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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/1642/2012-RA | 1193 Date of Issue: 03|08|2018

ORDER NO. 223 /2018-CX (WZ)/ASRA/MUMBAI DATED 26.07. 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 Angoora International.

Respondent : Deputy Commissioner(Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/741/RGD/2012 dated 30.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

This revision application is filed by the M/s Angoora International (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/741/RGD/2012 dated 30.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. The issue in brief is that the appellant had filed 04 rebate claims collectively for Rs.2,18,119/- (Rupees Two Lakh Eighteen Thousand One Hundred Ninteen only). The adjudicating authority i.e. the Deputy Commissioner, Central Excise (Rebate), Raigad, vide his Order-in-Original No.2442/11-12/DC (Rebate)/Raigad dated 15.03.2012 rejected the 4 (Four) rebate claims collectively for Rs.2,18,119/- (Rupees Two Lakh Eighteen Thousand One Hundred Ninteen only) on the following grounds:

(a) that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1A) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the appellant could not have paid duty and did not have the option to pay the duty.

(b) that the Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying except in R.C. No.14949 and the name and designation of the authorized signatory was not appearing on ARE-1 and thus the conditions for grant of rebate under Notification No.19/2004-CE (NT) were not fulfilled.

(c) that since the name of M/s Angoora International was appearing in the alert list, they were requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty. However, they failed to submit the same.

3. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals-II), Central Excise, Mumbai who vide the impugned Order-in-Appeal No. US/741/RGD/2012 dated 30.10.2012 upheld the Order-in-Order No.2442/11-12/DC (Rebate)/Raigad dated 15.03.2012 and rejected the appeal on the grounds that the appellant did not produce evidence of the genuiness of the Cenvat Credit availed as the bonafide nature of transaction is imperative for admissibility of the rebate claim filed by the merchant exporter.

4. Being aggrieved, the applicant filed the Revision Application to the Central Government on the following grounds :

4.1 that the Order-in-Appeal was bad in law and that the Order is not maintainable.

4.2 that the Learned Commissioner(Appeals) ought to have appreciated during personal hearing that all the 4 rebate claims originally filed within the prescribed time limit and submitted all the statutory documents prescribed by the Excise Law. All the rebate claims were related to the duty paid on the final products exported and not related to the duty paid on input materials used for the export product. They had fulfilled all the conditions and procedures referred in Rule 18 of the Central Excise Rules, 2001, and laid down in the Notification No. 40/2001 C.Ex.(N.T.) dated 26.06.2001 at the time of clearance and export of the said goods and later on i.e. at the time of claiming rebate.

4.3 that there was no dispute of duty payments on the finished fabrics and readymade garments at the time of exports and the triplicate copies of ARE-1 were countersigned by the Central Excise Range officers certifying the payment of duty without raising any suspicion / objection about the Cenvat credit availed by them.

4.4 that in the Order-in-Original and Order-in-Appeal , there was no charge or allegation that the transaction between exporter/ processor and the manufacturer/ supplier of inputs was not at arms length or not non-bonafide and influenced by any extra commercial consideration. The only charge or allegation forming the genesis and basis for denial of rebate claim to the exporter

is therefore not against him but the insufficient documentations to establish the correctness of Cenvat credit availed in cases where the duty on export goods was paid through Cenvat credit by manufacturer. In this regard, sufficient legislative and machinery provision exist in the Central Excise Act/ Rules to recover such frauds detected if any from the manufacturer/ supplier of goods along with interest and penalty. Rule 14 of the Cenvat Credit Rules, 2004, provided that where any frauds detected on wrongly availed credit, it has to be recovered from manufacturer – supplier along with interest and provisions of Section 11A (Recovery of duties not levied or not paid or short paid or erroneously refunded) and 11AB (interest on delayed payment of duty) of the Act shall apply mutates mutandis for effecting such recoveries. Rule 15 of the Cenvat Credit Rules provides if any person takes Cenvat credit wrongly or without taking reasonable steps to ensure that duty has been correctly paid on goods as indicated in accompanying documents as per Rule 9, he shall be liable to penalty not exceeding the duty involved on excisable goods in respect of which contravention is committed. Also where duty has been collected from the exporter but allegedly not paid to Government, they are also recoverable along with interest in terms of Section 11D and 11DD of the Central Excise Act, 1944. The original rebate sanctioning authority and the Commissioner (Appeals) did not consider this fact while passing the said orders.

