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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
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Mumbai- 400 005

F. NO. 195/401/13-RA 2954 Date of Issue: 02/06/21

ORDER NO. 199/2021-CX (WZ) /ASRA/Mumbai DATED 20.5.2021 OF THE GOVERNMENT OF INDIA - PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Tusha Textiles (Mumbai) Pvt. Ltd.
13 Pushya, Sector 5, Shrusti, Mira Road,
Mumbai- 401 107

Respondent : Commissioner of Central Excise & Customs Vapi.

Subject : Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.SRP/ 142/ VAPI/2012-13 dated 16.11.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

ORDER

This Revision Application has been filed by M/s Tusha Textiles (Mumbai) Pvt. Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No.SRP/142/VAPI/2012-13 dated 16.11.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi.

2. Brief facts of the case are that the applicant a merchant- exporter had filed 12 rebate claims totally involving Rs. 12,21,325/- in respect of Grey/Printed/Dyed Fabrics falling under Chapter no. 55151120 of CETA, 1985 manufactured by M/s. Laxmi Impex, A-I,2704, 3rd Phase, GIDC, Umbergaon, exported to SEZ. The export goods were cleared under self removal procedure under the provisions of Rule 18 of Central Excise Rules, 2002 read with Section 11 B of the Central Excise Act, 1944 and Notification No. 19/2004-CE (NT) dated 06.09.2004 (as amended).

3. Subsequent to despatch of goods to SEZ, the applicant filed a claim for rebate of the Excise duty paid by M/s Laxmi Impex before the Assistant Commissioner of Central Excise, Vapi. However, Show Cause Notice F. No. V / 18-626/2010-11/R dated 19.12.2011 was issued to the applicant alleging that the Lorry receipt & invoice shows the port of loading as Tarapur /Umargaon. Hence the goods were not dispatched directly from the factory of manufacturer i.e. from Laxmi Impex, Umargaon.

4. The Assistant Commissioner of Central Excise, Vapi vide Order in Original No.2424 to 2435/AC/RE/Div-Vapi/20111-12 dated 30.01.2012 rejected rebate claims of Rs.12,21,325/- filed by the applicant holding that -

a) The documents submitted by the appellant in support of their rebate claim clearly showed that the place of removal of the goods in question is Tarapur and not Umbergaon;

b) It clearly indicated that the said goods have been cleared from Tarapur itself and not from the factory premises of M/s Laxmi Impex, Umbergaon as claimed by the exporter and

c) The condition No. 2(a) of Notification No. 19 /2004-CE (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 explicitly provides that the excisable goods shall be exported after payment of duty, directly from the factory or warehouse, which condition was not met by the exporter.

5. Being aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs & Service Tax, Vapi who vide Order-in-Appeal No.SRP/142/VAPI/2012-13 dated 16.11.2012 (impugned Order) upheld the Order in Original and rejected the appeal filed by the applicant.

6 Being aggrieved with the impugned Order, the applicant has filed present revision application mainly on the following grounds :-

(a) Commissioner (Appeals) failed to appreciate the facts that the goods were sent for further processing by supporting manufacturer to Mandhana Dyeing, Tarapur. They submitted that the goods were manufactured from Laxmi Impex, Umargaon and Laxmi Impex got part of the process done from Mandhana Dyeing, Tarapur on job work under rule 4(5)(a) of Cenvat Credit Rules, 2004. The same transporter who had carried the goods from Tarapur to Laxmi Impex, Umargaon has carried the export goods to Kandla SEZ. The process of finishing was done by the Mandana Textiles and the processed goods were brought back to Umargaon by Lalji Mulji Transport and the final products were moved by the same transporter to Kandla SEZ under the same LR. Therefore the lorry receipt shows. Tarapur to Umargaon/Kandla. The said issue has also been clarified by the transporter by way of their Letter dated 11.4.2011, stating the facts. Therefore the goods moved from Tarapur via Umargaon which is on the way to KASEZ. Therefore merely because the Lorry receipt shown Tarapur/Umargaon to KASEZ, by itself is not a ground for rejection of the rebate claim. Therefore order of commissioner holding the said ground for rejecting the rebate claim is liable to be set aside.

