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F.No. 195/253/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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NEW DELHI-110 066

Date of Issue 7/3/13

Order No. 199 /2013-CX dated 06-03-2013 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 Act, 1944 against order-in-appeal No. 67/2010(M-I) dated 29.12.10 passed by Commissioner (Appeals) Central Excise, Chennai.
Applicant	:	M/s SRF Polymers Ltd., Chennai
Respondent	:	Commissioner of Central Excise, Chennai-I Commissionerate.

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ORDER

This revision application is filed by the applicant M/s SRF Polymers Ltd., Chennai against the order-in-appeal No. 67/2010(M-I) dated 29.12.10 passed by the Commissioner (Appeals) Central Excise, Chennai with respect to order-in-original No. 23/09/R dated 11.5.09 passed by Deputy Commissioner of Central Excise, AB Division, Chennai I Commissionerate.

2. Brief facts of the case are that the applicants had filed two rebate claims for Rs.150240/- relating to ARE2 Nos.1/2008-09 dated 16.5.08 and 3/2008-09 dated 26.7.08 vide their letter dated 9.9.08 for the raw materials viz. Nylon Filament Yarn used in the manufacture of final products viz. Nylon Fishnet twine exported. The Nylon Fishnet twine of 210D, falling under Chapter Heading 5607 5010, is exempt from payment of duty vide Notification No.30/04-CE dated 9.7.04. The lower authority rejected the rebate claims on the ground of non-compliance of provisions of Rule 18 of Central Excise Rules 2002 read with Notification No.21/2004-CE(NT) dated 6.9.04 as amended in as much as they have not all followed the procedure prescribed for claiming the rebate of excise duty paid on excisable goods used in the manufacture of goods exported.

3. Being aggrieved by the said order-in-original, the applicant filed appeal before Commissioner (Appeals) who upheld the impugned order-in-original and rejected the appeal.

4. Being aggrieved with the said order-in-appeal the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 When the fact of export is not disputed the excise duty paid on excisable goods (yarn) used in the manufacture and export goods (twine) cannot be denied. The applicant submits that the following facts are not disputed:

a) That duty has been paid on the nylon yarn used in the twine exported.

b) The rebate claims were filed within time.

c) That the sale proceeds of the twine exported have been received.

d) That the duty paid on the yarn has been debited by the manufacturer to the exporter's account and no refund has been claimed by the manufacturer of yarn.

The rebate claims were rejected on incorrect premise that the Applicant has not borne the incidence of duty and that they have not followed the procedures prescribed under Notification No. 21/2004-CE(NT) . The Applicant submit that when the fact of payment of duty, time limit and the fact of export are not in dispute, the rejection of the rebate claim that the procedure is not followed is incorrect.

4.2 There was no procedural violation. In any case, rebate cannot be denied for procedural violations.

The impugned orders allege the following procedural violations:

a) The applicant have to file the declaration even before procuring the inputs;

b) At the time of clearance, the applicant has not followed the procedure prescribed for self-sealing;

c) With regard to the export vide ARE2 No.03/2008-09, no declaration was filed and procedures were not followed.

On these allegations, the impugned orders hold that the applicant have not fulfilled the conditions prescribed under Notification No.21/2004-CE (NT) and thus, contravened the provisions of Rule 18 of the Central Excise Rules, 2002. In this regard, the applicant submits that they had submitted a letter dated 08.05.2008 to the Deputy Commissioner of Central Excise seeking permission to avail rebate on excisable goods used in the aforesaid export product. It was clearly stated in the said letter that the Input-Output ratio is as per provision H-406 of the Standard Input Output Norm (SION) of the Exim Policy. The applicant also informed that a consignment was to be exported to

