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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, Centre-I, World Trade Centre, Cuff Parade, Mumbai- 400 005

F NO. 195/1465/12-RA/615

Date of Issue: 22nd DECEMBER 2017

ORDER NO. 22/2017-CX (WZ)/ASRA/Mumbai Dated 22nd December, 2017
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 CENTRAL EXCISE ACT, 1944

Applicant: M/s Eence Overseas, Plot No. 25, Cama Industrial Estate,
Goregaon (E), Mumbai-400 063.

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

Subject: Revision Application filed, by M/s Eence Overseas, Plot No. 25, Cama
Industrial Estate, Goregaon (E), Mumbai-400 063, against the
Order -in -Appeal No. US/508/RGD/2012 dated 23.08.2012 passed
by The Commissioner Central Excise, (Appeals-II), Mumbai.



ORDER

This Revision Application has been filed by M/s Encee Overseas, Plot No. 25, Cama Industrial Estate, Goregaon (E), Mumbai-400 063 (hereinafter referred to as the "Applicant") against the Order-in-Appeal No. US/ 508/ RGD/ 2012 dated 23.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

The facts, in brief, giving rise to filing of the present revision are as below.

2. The Applicants procured grey fabrics i.e. Grey Poly Viscose fabrics from M/s Priyadarshini Fashion Pvt. Ltd., M/s Hariom Silk Industries and M/s Shree Krishna & Ram Industries etc on payment of duty and the same was sent for processing to M/s Swastik Poly Prints Pvt. Ltd. M/s. Swastik, Surat processed the said fabrics on job work basis for the Applicants and the processed poly viscose fabrics were exported by the Applicants directly from the factory of M/s. Swastik under the cover of Central Excise invoices and ARE-1. The Applicants filed 14 rebate claims through which rebate of duty paid on the processed fabrics by the job worker was claimed as rebate along with enclosures thereto aggregating to rebate of Rs. 6,87,806/-.

3. The Deputy Commissioner (Rebate), Raigad, rejected the rebate claims, through Order-in-Original No.1747/11-12/Deputy Commissioner (Rebate)/Raigad dated 9.1.2012, on the grounds that;

(i) goods exported are exempted under Notfn.30 /2004-CE, and duty was not required to be paid on export thereof, as per Section 5A(1A), CEA, and CBEC Circular dated 26.11.2010;

(ii) in light of the supplementary instructions issued by CBEC having the force of law, deficiencies in the documents claiming rebate cannot be condoned.

(iii) the duty paid nature of the grey fabrics was not free from doubt as M/s Swastik was in the habit of availing cenvat credit on duty payment documents issued by bogus non-existent firms.



(iv) the Applicants never submitted documents proving the genuineness of credit availed by M/s. Swastik and subsequent utilisation thereof for payment of duty on export.

4. Aggrieved by the said Order-in-Original, an appeal was filed before Commissioner (Appeals). The Commissioner (Appeals) in his Order in Appeal held that the grounds for rejection which were all procedural/technical in nature are condonable. The denial of rebate claims on the grounds that full exemption under Notification no. 30/2004 dated 09.07.2004 was available to the Applicants was also held to be incorrect as the exemption contained in the notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of Cenvat Credit Rules 2004. The ARE-I clearly declare that the goods have been manufactured availing input Cenvat Credit. However, the rebate claims were rejected as the processors/manufacturers i.e. M/s Swastik Poly Prints Pvt. Ltd., were figuring in alert notices issued by DGCEI for fraudulent availment of credit on the basis of invoices issued by bogus/non existent grey manufacturers, and held that, bonafide nature of the transaction between the merchant exporter and supplier-manufacturer is imperative for admissibility of rebate claim.

5. Being aggrieved by the portion of rejection of the rebate claim in the aforesaid Order-in-Appeal, the Applicants have preferred this Revision Application on the following grounds.

- The exports have been effected on payment of duty and once the duty payment character and facts of export is not in dispute, substantial benefits of rebate cannot be denied.
- It is clear that, both the lower authorities have proceeded on a presumption that, the Applicants may be a party to fraudulent availment of credit, without any substantiation or any documentary evidence to that effect.
- Denying the rebate on a presumption that, since the processors are figuring in the alert notices issued by DGCEI for fraudulent availment of credit on the basis of invoices issued by bogus/non existent grey



manufacturers, the Applicants may also be a party in the said fraudulent availment of credit, is incorrect.