(b) Commissioner (Appeals) erred in relying on the Vehicle number while rejecting the rebate claims without appreciating the fact that in transportation Lorry Receipt is the legal document and not the vehicle number. It is industry practice in Transport Agencies to get the goods consolidated by one truck and distribute in local trucks where terms of door deliveries are accepted by the transporter. It was further submitted that the allegation that the factum of goods having been exported on payment of duty was not in dispute. The ARE 1 which shows the complete description and quantity of goods bears an endorsement regarding goods having been supplied from Umargaon and are received in the KASEZ and the same is endorsed by the jurisdictional Customs

officer of KASEZ. The sale proceeds of the SEZ supply was also received as evident from the bank realisation certificate attached. Therefore there is no dispute to the fact that the very same goods were supplied, the same are received in the SEZ and the sale proceeds are realized in foreign exchange. It was submitted that when these basic facts of exports are not in dispute, the technical infractions of Lorry receipt showing both location of loading as Tarapur /Umargaon should not be held against the appellant.

(c) Respondent failed to appreciate that the said goods after processing has been brought back to factory, recorded the said quantity in Dairy RG 1 register maintained by the Job worker (Laxmi Impex) and cleared the said goods on payment of duty. The RG 1 register clearly shows the production and the duty paid at the time of clearance. Commissioner (Appeals) however just brushed aside all these documentary evidence and only relied upon the lorry receipt which shows dispatch from Tarapur/Umargaon to Kandla SEZ. Copy of the said RG 1 maintained by the job worker showing the production and payment of duty at the time of clearance in annexed. Therefore the order of respondent denying the rebate claim is liable to be quashed & set aside.

(d) Commissioner (Appeals) further erred in holding that the condition of direct export of goods from factory of manufacturer, as stipulated under Notification No. 19/2004-CE (NT) has not been met. They submitted that the allegation of 'goods not having been directly exported from the factory at Umargaon', is also baseless, as is evident from the fact that the goods were cleared from the factory of manufacturer, i.e. Laxmi Impex who is registered under Central Excise and who have manufactured the export goods. This is also evident from the Central Excise Invoice and from the ARE 1, which are endorsed by the customs officers of SEZ on receipt of the goods. There is no dispute from the SEZ unit about the receipt of goods other than the description stated therein. This can be verified through the offices having jurisdiction over the SEZ. Therefore, the rebates claimed by them are clearly eligible and requires to be settled at the earliest. However, Commissioner (Appeals) merely held that the goods were not directly dispatched from factory and hence the rebate has been rejected.

(e) Without prejudice to the above, it is settled by Hon'ble Bombay High court in the case of Micro Inks Ltd. held in Writ Petition No. 2195 of 2010 that the factory from which the goods are cleared would be 'deemed manufacturer' of the export goods and the condition of direct export from factory of manufacturer is therefore fulfilled. In the instant case the goods are cleared from the factory of Laxmi Impex who are the Central Excise registered manufacturers from where the goods have been exported. Therefore, the allegation that the goods have not been exported directly from the factory is not sustainable and hence liable to be dismissed on this ground only. If such claim is to be enforced, then no merchant exporters will be eligible for the credit, which is not the intention of the law.

(f) Without prejudice to the aforesaid submissions, it is submitted that the substantive benefit due to it cannot be denied for any procedural lapses. The fundamental requirement for rebate is manufacture and export and as long as this fundamental requirement is met, other procedural deviations, if any, can be condoned. In support of the above, they rely on the Order No. 526/2005 dated 09.11.2005 of the Govt. of India, Ministry of Finance [2006 (205) ELT 1027 (GOI)] in the matter of revision application filed by M/s. Cotfab Exports, Mumbai against the order-in-appeal passed by Commissioner of Central Excise (Appeals), Mumbai. In this regard, the applicant had reproduced relevant extracts from para 6 of the order.

(g) However the Commissioner (Appeals) merely stated that the case is distinguishable without assigning any reasons. They submit that the ratio of the judgment was that the once the fact of export and receipt of sale proceeds, the procedural compliance has to be waived while sanctioning the rebate. This aspect has not been considered by the Commissioner (Appeals) while rejecting their rebate claims.

7. A Personal hearing in this case was held on 21.01.2021 which was attended by Shri Narendra Soni, Chartered Accountant and Consultant on behalf the applicant. He reiterated the written submission and submitted that the goods were moved in one direction only from Tarapur to Umergaon to Gandhinagar. Regarding Truck Number variatioin, he submitted that in respect of LCL Cargo, Consolidation of Cargo is a normal practice. Therefore, he requested to allow the Revision Application and set aside the impugned Order in Appeal.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Appeal and Order-in-Original.