Uganda by 10/05/2009 and the representative of the applicant company also met the Deputy Commissioner of Central Excise. The applicant further submits that the relevant Notification No. 21/2004-CE (NT) requires the Assistant/Deputy Commissioner to verify the Input-Output ratio mentioned in the declaration filed before commencement of export and to grant permission after such verification and on his satisfaction that there is no likelihood of evasion of duty. Further, in the CBEC's Manual of Supplementary Instructions, vide Para 3.2 of Chapter 8, it has been clarified that for the sake of convenience and transparency, input output norms under the Export Import Policy may be accepted unless there is no specific reasons for variation. In their declaration, the applicant also declared that the input output ratio is 1.02: 1 as per SION H 406 of the Export Import Policy. The input-output ratio in this case is also not in dispute. In terms of the statutory provisions, grant of rebate is mandatory. Only thing that has to be verified by the Department is the input output ratio. Thus, when the input output norms were as per the EXIM Policy and when the Department orally asked the applicant to go ahead with the export, the applicant cannot be faulted for claiming the rebate. Further, in the absence of any communication from the Department denying the permission, it has to be inferred that the Department has granted necessary permission.

4.3 Without prejudice, the applicant submits that as regards the observation that the procedures relating to self-sealing were not followed, the applicant submits that normally, the goods are brought to the Customs Area, examined by Customs officers at the port of export and allowed for export. This is the norm. An exception has been provided where an exporter desires that the export consignment is to be examined and sealed at the factory premises or the place of dispatch. Only in this event, the question of both examination and sealing by the Central Excise officer or self-sealing and self-certification arise. When the exporter does not want to avail this facility, the goods would be examined by the Customs officers at the port of export in the normal course, which was done in the present case.

4.4 Benefit of rebate should not be denied on technical grounds. Case laws relied upon:

- UOI Vs Suksha International & Nutan Gems & Anr [1989(39)ELT503 (SC)]
- UOI vs A.V.Narasimhalu [1983 (13)ELT 1534 (SC)]
- Cotfab Exports Private Limited [2006(205)ELT 1027 (GOI)]
- In Re Barot Exports - 2006 (203) ELT 321 (GOI)
- In Re Harisson Chemicals - 2006 (200) ELT 175 (GOI)

4.5 The presumption that the applicant has not borne the incidence of duty itself is incorrect. In the present case, SRF paid duty on the Nylon yarn manufactured by them and collected the same from the applicant. Even though the transaction is between related persons, the entire transaction is accounted for in their respective books of accounts. For the Central Excise duty so paid by SRF, they raised debit notes on SRF and SRFP paid the same by way of adjustments in their books of accounts. Thus, the fact remains that Central Excise duty remains collected from the applicant and as such they have borne the incidence of duty.

4.6 The Applicant submits that it has obtained Nylon Yarn from SRF under a valid excise invoice wherein SRF has discharged the excise duty liability for the manufacture of Yarn. Using this input, the Applicant had manufactured Twine and exported. Thus, the duty paid on the input is sought as input rebate under Rule 18 of the Central Excise Rule, 2002. The Applicant is claiming rebate on the duty paid on the input used, i.e., Nylon Yarn. SRF is the manufacturer of the Nylon Yarn and the applicant is the receiver of the Nylon Yarn. As per Section 12B, the duty incidence is deemed to have been passed on to the buyer of the goods. Thus in this case, the receiver of the goods being the applicant, it is deemed that the duty paid by the manufacturer (SRF) has been passed on to the applicant. The applicant thus

submits that they have borne the incidence of tax even as per Section 12B of the Central Excise Act, 1944. Thus there is no basis for the allegation that the applicant has not borne the incidence of Duty and denial of rebate claims on this ground deserves to be set aside.

4.7 Duty paid on nylon yarn used in twine exported eligible for rebate. That twine is exempted is not relevant. Rule 18 of the Central Excise Rules provide for rebate of duty paid on any goods used in the manufacture of goods that are exported. Notification No.21/2004-CE (NT) prescribes the procedures for payment of rebate of duty paid on excisable goods used in goods exported to any country except Nepal and Bhutan.

