10-11/AC (Rebate)/Raigad dated 28.01.2011 passed by the Assistant Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant had filed Rebate Claims as Merchant exporter under Rule 18 of Central Excise Rules, 2002, read with Notification No. 19/2604-CE(NT) date 06.09.2004 and the Rebate Claims amounting to Rs. 3,18,899/- were sanctioned by the Assistant Commissioner of Central Excise (Rebate) Raigad, vide Order-in-Original No. 1827/10-11 dated 28.01.2011. and the same was communicated for review on 21.02.2011.

3. The said Order in Original was reviewed by the Commissioner Central Excise Raigad who found that the order was not legal and proper because of the following grounds: -

1) That on examination of the documents of the said claim it was noticed that the manufacturer of the exported goods viz. M/s. Supreme Nonwoven Industries Pvt. Ltd. Daman had given certificate dated 06.02.2010 that the goods exported through M/s. Micro Inks Ltd. under (1) A.R.E.-I No. R-160/07-08 dated 16.10.2007 (2) A.R.E.-1 No. R-235/07-08 dated 17.01.2008 (3) A.R.E.-I No. R-262/07-08 dated 18.03.2008 & (4) A.R.E.-I No. R-27/08-09 dated 09.06.2008, were manufactured out of raw materials imported under Customs Notification No. 93/2004 dated 10.09.2004; as per the said Notification the goods imported are duty free under Advance Licence and hence, availment of Cenvat Credit on such imported duty free material does not arise. In pursuance of Notification No. 30/2004-CE

dated 09.07.2004 as amended, such goods exported were wholly exempted from payment of Central Excise duty. However, in the present case, the assessee had paid the Central Excise duty and filed the rebate claims to the rebate sanctioning authority. Since the goods exported were wholly exempted from payment of Central Excise duty, the payment made by the assessee cannot be considered to be payment of Central Excise duty and consequently, the rebate of such amount paid cannot be sanctioned in terms of Rule 18 of Central Excise Rules, 2002. Hence, the assessee was not eligible for rebate.

4. Commissioner (Appeals) observed that the question involved in the appeal is whether the exported goods were exempted under Notification No.30/2004- CE dated 09.07.2004 and whether the rebate claimed by them was admissible. He observed that respondents in their written submissions have submitted that the Notification No.30/2004-CE is an optional exemption notification and the manufacturer can pay duty if he opts for the same under Notificaion No.29/2004- CE. He further observed that the adjudicating authority in the impugned order has held that the respondent have stated in their reply to the deficiency memo that the manufacturer M/s Supreme Nonwoven Industries Pvt. Ltd. have manufactured the goods out of raw materials imported under Customs Notification No.93/2004-Cus. dated 10.9.2004 and per the said notification the goods imported are duty free under Advance Licence and therefore the question of availment of cenvat credit on such imported duty free material did not arise. Since the respondents had imported the goods against Advance licence, they could not have availed Cenvat Credit on inputs and the goods exported were wholly exempted from payment of Central Excise duty, the payment made cannot be considered to be payment of Central Excise duty. Accordingly, Commissioner (Appeals)videOrder-in-Appeal No. US/154/RGD/2012dated 29.02.2012 set aside the impugned order sanctioning the rebate claims.

5. Being aggrieved with the impugned order in appeal, the Applicants filed this Revision Application on the following grounds that :

5.1 the cross objections filed by the applicants before the Commissioner (Appeals) be treated as part and parcel of this revision application.