- the transaction between themselves and processors was at arms length. In fact, in the impugned Order there are no findings or any documentary evidence to show or prove any role direct or indirect of the Applicants in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices. There is also absolutely nothing to show any mutuality of interest, financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.
- The applicants submit that the learned Commissioner (Appeals) has failed to bring any iota of evidence and the entire ground for rejection is based on presumption and conjecture, without adducing any evidences and hence is not sustainable.
- Denial of rebate merely on the ground that, duty paid nature of the grey fabrics (inputs) is not free from doubt as the processor was in habit of availing Cenvat credit on duty payment documents issued by bogus non-existent firms, is absolutely incorrect.
- The Applicants further submit that, it was not possible for them to ascertain as to whether the supplier or the processor manufacturer had really paid duty or the invoices of the supplier were fake or genuine. Reliance is placed on the Supreme court judgment in the case of Decent Dyeing 1990 (45) ELT 201 (SC), wherein it was held that, it would be intolerable if the purchasers were required to ascertain whether excise duty has already been paid as they had no means of knowing it. It is a settled position of law that, law cannot compel the assessee to do what possibly he cannot do, based on the legal maxim "lex non cogit ad impossibilia".
- The Applicants submit that, they had taken reasonable steps to ensure that the inputs in respect of which credit is availed are goods on which appropriate duty of excise, as indicated in the documents has been paid, as the invoices of the suppliers of inputs clearly showed duty payable. The Applicants have procured certificate from the Range Superintendent of the manufacturer-processor verifying duty paid on goods exported.



- the credit was taken based on invoices showing duty payable, name and address of the supplier and exports were also undertaken by preparation of valid documents like shipping bills, ARE-1s etc. on payment of duty which was further evidenced by Certificate from Range Superintendent to the effect that, duty has been paid on exports of which rebate has been claimed for the disputed period.

6. A Personal Hearing was held on 22nd November, 2017 which was attended by Shri Lalit Pathak, Excise Manager, of M/s Eence Overseas. He submitted the Bank realisation certificates for all the impugned exports, EGM copies of the proof of export and 3 signed copies of the duty paid certificates, the rest of the certificates enclosed were not signed as the duty paid through individual invoices issued by the grey weavers were less than Rs. 5000/-. Therefore, it was pleaded that in view of the genuineness of exports, the Revision Application may be allowed and the Order in Appeal rejected. Further, vide letter dated 15.12.2017 the applicant submitted copies of certificates issued by Superintendent in earlier rebate claims wherein all the grey weavers/ manufacturers who have supplied the raw materials for processing to M/s Swastik have been certified to be in existence and that their names do not appear in the negative list circulated by different agencies of the Commissionerates.

7. Government has carefully gone through the relevant case records available in case files & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. The Order in Appeal has held that, all the errors with regard to wrong mention of the address of the Maritime Commissioner, Classification of the product in Excise invoices, Non-submission of the Disclaimer certificate and not mentioning the container number and seal number in the Bill of Lading, to be technical in nature and are condonable lapses when shipping bills and mate receipts confirms exports. The Applicants grievances however, are directed at the rejection of the rebate claims in the order of the Commissioner (Appeals).

8. Page 5 of the order states " The Appellents are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors who manufactured the goods were figuring in the Alert notices

issued by D.G.C.E.I. Vadodara and Surat Commissionerate for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/ non-existent grey manufacturers. The credit had been availed by (sic) who **may have** availed the said Cenvat Credit fraudulently and the appellants **may also** be a party in the said fraudulent availment of Cenvat Credit. The bona fide nature of transaction between the merchant-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter.

9. From the above it is clear that, the Order in Appeal has proceeded on a premises and conjectures and without any substantive piece of evidence that, the Applicants/ processor may be a party to fraudulent availment of credit. The rebate has been denied on a presumption that, since the processors are figuring in the alert notices issued by DGCEI, the Applicants may also be a party in the said fraudulent availment of credit, this is incorrect. There is no substantiation or any documentary evidence to that effect and cannot be the basis to arrive at a positive conclusion that the Applicants were/are a party in the said fraudulent availment of credit. The entire ground for rejection of the rebate claim is based on this allegation, surmises and conjecture and without adducing any evidence, and are contrary to the ratio of the following judgements wherein the facts are similar to the facts of the present case, 1978 (2) ELT (J-172) - Oudh Sugar Mills, 1995 (80) ELT 579 Phosphate Company, 1997 /90/ ELT 343 (T) - Padmanabh Dyeing, 1998 (98) ELT 787 (7) - Saraya Steels Ltd., 2003 (153) ELT 1, Sunder Silk Mills.