4.8 The impugned orders proceed on the premise that since the final products are exempt from Central Excise duty, grant of rebate will result in unintended benefit of credit otherwise not entitled. This finding of the lower authority upheld by the Ld. CCE is contrary to the statutory provisions as above in terms of which, rebate on materials used in any goods exported are allowable. In the present case, there is no dispute regarding the payment of duty on nylon yarn used in the fishnet twine that was exported. In the circumstances, the impugned order merits to be set aside for this reason itself.

4.9 Further, the applicant submits that as per Part- V of Chapter-8 of the CBEC's manual of supplementary instructions which relate to 'Export under claim for rebate of duty on excisable material used in the manufacture of export goods. Thus the ground of the Deputy Commissioner is incorrect and contrary to the rule 18 and the departmental instructions. In the circumstances, the denial of rebate claimed is not in order and the impugned order deserves to be set aside.

4.10 That the yarn manufacturer availed credit of the duty paid on chips is also not a ground to reject rebate of the duty paid on the yarn used in the

export product. Similarly, there is no dispute that appropriate CVD was paid by the applicant on the Nylon yarn imported by them and used in the manufacture of exported fishnets. The Applicant did not avail credit of the duty paid on yarn. In the circumstances, the question of ineligible credit does not arise.

5. Personal hearing scheduled in this case on 13.12.12 at Chennai was attended by Shri V.Panchanathan, Advocate & Shri K.Sankara Narayan, DGM Material on behalf of applicant who reiterated the grounds of revision application. Shri P.Jaykumar, Superintendent appeared on behalf of the respondent department who submitted that the 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. On perusal of records Government observes that the original authority rejected the rebate claim on the ground that the final product viz. Nylon Fishnet Twine was exempt from payment of duty and hence the applicants were not eligible for credit of duty paid on the base raw materials i.e. Nylon Chips. They had cleared the same directly to their sister unit without taking cenvat credit for job work to enable M/s SRF Ltd. to take the credit and their sister concern did so. He observed therefore that the applicants/job worker was neither entitled to avail cenvat on the inputs used in exempted goods neither the same was borne by them. The impugned order is upheld by the Commissioner(Appeals). Now the applicants have filed this revision application on the grounds stated at para (4) above. They have mainly contended that when export of duty paid goods not disputed and the duty incidence is borne by the applicants rebate is admissible even if the twine (the final product) is exempted. Benefit of rebate should not be denied on technical grounds.

8. Government notes that the factual details of the case given by original authority in order-in-original para 17.3 are as under:

"The procedure followed by M/s SRF Polymer with regard to manufacture of Nylon Yarn in their name is as follows: the basic raw materials i.e., Nylon chips are imported/purchased indigenously by the Applicants and sent to M/s SRF Ltd. for conversion into Nylon Yarn on job-work basis. However, job-work procedure is not followed on the pretext that the Applicants are not taking credit on the Nylon chips though they mention as "Job -work" in all the concerned documents. In fact both the parties i.e. the Applicants and M/s. SRF Ltd. have entered into an agreement for job work conversion. After conversion, the Nylon Yarn is sent back to the Applicants on payment of duty by M/s. SRF Ltd. However, the Applicants are not taking credit of this duty since the final product Nylon Fishnet Twine is otherwise exempt from payment of duty as said earlier. In this conversion as already observed in the Commissioner's show cause notice C.No.V /54/15/35/08-Adj. dt.07.11.08, M/s SRF have not even agreed to pay the duty amount paid on Nylon chips at the time of import which is actually availed by them as credit nor M/s. SRF Polymers agreed to pay the duty on Nylon Yarn cleared to them after conversion. Therefore, M/s. SRF Polymers have not at all borne the duty incidence on Nylon Yarn for which they are claiming refund/rebate. This is further evident from the facts that (i) M/s. SRF Ltd. have furnished a disclaimer certificate which clearly shows that the duty incidence is borne by them only (ii) the Applicants have confirmed only that the title of the Nylon Yarn belongs to them but they have not at all stated that they have paid/borne the incidence of duty paid on the said Nylon Yarn. In general practice only in case of exports through Merchant exporters the person who is not claiming rebate i.e., either the manufacturer or merchant exporter will file a disclaimer certificate, to the effect that they do not claim the refund/rebate. In the instant case the export involves only the Applicants and no through M/s SRF Ltd."

