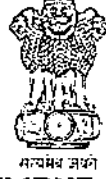


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F.No.195/274/WZ/2019-RA / 2153

Date of issue: 12.04.2023

ORDER NO. 231 / 2023-CX (WZ)/ASRA/MUMBAI DATED 12.4.2023
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. Yashasvi Yarns Limited.

Respondent : Commissioner, CGST, Daman

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-SRT(APPEAL)PS-946/2017-18 dated 28.03.2018
passed by the Commissioner (Appeals), CGST & Central
Excise, Surat.

ORDER

This Revision Application is filed by the M/s. Yashasvi Yarns Limited, Survey No. 272/1/2, Demani Village, Dadra, Silvassa (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. CCESA-SRT(APPEAL)PS-946/2017-18 dated 28.03.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Surat.

2. Brief facts of the case are that the applicant had filed a rebate claim amounting to Rs.2,70,058/- under Notification No.19/2004-CE(N.T.) dated 06.09.2004 issued under Rule18 of the Central Excise Rules,2002 for export of 'Polyester Twisted Yarn' carried out by the merchant exporter, M/s. Super Tèx Industries Limited. The claim was rejected by the rebate sanctioning authority vide Order-in-Original (OIO) No. 215/AC/SLV-1/Reb/15-16 dated 26.02.2016 on the grounds that the concerned commercial invoice and Shipping Bill had different description of the product exported viz. 'Polyester Texturised Yarn'. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) upheld the OIO and rejected the appeal vide the impugned OIA.

3. Hence, the applicant has filed the impugned Revision Application. mainly on the grounds that:

- a) it is matter of fact that the Applicant has cleared for Export "Polyester Twisted Yarn". The Polyester Twisted Yarn is either mentioned as Twisted Yarn or Twist per meter i.e. TPM is mentioned. TPM signifies that the yarn is twisted.
- b) the material exported is 50 Denier 72 Filaments, Twisted Yarn with 600 TPM (Twist per meter). This nomenclature as mentioned in the Excise Invoice and ARE 1 also tallies with the Export documents issued by the Merchant Exporter such as Commercial Invoices, Packing List, Pill of Lading and Shipping Bill, Mate receipt etc.

- c) it is not in dispute that the quantity and CETH declared by the Applicant in his ARE-1 and Excise Invoice tallies with that declared by the Merchant Exporter in his Export Invoice, packing list and Shipping Bill. Further it is a matter of fact that the Applicant has mentioned the denier i.e. 50D/72F/600 TPM, which is an essential requirement and which substantiate the fact that what actually exported is Polyester Twisted Yarn.
- d) duty has been paid by applicant on the assessable value indicated in the invoice, which is proper. The value indicated in the shipping bills is for customs purpose and not for payment of excise duty. The clarification is given in para 4.1 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions.
- e) the goods viz. Polyester Twisted Yarn after their clearance from the factory on payment of duty, have been exported and merely because there is a minor technical difference in the description as mentioned in ARE 1 and Excise Invoice and that mentioned by the Merchant Exporter in his Commercial Invoice and Shipping Bill/ does not lead to an inference that the goods have been diverted / replaced into India. The adjudicating authority as well as Appellate authority cannot merely allege that the goods have been diverted / replaced, without bringing any evidence on record to prove that the goods have been diverted.
- f) the Applicant relied upon the following decisions of the Hon'ble Revisionary Authority, wherein it has been held that Rebate claims should not be rejected for minor technical lapses or where there is minor difference in description:-
- 2014 (314) E.L.T. 953 (G.O.I.) Ran's Pharma Corporation
 - 2012 (285) E.L.T. 3.51 (G.O.I) - Aventis Pharma Ltd.
 - 2006 (205) E.L.T. 1027 (G.O.I.) - Cotfab Exports

The ratio of the above decisions is equally applicable to the impugned case and hence the Order-in-original dated 26.02.2016 confirmed by the Order-in-Appeal No. CCESA- SRT(APPEAL)/PS-946/2017-18 dated 28.03.2018 for rejection of Rebate claim should be dropped and the Rebate claim should be allowed with

consequential relief, by way of granting Interest on delayed refund of Rebate claim.

- g) the Applicant vide their letter dated 07/10/2015, has given detailed clarification as to why the mistake has happened and has also brought on record the explanation tendered by the Merchant Exporter, who has ultimately exported the goods. The Merchant Exporter has also reiterated the same thing that they have mentioned TPM (i.e. Twist per meter) in all their Export documents including Excise Invoice and ARE 1 and that TPM signifies that the yarn is Twisted Yarn. Further they have also clarified that the Classification and quantity of goods as well as the remaining nomenclature of the goods as mentioned in the export documents tally with the ARE 1 and Excise Invoice issued by the Applicant.
- h) The Appellate authority had not discussed a single case law cited by the Applicant as to why the case laws cited by Applicant is not applicable in present case.