4.5 that for the fault of the manufacturer-supplier, if any in respect of Cenvat availed, the applicant who is the genuine exporter and who properly paid the duty of finished should not be punished for none of his fault.

4.6 that the rebate/ drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specially, it is now a title law that the procedural infraction of Notifications, Circulars, etc. are to be condoned, if export have really taken place, and the law is settled that substantive benefits can't be denied for procedural lapses. Here

they relied few Case laws where it is upheld that " if the goods have actually been exported than all procedural conditions can be waived". In their present case, the said textile fabrics and ready made garments have actually been exported and this is undisputed fact moreover all substantial requirements have been fulfilled. Hence the impugned orders are required to be set aside on this ground.

4.7 that they prayed to allow the Revision Application filed by them and to set aside the Order-in-Appeal dated 30.10.2012 and concerned Order-in-Original dated 15.03.2012.

5. A personal hearing in the case was held on 01.02.2018. Shri Sajimon K.C., Export Manager appeared on behalf of the applicant. He reiterated the submission filed through RA and it was pleaded that RA be allowed and Order-in-Appeal be set aside.

6. 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.

7. On perusal of records, Government observes that the applicant is a manufacturer/exporter who is engaged in the export of fabrics and ready made garments. They had filed 04 rebate claims applications with the Maritime Commissioner of Central Excise, Raigad, for rebate of Central Excise duty.

8. Government observes that the original adjudicating authority rejected the rebate claims filed by the applicant on the grounds that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1A) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the applicant could not have paid duty and did not have the option to pay the duty; that the Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying except in R.C. No.14949 and the name and designation of the

authorized signatory was not appearing on ARE-1 and thus the conditions for grant of rebate under Notification No.19/2004-CE (NT) were not fulfilled and that since the name of M/s Angoora International (applicant) was appearing in the alert list, they were requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty. However, they failed to submit the same.

9. Government further observes that Commissioner (Appeals) in his impugned Order observed that the rejection on the ground of non-mention of name & designation of the authorized signatory on ARE- I, cannot be the ground for the rejection of the rebate claims when the other corresponding documents prove the export of the goods. However, he upheld the Order in Original dated 15.03.2012 where by the adjudicating authority rejected the rebate claims as the appellants did not produce evidence of the genuineness of the Cenvat Credit availed.

10. From the Order in Original No. 2442 /11-12/ DC (Rebate)/Raigad dated 15.03.2012, Government observes that during the material time, the investigations carried out by DGCEI revealed that the non-existent / bogus grey fabrics suppliers had merely supplied duty paying documents, i.e., Cenvatable invoices, on a commission basis without supplying any grey fabrics to the grey processors with the intention to pass on fraudulent bogus Cenvat credit. Subsequently, without proper verification of genuineness of invoice received from the grey fabrics supplier, the processors availed the Cenvat credit on the bogus / fake invoices issued by the non-existent grey fabrics suppliers & utilized the said bogus credit for payment of central excise duty on exports goods. As a consequence of the frauds detailed above, Alert Lists were issued by several investigative agencies such as DGCEI and Central Excise & Customs Preventive formations and the applicant's name was appearing in the alert list issued by the A.C. Rebate, Commissionerate Raigad under [illegible] No. V/GRIV/REB/TEXTILE/ALERT/10. The name of the applicant also

appeared in the list of purchaser of bogus invoices of grey fabrics who availed rebate of Central Excise duty by showing receipt of grey fabrics from bogus units.

11. Government also observes that in order to verify the authenticity of the Cenvat credit availed by the processors, on the strength of invoices received by them from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of central excise duty on the above mentioned exports made by the applicant, an opportunity was given by the adjudicating authority to the applicant for submission of document / records regarding the genuineness of the availment of Cenvat credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the relevant ARE-I. However, the applicant submitted the copy of the fire report dated 09.05.2008 of Kalyan Dombivali Municipal Corporation relating to manufacturer M/s. Ronak, Dyeing Ltd. stating that records were lost in fire. No any relevant documents evidencing actual payment of duty at input stage i.e. grey stage/fabric stage was furnished by the applicant before the adjudicating authority. Therefore, the genuineness of the Cenvat Credit availed on input used in export fabrics could not be verified due to non-submission of relevant records by the applicant. Thus, the Department had prima facie proved that the supplier of the goods, had committed fraud against the Department and had taken Cenvat credit fraudulently based on bogus/non-existent units and they themselves did not have any manufacturing unit.