From above details it becomes clear that the basic raw material Nylon Chips were sent by applicant to M/s SRF Ltd. for conversion into Nylon Yarn on job work basis who availed cenvat credit of duty paid on Nylon Chips. Applicant is claiming input rebate of duty paid on raw materials by M/s SRF. Original Authority has observed that applicant has not paid any duty on Nylon yarn.

So, in case of invoices stated in para (6) of order-in-original where no duty is paid by applicant, the input rebate is rightly held inadmissible.

9. Government notes that original authority has observed regarding export of goods vide ARE-2 No.3/08-09 dated 26.7.08 in para 17.7 of order-in-original as under:

> "Regarding the 4th entry as mentioned in table at para 6, the Nylon Yarn was imported by the Applicants under Bill of Entry No.777190 dt.26.6.08 directly and the Duty amount of Rs.73,630/ - was paid under T.R.6 Challan No.98938923 dt. 26.6.08 and the same has been verified and attested to be correct by the Superintendent of Central Excise AB2 Range vide his report O.C.No.389/08 dated 1.12.08. The said Nylon Yarn has been used in the manufacture of Nylon Fishnet Twine exported under ARE2 No.03/2008-09 dated 26.7.08."

The perusal of said para reveals that in this case nylon yarn was imported by applicant directly on payment of duty (CVD) amount of Rs.73630/- and goods manufactured i.e. Nylon Fishnet Twine exported vide ARE-2 No.3/08-09 dated 26.7.08 were exported. Original authority has observed/admitted the payment of duty on raw materials and export of goods manufactured. In this case, there are only procedural violation of not following the procedure laid down in Notification No.21/04-CE(NT). Government notes that goods were cleared under ARE-2 form. Applicant has claimed that input-output ratio is as per Standard Input-output Norm H-406 (SION) of EXIM Policy i.e. 1.02:1. CBEC Manual of Supplementary Instructions para 3.2 of Chapter 8 has clarified that for sake of convenience and transparency, input-output norms under Export-Import policy may be accepted unless there are specific reasons for variation. There are catena of judgements that substantial benefit of rebate should not be denied for procedural infractions. Therefore, Government holds that input rebate claim is admissible in respect of duty paid on materials used in the manufacture of goods exported vide ARE-2 No.3/08-09 dated 26.7.08, subject to the condition that input-output ratio does not exceed the SION Norms and there are no other reason for variation. The original authority is directed to

sanction the said input rebate claim of Rs.73630/- subject to compliance of conditions stated above. The impugned order-in-appeal is modified to above extent.

10. The revision application is disposed of in terms of above.

11. So ordered.

(D P Singh)
Joint Secretary (Revision Application)

M/s SRF Polymers Ltd
Manali Industrial Area
Manali
Chennai-600068

Attested

GOI Order No. 199 /13-CX dated 06-02-2013

Copy to:

1. Commissioner of Central Excise & Customs, Chennai-I Commissionerate, No.26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

2. Commissioner of Central Excise (Appeals), Chennai, No.26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034

3. Deputy Commissioner of Central Excise AB Division, Chennai-I Commissionerate, 459(317), Anna Salai, Teynampet, Chennai-600018

4. Shri V.Panchanathan, Advocate

5. PS to JS (RA)

6. Guard File.

7. Spare Copy

ATTESTED

(P.K.Rameshwaram)
OSD (Revision Application)