5.2 when the revenue had filed appeal only on the ground of violation of notification 30/2004-CE, respondent could not have invented a totally new ground by relying on Foreign Trade Policy and notification 93/2004-Cus. The impugned OIA is required to be set aside on this ground alone. Reliance is placed on the following precedents:-

2005 (181) E.L.T. 311 (S.C.)-TATA IRON AND STEEL CO. LTD. Versus COLLECTOR OF CENTRAL EXCISE, PATNA

1993 (68) E.L.T. 734 (Bom.)-BABOOBHAI PATEL AND COMPANY Versus COLLECTOR OF CUSTOMS

Appellate Tribunal cannot make out a new case beyond the Show Cause Notice - Appellate Order - Deputy Chief Chemist's report relied on by Additional Collector to hold the goods as canalised items and impermissible for import under OGL - Opinion of Chief Chemist sought during pendency of appeal before Tribunal and relied on by Tribunal for describing the goods as anhydrous in spite of water content -Tribunal's order making out a new case not sustainable being beyond the purview of show cause notice issued by Additional Collector -Section 35B of the Central Excises and Salt Act, 1944.

5.3 the Commissioner (Appeals) adverse finding relying on condition (v) of Notification 93/2004-Cus is false to the said condition itself inasmuch as the said condition had been amended by corrigendum dated 17. 5. 2005.

5.4 since the corrigendum dated 17 May 2005 has specifically restricted the rebate only in respect of duty paid on the raw materials under rule 18 of the Central Excise Rules, 2002 and the manufacturer has paid the duty on the finished products only, the adverse findings by the appellate Commissioner in the

impugned order are contrary to the notification itself as amended by the corrigendum and therefore, the impugned order is liable to be quashed and set aside.

5.5 though exactly not relevant to the issue involved in the present revision application, for the purpose of relying on the interpretation of similar corrigendum in the predecessor notification, applicants crave leave to refer and rely upon the case law reported as 2012 (276) E.L.T. 335 (Kar.)-JUBILANT ORGANOSYS LTD. Vs ASSTT. COMMR.OF C. EX., MYSORE-III.

EXIM - Advance licence - Condition No. (v) of Notification No. 43/2002- Cus., dated 19-4-2002 corrected by corrigendum dated 29-11-2002 clarifying that 'under Rule 18' of Central Excise Rules, 2002 shall be corrected to read as 'under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)' - HELD : Corrigendum had retrospective effect from date of Notification ibid which it - had corrected - In that view, benefit of advance licence could not be denied where exporter had taken rebate on export goods, and not on duty paid on materials to manufacture them. [paras 9, 10]

5.6 the further finding in the impugned order in appeal that since the manufacturer exporter had imported the goods against advance licence and could not have availed the CENVAT credit on the inputs due to paragraph 4.4.7 of the foreign trade policy 2004-2009, and therefore the goods exported or only exempted from payment of Central excise duty, etc are false on facts and law in as much as the exports has not been made in the charge of the obligation against advance licence. Imports have been made by the manufacturer exporter after fulfilment of the export obligation and therefore, these findings are contrary to facts and law.

5.7 the impugned findings are not based on the grounds in EA2 filed by the revenue and therefore, the impugned OIA was going beyond the grounds canvassed by the revenue in its appeal

deserves to be set aside and quash on this ground alone. Reliance is placed on the case laws relied upon above.

6. As there was apparent delay in filing the instant revision application, an application seeking condonation of delay has been filed by the applicant stating that they sent the Revision Application with enclosures to the address given in the impugned Order in Appeal. The same was received at the wrong address given in Order in Appeal on 30.04.2012 vide acknowledgement of entry date. It has taken time to reach the papers to the correct address of RA, the delay has occurred. The applicant further submitted that since RA papers were filed in the address given in OIA within time, no delay has occurred and hence they prayed that the same be condoned in the interest of justice and in the facts and circumstances of the case.

7. Personal hearing was held in this case on 21.12.2017 ShriS. Suriyanarayanan, Advocate duly authorized by the applicant appeared for hearing on and reiterated the submission filed through Revision Application as well as written submissions. He also submitted synopsis dated 27.12.2017 alongwith case law 2012 (276) ELT 335 (Kar) to support his case. In view of this, he pleaded that the instant RA be allowed and Order in Appeal be set aside.

8. 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.