10. Further, the Appellate authority in the impugned Order in Appeal has not adduced or relied upon any evidence that the transaction was not at arms length, there are no findings that the transactions were bogus or were influenced by any extra commercial consideration or mutuality of interest between the Applicant, exporter and the supplier processors. While rejecting the rebate claim the impugned order states that, since the processors manufacturing goods were figuring in the alert notices issued by DGCEI, Vadodara, the Applicants may also be a party in the said fraudulent availment of credit. The benefit of rebate claim cannot be denied on the basis of conjecture. Reliance on this issue is placed on



the order of the Joint Secretary's, Order No. 501/2009-CX, dated 29-12-2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International ".....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order-in-original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices.....The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.....". The Joint Secretary's, Order No. 351/2010-CX, dated 26-2-2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports also echoes a similar sentiments.

The Order in Appeal also relied on the judgement of the Hon'ble Bombay High Court in Union of India v/s Rainbow Silks -2011 (274) E.L.T. 510 (Bom.) which noted that during the course of the physical verification of firms, as a

part of an investigation into the grant of fraudulent rebate, 71 firms at Surat were found to be bogus and non-existent.....Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and such credit was utilised to pay duty. The Order in Appeal also relied on the judgement in the case of M/s Sheetal Exports – 2011 (271)ELT 461 (G.O.I) quoting that, there is nothing on record nor the merchant exporters have produced any evidence documents to prove that their transactions were transparent and bonafide in nature and are not influenced by any extra commercial consideration and there was no involvement of the applicant in committing the said fraud.

12. Both the above quoted judgements are not applicable in the present case, in the case of Rainbow Silks, a show cause notice was issued to the manufacturer supplier i.e. the processor alleging therein credit has been taken based on invoices issued by bogus and fictitious firm. There was a clear admittance that, the processor had not received the grey fabrics from the supplier but had received it through exporter-assessee. In the said case, it was held that, the impugned Order proceeded on the basis that there was no allegation of want of bonafides but the records indicated otherwise and rebate claims were rejected. As against the same, in the present case, the impugned Order has merely proceeded on presumption that, the Applicants may be a party to the fraudulent availment of credit, without any evidence to that effect, nor do records indicate anything to the effect that any show cause notice was issued to the applicant alleging bogus purchase or wrong availment of credit. In the other case of Sheetal Exports rebate referred to in the Appellate order, claims filed by merchant exporter were rejected on the ground that, the merchant exporter had purchased the goods from a manufacturer who was found to have no manufacturing activity and the duty paying documents were found to be bogus on investigation. The facts in the present case, again are at variance with the referred judgement.

13. In the present case the applicants have taken credit based on valid documents showing duty payable and other details. The documents submitted at the time of personal hearing depict, support the entire co-relation of the transaction. The input credit availed by the Processor, M/s Swastik Poly Prints Pvt. Ltd., are based on duty paid by genuine manufacturers. The Range

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Superintendents of the department have certified the genuineness of the grey manufacturers. The names of these weavers do not appear in the negative lists circulated by the revenue. It therefore follows that the duty paid by the processors, M/s Swastik Poly Prints Pvt. Ltd., is on the basis of credit accumulated from these duty paying documents supplied by the grey manufacturers. The bank certificates showing actual payments made, goods exported under ARE-1, shipping bills etc on payment of duty, all establish the bonafides of the Applicants. Hence denial of rebate based on presumptions and assumptions are not sustainable, and rejection of rebate is incorrect. Hence the impugned order in appeal is liable to be set aside and the instant Revision Application is liable to be allowed.

14. The Government of India accordingly rejects the Order in Appeal No. US/508/RGD/2012 dated 23.08.2012, issued by the Commissioner Central Excise (Appeals II) setting aside the rebate claims and allows the instant Revision Application with consequential relief.

12. So, ordered.

(Signature)
22.12.12

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No 22/2017-CX (WZ) /ASRA/Mumbai

DATED 22.12.2017

M/s Eence Overseas,
Plot No. 25,
Cama Industrial Estate,
Goregaon (E), Mumbai-400 063.

True Copy Attested

(Signature)
22/12
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex. (RA)

Copy to:

1. The Commissioner of GST & CX, Raigad Commissionerate.
2. The Commissioner Central Excise, (Appeals-II), Mumbai.
3. The Deputy / Assistant Commissioner (Rebate), Central Excise building, Plot no. 1, Sector-17, Khandeshwar, Navi-Mumbai -410206.
4. Sr. P.S. to AS (RA), Mumbai

Guard file

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