On the above grounds, the applicant prayed to set aside the OIO and allow their appeal.

3.2 In their further written submission, the applicant inter alia submitted that:

- a) In the instant revision application, in covering letter, they have made several mistakes due to copy paste of their earlier Appeal.
- b) The Applicant had not received Order-in-Appeal copy even after completion of 17 months of Personal Hearing as such they had written letter dated 31.07.2019 to Commissioner (Appéals) to provide them the copy of Order-in-Appeal in respect of Appeal filed by them against OIO dated 26.02.2016. In response to their letter dated 31.07.2019 the commissioner (Appeals) has provided them photocopy of the Order-in-Appeal No CCESA-SRT(APPEAL)/PS-946/2017-18 dated 28.03.2018 on 20.08.2019.

4. A Personal hearing was held in this case on 11.01.2023. Shri Uday Kadu, Advocate appeared online and submitted that minor variations in description which have been later clarified should not result in denial of rebate when export of duty paid goods is not in doubt.

5. 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.

6. Government observes that the impugned Order-in-Appeal was passed and issued on 28.03.2018, while the instant Revision Application was filed on 17.10.2019, viz. after more than 1½ years. In this regard Government observes that the applicant has claimed that the date of communication of impugned OIA to them is 20.08.2019 as they had obtained the photocopy of OIA after corresponding with the office of Appellate authority. However, from the covering letter enclosing the photocopy of impugned OIA to the applicant, Government observes that the Appellate authority has not agreed with this contention of the applicant. The relevant extract of the said letter dated 20.08.2019 is reproduced hereunder:

2. In this connection, it is to inform that the OIA No. CCESA/SRT(APPEAL)PS-946/2017-18 dated 28.03.2018 had already been passed in the appeal no. 62/16-17 filed against the OIO No. 215/AC/SLV-1/Reb/15-16 dated 26.02.2016.

3. As regards provision of original copy of the said order, it is informed that the said order was sent by speed post at the address from where the appeal was filed i.e. Survey No. 272/1/2, Village Dadra, D & N.H. (UT)-396230 and from the records of this office, the OIA sent to this address has not been returned back undelivered. it is clear that the same might have been received at the said address.

4. However, a photocopy of the said OIA (retrieved from guard file of this office) is attached herewith.

Government observes that with regard to serving of an Order, the relevant is Section 37C of the Central Excise Act,1944 which reads as follows:

SECTION [37C. Service of decisions, orders, summons, etc. — (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to the person for whom it is intended or his authorised agent, if any;

Thus, as the lower authority has not mentioned about 'proof of delivery' of sending OIA by speed post, it cannot be said that the Order had been served to the applicant. Hence, Government accepts the contention of the applicant that the date of communication of impugned OIA to them is 20.08.2019.

7. Now, Government takes up the matter on merits. On perusal of records, Government observes that the rebate claim in question was rejected on the grounds of mismatch of description of goods mentioned in ARE-1 & Excise invoice whereunder they were cleared from the factory of the applicant with the description of goods mentioned in the export documents prepared by the merchant exporter. Whereas in the Excise documents the description of goods was given as 'Polyester Twisted Yarn', in the Export documents, the same appeared as 'Polyester Texturised Yarn'.

8. Government observes from the documents submitted by the applicant that Lot number: 1094, specification of yarn: 50D/72F/600TPM, net weight: 11622 kgs, tally with all the export documents, viz. Shipping bill, Export Invoice, Packing List etc. which proves that the goods in question have been actually exported out of India. Further, export proceeds in foreign exchange have also been realized. Government further observes that explaining the reason for impugned discrepancy, the merchant exporter had informed that

the error/anomaly had occurred as they had mentioned the name of product exactly as appearing in the Customer order. Hence, as substantial requirement of law is fulfilled so the rebate claim cannot be denied for minor procedural infraction as held by this authority in catena of decisions including the ones relied upon by the applicant.

9. In view of the above discussion and findings, the Government sets aside the Order-in-Appeal No. CCESA-SRT(APPEAL)PS-946/2017-18 dated 28.03.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Surat and allows the impugned Revision Application.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 23 /2023-CX (WZ)/ASRA/Mumbai dated 12.4.23

To,

M/s. Yashasvi Yarns Limited,
Survey No. 272/1/2,
Demani Village, Dadra, Silvassa - 396 230.

Copy to:

1. Commissioner of CGST, Daman,
2nd Floor, Hani's Landmark,
Vapi-Daman Road, Chala,
Vapi - 396 391.
2. Adv. Uday B. Kadu
Flat No. F/101, Sun Residency,
Opp. Pramukh Residency,
Vapi-Daman Road, Chala,
Vapi - 396 391
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file