9. Government first proceeds to take up the application for condonation of delay in filing the revision application by the applicant. On hearing Shri S. Suriyanarayanan, Advocate on the application of condonation of delay of 2 months and 23 days, Government observed that since the applicant had filed the instant RA at the earlier address in time, in the interest of justice, the delay in filing RA in correct address by 2 months and 23 days is condoned and Government proceeds to examine the case on merits.

10. Government notes that in impugned Order-in-Appeal, it has been observed by the Appellate authority that since the respondents had imported the goods against Advance licence, they could not have availed Cenvat Credit on inputs and the goods exported were wholly exempted from payment of Central Excise duty, the payment made cannot be considered to be payment of Central Excise duty. While arriving at the said conclusion, the Commissioner (Appeals) relied on condition No. (v) of the Notification No. 93/2004-Cus dated 10.09.2004 which read as follows-

> "*v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of 19 of the Central Excise Rules, 2002 has not been availed :*

11. In this regard Government observes that on 17th May, 2005 corrigendum was issued by the Board to above Notification which is reproduced below:

CORRIGENDUM

In condition (v) of opening paragraph of the Notification of the Government of India, in the Ministry of Finance (Department of Revenue) Nos.93/2004-Customs, dated the 10th September, 2004, published in the Gazette of India (Extraordinary), vide GSR 606(E), the words & figures "under rule 18" shall be corrected to read as "under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)"

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(H. K. PRASAD)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA

12. Government observes that vide corrigendum dated 17 May 2005 the rebate of duty paid on materials was restricted under rule 18 of the Central Excise Rules, 2002 and not the duty paid on the finished products.

13. In this regard Government places its reliance on GOI Order IN RE Garden Silk Mills reported under 2014 (311) E.L.T. 977 (G.O.I.) wherein while deciding the issue of "Duty paid on final product, final product exported - Condition No. (viii) of Notification No. 96/2009-Cus. debars only the facility of rebate of duty paid on inputs used in the manufacture of exported goods, condition not violated - Export of duty paid goods not disputed - Rebate claims admissible - Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.) the Revisionary Authority at paras 9 to 9.3 observed as under :

> **9.** *Government notes that in this issue to be decided is whether rebate of duty paid on exported goods is not admissible for violation of Condition No. (viii) of Customs Notification No. 96/2009-Cus., dated 11-9-2009.*
>
> **9.1** *In order to examine the issue in the context of Notification No. 96/2009-Cus., dated 11-9-2009, it would be proper to peruse the Condition No. (viii), which reads as under :-*
>
> *"that the export obligation as specified in the said authorization (both in value and quantity terms) is discharged within the period specified in the said authorization or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorization and in respect of which facility under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed :*
>
> *Provided that an Advance Intermediate authorization holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.1.3 (ii) of the Foreign Trade Policy;"*
>
> *The said Condition No. (viii) debars availment facility of rebate claim on duty paid on materials used in manufacture of resultant product under Rule 18 and also the facility of duty free procurement of raw materials under Rule 19(2) of Central Excise Rules, 2002. The applicant has claimed rebate of duty paid on final product and not of duty paid on raw materials/inputs used in manufacture of final resultant product exported as is evident from the order-in-original. There is a categorical declaration in the ARE-1 form that no facility of Notification 21/2004-C.E. (N.T.), dated 6-9-2004 i.e. input rebate claim and under Notification*

43/2001-C.E. (N.T.), dated 26-6-2001 i.e. duty free procured of raw material under Rule 19(2) was availed.