9. On going through the case records, it is observed that the case emanates out of rebate claims filed for 12 ARE-1's by the applicant before the Assistant Commissioner, Vapi Division. The applicant is a merchant exporter and has claimed rebate in respect of duty paid on goods sent to KASEZ, Gandhidham. These rebate claims have been rejected by the Assistant Commissioner as well as the Commissioner(Appeals). The applicant has now filed revision application for grant of the rebate claims.

10.1 Government observes that at the time of replying to the show cause notice issued to them for rejection of the rebate claim, the applicant had stated that they had procured raw material(yarn) from various vendors who had directly supplied the raw material to their supporting manufacturer – M/s Laxmi Impex, Umargaon. It was claimed that M/s Laxmi Impex, Umargaon had manufactured the final product but had also got part of the process done by M/s Mandhana Dyeing, Tarapur under Rule 4(5)(a) of the CCR, 2004. However, the goods had finally been dispatched under ARE-1 from the factory premises of M/s Laxmi Impex, Umargaon on payment of the prescribed central excise duty. The applicant had made submission to the effect that the same transporter who had carried the goods from Tarapur to M/s Laxmi Impex, Umargaon had carried the export goods to Kandla SEZ The Assistant Commissioner observed that in the relevant bills of export, the Land Customs Station has been mentioned as "Tarapur" instead of "Umargaon". Similarly, the consignment notes mention the name of consignor as "M/s Tusha Textile (Mumbai) Pvt. Ltd., Tarapur. However, in some of the consignment notes after the word "Tarapur", the word "Umargaon" has been added later on. Moreover, the relevant commercial invoices and the packing lists mentioned the place of loading as "Tarapur, India". The Assistant Commissioner therefore concluded that the place of removal of the goods was Tarapur and not Umargaon and also that the applicant had failed to adhere to condition 2(a) of Notification No. 19/2004-CE(NT) dated 06.09.2004 which requires that excisable goods are to be directly exported from the factory or warehouse after payment of duty. The rebate claims had therefore been rejected.

10.2 Similarly, on appeal by the applicant before the Commissioner(Appeals), certain other adverse facts had come to notice. Commissioner(Appeals) found that out of 12 bills of export, in 10 bills of export land customs station or place of

loading has been mentioned as "Tarapur, India" whereas in 2 bills of export the place of loading has been mentioned as "Umargaon, India". He further observed that none of the bills of export mentioned the corresponding ARE-1 No. and date and central excise invoice no. and date. Moreover, the consignment notes/LR prepared by the transporter M/s Lalji Mulji Transport Co. also indicated that the goods had been loaded from Tarapur in most cases but do not contain the vehicle number. Commissioner(Appeals) also found that in ARE-1 No. L1/064/9 10 dated 18.02.2010 and central excise invoice no. 73 dated 18.02.2010 the vehicle no. has been indicated as GJ-7Y-7209 whereas the corresponding bill of export mentions vehicle registration no. as GJ-11W-4692. The said bill of export has been endorsed by the Customs Officer on the reverse. This fact meant that the goods cleared in vehicle no. GJ-7Y-7209 from Tarapur or Umargaon but reached KASEZ in vehicle no. GJ-11W-4692. The Commissioner(Appeals) also noted that the applicant had failed to submit any documentary evidence about movement of the goods from M/s Laxmi Impex, Umargaon to M/s Mandhana Dyeing, Tarapur under Rule 4(5)(a) of the CCR, 2004. The Commissioner(Appeals) on the basis of these findings and other grounds rejected the appeal filed by the applicant.

11.1 Government observes that the facts noticed by the adjudicating authority and the appellate authority reveal that the goods said to have been exported have been cleared from Tarapur and not from the premises of the supporting manufacturer M/s Laxmi Impex located at Umargaon. Both these authorities have also taken note of several inconsistencies in the documents submitted by the applicant. Moreover, the Commissioner(Appeals) has also uncovered difference in the vehicle numbers mentioned in the bill of export and corresponding central excise invoice and ARE-1.