12. However, Government observes that the applicant in their grounds of appeal have contended that

> *"there was no dispute of duty payments on the finished fabrics and readymade garments at the time of exports and the triplicate copies of ARE-1 were countersigned by the Central Excise Range officers certifying the payment of duty without raising any suspicion / objection about the Cenvat credit availed by them.*

"in the Order-in-Original and Order-in-Appeal , there was no charge or allegation that the transaction between exporter/ processor and the manufacturer/ supplier of inputs was not at arms length or not non-bonafide and influenced by any extra commercial consideration. "The only charge or allegation forming the genesis and basis for denial of rebate claim to the exporter is therefore not against him but the insufficient documentations to establish the correctness of Cenvat credit availed in cases where the duty on export goods was paid through Cenvat credit by manufacturer. In this regard, sufficient legislative and machinery provision exist in the Central Excise Act/ Rules to recover such frauds detected if any from the manufacturer/ supplier of goods along with interest and penalty. Rule 14 of the Cenvat Credit Rules, 2004, provided that where any frauds detected on wrongly availed credit, it has to be recovered from manufacturer – supplier along with interest and provisions of Section 11A (Recovery of duties not levied or not paid or short paid or erroneously refunded) and 11AB (interest on delayed payment of duty) of the Act shall apply mutates mutandis for effecting such recoveries. Rule 15 of the Cenvat Credit Rules provides if any person takes Cenvat credit wrongly or without taking reasonable steps to ensure that duty has been correctly paid on goods as indicated in accompanying documents as per Rule 9, he shall be liable to penalty not exceeding the duty involved on excisable goods in respect of which contravention is committed. Also where duty has been collected from the exporter but allegedly not paid to Government, they are also recoverable along with interest in terms of Section 11D and 11DD of the Central Excise Act, 1944. The original rebate sanctioning authority and the Commissioner (Appeals) did not consider this fact while passing the said orders".

13. In this regard Government observes that in the case of M/s Poddar Exports (India) Vs Union of India [2015(316) ELT 179 (Guj)] Hon'ble High Court Gujarat while dismissing the Special Civil Application filed by the petitioner observed as under :-

Under the circumstances, when the transactions between the manufacturer (processor) and the merchant exporter (petitioner) are found to be bogus and when it has been established that the purported suppliers are fake and fictitious persons and the entire transaction is found to be only billing activities for the purpose of taking undue advantage of the Cenvat credit and/or the rebate, no

error has been committed by the Authorities below in denying the rebate claims claimed by the petitioner.

5.1 Now, so far as the contention on behalf of the petitioner that as the petitioner had exported the goods on payment of duty the petitioner is entitled to rebate of Excise duty is concerned, the same arguments came to be considered by the Division Bench of this Court in Special Civil Application No. 13931/2011 [2013 (295) E.L.T. 387 (Guj.)]. At that stage also, the petitioner of that petition heavily relied upon the decision of this Court in the case of D.P. Singh (supra). While not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench of this Court has observed as under :

> *"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."*

In the present ease also, there are concurrent findings of fact given by all the authorities below with respect to the fake transactions between the petitioner and M/s. Raju Synthetics Pvt. Ltd., we are of the opinion that all the authorities have examined the case in detail and as such no interference is called for. The conclusions arrived at by the authorities below are on the basis of evidence on record and such conclusions are not pointed out to be perverse. Under the circumstances, as such no interference in exercise of powers under Articles 226 & 227 of the Constitution of India, therefore, can be made.

14. In view of above discussions and findings and also applying the ratio of afore stated case law [2015 (316) E.L.T. 179 (Guj.)], Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned Order-in-appeal and upholds the same.

15. The revision application is thus dismissed being devoid of merit.

16. So ordered.

26.7.18

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

ORDER No. 223 /2018-CX (WZ)/ASRA/Mumbai DATED 26.07. 2018.

To,
M/s Angoora International,
53, 147/149 Gaiwadi Sadan,
Dr. Viegas Streed, Kalbadevi,
Mumbai 400 002.

Copy to:

1. The Commissioner of GST & CX, Belapur,
2. The Commissioner of GST & CX (Appeals) Belapur, CGO Complex, Belapur.
3. The Deputy / Assistant Commissioner(Rebate), GST & CX Mumbai, Belapur,
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

Attested

3/8/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C)