9.2 *Commissioner (Appeals) has relied upon G.O.I. Revision order in the case M/s. Omkar Textiles - 2012 (284) E.L.T. 302 (G.O.I.). Government notes that in the said case exporter M/s. Omkar Textile has purchased inputs i.e. Linear Alkyl Banzone (LAB) and Sulphuric Acid and used the same in the manufacture of exported goods. They had claimed rebate of duty paid on inputs (LAB) used in the manufacture of exported goods. Government had denied the input rebate claim in the said case since final goods were exported in discharge of export obligation under Advance License Scheme in terms of Notification No. 93/2004-Cus., dated 10-9-2004 as there was similar Condition No. (v) in the said notification which was exactly similar to Condition (viii) of Notification No. 96/2009-Cus., which debarred the exporter from claiming input rebate claim i.e. rebate of duty paid on inputs/raw materials used in the manufacture of exported goods. In that case the inputs rebate claim was disallowed, whereas in the instant case applicant has claimed rebate claim of duty paid on (finished) exported goods. As per Condition (viii) of Notification No. 96/2009-Cus.or Condition No. (v) of Notification 93/2004-Cus. relating to advance licence scheme, there is no restriction on availing the facility of rebate claim of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. In the instant case issue relates to rebate of duty paid on (final) exported goods and therefore ratio of above said G.O.I. Revision Order is not applicable to this case.*

9.3 *Government notes that in the case of M/s. Shubhada Polymers Products Pvt. Ltd. reported as 2009 (237) E.L.T. 623 (G.O.I.) this revisionary authority has held that rebate of duty paid on goods exported (finished) in discharge of export obligation under advance licence scheme in terms of Notification No. 43/2002-Cus., dated 19-4-2002 as amended vide corrigendum dated 29-11-2002 is admissible since the amended Condition (v) of said notification debarred only the availment of rebate of duty paid on inputs/raw materials used in the manufacture of finished exported goods. The said Notification No. 43/2002-Cus.was subsequently replaced by Notification No. 93/2004-Cus., dated 10-9-2004. In view of the position, the rebate claim of duty paid on export goods (finished goods) cannot be rejected on this ground since there is no violation of Condition (viii) of Notification No. 96/2009-Cus., dated 11-9-2009 which debars only the facility of rebate of duty paid on inputs used in the manufacture of exported goods.*

14. Government observes that the ratio of the above case is applicable to the issue involved in the instant revision application. Further, in the case of Jubilant Organosys Ltd.(2012 (276) ELT 335 (Kar)) Hon'ble High Court of Karnataka observed that Condition No. (v) of Notification No. 43/2002-Cus., dated 19-4-2002 corrected by corrigendum dated 29-11-2002 clarifying that 'under Rule 18' of Central Excise Rules, 2002 shall be corrected to read as 'under Rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) and held that

> *a corrigendum in question has been issued for correction of the notification and it relates back to the date of the notification corrected. It ceases to be a correction if it is effective from the date of its issuance. It then becomes an amendment. A correction relates back to the date of the notification itself. If that is so, the order of the appellate authority as also the revisional authority are contrary to the notification dated 29-11-2002.*

Therefore, following the ratio judgement, Government holds that rebate of duty paid on goods exported (finished) in discharge of export obligation under Advance licence scheme in terms of Notification No.93/2004-Cus dated 10.09.2004 as amended vide corrigendum dated 17.05.2005 is admissible to the applicant as the amended condition (v) of the said notification restricted only the availment of rebate of duty paid on inputs /raw materials used in the manufacture of resultant product. Government also notes that the original authority on scrutiny of rebate claims had not found any discrepancy in the rebate claim and found the same to be correct and admissible to the applicant. As such, it is clear that rebate claims were found in order and there was no dispute about the export of duty paid goods. As such the fundamental condition for allowing rebate claims that duty paid goods are exported, already stands satisfied in this case. Hence the Revision Application is liable to be allowed and the impugned Order in Appeal is liable to be set aside.

15. In view of the above Government holds that the said rebate claims are admissible to the applicant under Rule 18 of Central Excise Rules, 2002

read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004. Hence, the impugned Order in Appeal is set aside.

16. Revision Application thus succeeds in above terms.

17. So ordered.

31.1.2018

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 16/2018-CX (WZ) /ASRA/Mumbai Dated 31.01.2018

True Copy Attested

To,
M/s Micro Inks Ltd.
(Now Hubergroup India Pvt. Limited)
907, Windfall, Sahar Plaza, JB Nagar,
Andheri (East), Mumbai 400 059.

5-2-18
एस. आर. हिरूलकर
S. R. HIRULKAR
A-C

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
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