11.2 The applicant has sought to explain that mention of place of loading of goods in the LR as Tarapur was due to the fact that the same transporter had carried the goods from M/s Mandhana Dyeing in Tarapur to M/s Laxmi Impex in Umargaon and from there to Kandla SEZ before the adjudicating authority. Thereafter, when the Commissioner(Appeals) pointed out the issue of change in vehicle numbers, the applicant has tried to explain this inconsistency. It is relevant to note that the applicant had not made any mention of the practice in the transport business to consolidate goods in one truck and distribute in local trucks where terms of door deliveries are accepted. Needless to say, the applicant could very well have made a clean breast of these facts at the level of the adjudicating authority itself. Such an approach would have established their bonafides. The manner in which the

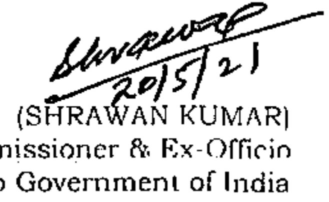
applicant is trying to explain each inconsistency noticed by the authorities below is more in the nature of damage control. Therefore, this explanation advanced by the applicant at the third stage of the proceedings clearly appears to be an afterthought.

11.3 Government observes that the applicant has all along been claiming that their supporting manufacturer M/s Laxmi Impex, Umargaon was getting goods processed from M/s Mandhana Dyeing, Tarapur under the provisions of Rule 4(5)(a) of the CCR, 2004. They have tried to explain the loading of the goods from Tarapur by the transporter by using this explanation. However, the applicant has not bothered to adduce any evidence to substantiate this claim. Hence, this submission is merely a bald assertion without any substance.

11.4 On going through the documents filed by the applicant with the revision application, Government notes that there is variance in vehicle number GJ-1-UU-4479 mentioned in the central excise invoice no. 52 dated 21.08.2010 when matched against the corresponding bill of export no. 4046 dated 20.08.2010 which mentions the vehicle number under which the goods were received as GJ-2T-8563. Besides this fact, it is pertinent to note that the invoice no. Tusha/153/2010-11 dated 17.08.2010 and the packing list prepared by M/s Tusha Textiles (Mumbai) Pvt. Ltd. mentions the port of loading as "Tarapur, India". Even if the applicants submission regarding the transporter not recording the transit stop at Umargaon is given credence, the fact that they themselves have mentioned the port of loading as "Tarapur, India" cannot be explained away. There can be no plausible explanation for a merchant exporter recording the port of loading as the place where M/s Mandhana Dyeing are located when they are in no way concerned with that processor. The arrangement between M/s Laxmi Impex and their processor M/s Mandhana Dyeing under Rule 4(5)(a) of the CCR, 2004 was independent of the transaction between the applicant and their supporting manufacturer. The applicant was only concerned with their supporting manufacturer M/s Laxmi Impex who were located at Umargaon. Therefore, the mention of the port of loading as "Tarapur, India" in the packing list and invoice prepared by the applicant is undeniable evidence of the fact that the goods which had been exported were procured from a place other than the factory of their supporting manufacturer; viz. M/s Laxmi Impex. Therefore, the condition 2(a) of Notification No. 19/2004-CE(NT) dated 06.09.2004 has not been adhered to and hence rebate would not be admissible.

11.5 The inference that ensues from the fact that the goods which were exported have actually been received from a place other than the factory of the supporting manufacturer declared by the applicant; i.e. the manufacturer who has countersigned the ARE-1 and other export documents is that the goods were not those on which the supporting manufacturer has paid duty. Hence, rebate cannot be granted. The reliance placed upon the judgment of the Hon'ble Bombay High Court in Writ Petition No. 2195 of 2010 in the case of Micro Inks Ltd. holding that the factory from which the goods are cleared would be deemed manufacturer of the export goods and the condition of direct export from such factory is fulfilled would be misplaced in this case since the goods have been cleared is not the one whose documents have been furnished for claim of rebate. In so far as the reliance upon the decision in the case of Cotfab Exports, Mumbai[2006(205)ELT 1027(GOI)] is concerned, the fundamental requirement of manufacture of goods by the declared supporting manufacturer has not been fulfilled. Hence, the ratio of this case law would not apply to the facts in the present case.

12. Government therefore does not find any infirmity in the impugned order. In the circumstances, the revision application filed by the applicant is rejected.



(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 199/2021-CX (WZ) /ASRA/Mumbai DATED 20.5.2021

To,
M/s Tusha Textiles (Mumbai) Pvt. Ltd.
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Mumbai- 401 107

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3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
6. Spare Copy.