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सत्यमेव जयते

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. 195/507/13-RA / 3620 Date of Issue: 12.02.2024

ORDER NO. 243 /2021-CX (WZ) /ASRA/Mumbai DATED 09.07.2024 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.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SRP/169/DMN/2012-13 dated 27.12.2012 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Daman.

Applicant : M/s CIL Textiles Pvt. Ltd., 302, Oasis Trade Centre, 22/20, Y.N.Road, Indore, (M.P.).

Respondent : Commissioner (Appeals) Central Excise, Customs & Service Tax, Daman.

ORDER

This Revision Application has been filed by M/s CIL Textiles Pvt. Ltd., Indore(M.P.) (hereinafter referred to as "the applicant") against the Order-in-Appeal No. SRP/169/DMN/2012-13 dated 27.12.2012 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Daman.

2. Brief facts of the case are that the applicant is a merchant exporter and has exported coated canvas manufactured by a job worker namely M/s Supreme Nonwoven Ind P. Ltd, Vapi (hereinafter referred to as "Supreme") falling under the jurisdiction of Range VI, Division-Vapi-I, Daman Commissionerate. The applicant filed rebate claim of the duties paid on the raw material used in the manufacture of the export goods before the Assistant Commissioner, Central Excise & Customs, Division-1 Vapi under Rule 18 of CER, 2002 read with Notification no. 21 / 2004-CE (NT) dated 06.09.2004. After examination of the rebate claim, it was observed that the appellant had not followed the condition and procedure as laid down under Notification no. 21 / 2004-CE (NT) dated 06.09.2004 and therefore, a show cause notice was issued to them proposing to reject the claim. After due process of law, the adjudicating authority viz., the Deputy Commissioner, Central Excise, Customs & Service Tax, Division-Vapi-I vide Order-In-Original No. VAPI-I/REFUND/92/ 2012-13 dated 14.06.2012 concluded that the applicant is not eligible for rebate and rejected the rebate claim filed by the applicant.

3. Aggrieved by the aforesaid Order, the applicant preferred appeal before the Commissioner(Appeals) on the following grounds:

(i) The adjudicating authority had not taken cognizance of the submissions and the case laws relied upon by them.

(ii) They filed the declaration in Annexure 24 with the Assistant Commissioner, Central Excise & Customs, Adarshdham Building, Zhanda Chowk, Division-Daman. It was further submitted that rebate claim should have been sanctioned at least on the basis of norms under Sr. No. J 359 of SION without insisting on the submission of Annexure 24.

(iii) As per Notification No. 21/2004 C.E. (NT) dated 06.09.2004 and part V of Chapter 8 of the CBEC supplementary instruction either the manufacturer or the processor is eligible to file an input stage rebate claim. They have submitted all the documents to evidence the export of the goods manufactured at job workers premises and in such situation rebate cannot be denied.

The Commissioner (Appeals) Central Excise, Customs & Service Tax, Daman vide Order in Appeal SRP/169/DMN/2012-13 dated 27.12.2012 (impugned Order) rejected the appeal filed by the applicant observing that :

..... The adjudicating authority has found that any manufacturer desirous of claiming rebate of duty paid on the raw material under Rule 18 of CER, 2002 is required to file a declaration under notification No. 21/2004-C.E. (NT) dated 06.09.2004, in the form of Annexure-24, before the commencement of manufacturing of the goods to be exported, which was not filed by the actual manufacturer of the goods i.e. M/s Supreme in this case. The adjudicating authority has also found that even the declaration sent by the appellant through speed post was not received by the proper officer. The quantity of raw material said to have been used in the manufacture of the goods has also been disputed. In those facts and circumstances of the case, the adjudicating authority rejected the claim.

I find that there is no dispute that the appellant has acted as exporter of the export goods which were manufactured by M/s Supreme. It is also on record that M/s Supreme did not file the declaration in form Annexure-24 prescribed under notification No. 21/2004-CE(NT), which is evident from the statement of Shri Prakash Dwivedi Manager Administration of M/s. Supreme, recorded on 05.01.11 under Section-14 of the Central Excise Act, 1944. I have also gone through the documents submitted by the appellant in support of their claim that they filed the declaration under notification No. 21/2004- CE(NT). On going through the said documents, I find that the documents were sent to the Dy. Commissioner, Central Excise 86 Customs, Adarshdham Building, Zanda Chowk, Division Daman and not to Asst/Dy. Commissioner, Division Vapi-I. Therefore, I agree with the finding of the adjudicating authority that the prescribed declaration under said notification was not filed by the proper person before the proper officer. Now the question remains to be answered whether non filing of said declaration is sufficient cause to reject the claim or otherwise.

I find that the said notification No. 21/2004-CE (NT) dated 06.09.2004 provides for rebate of whole of the duty paid on excisable goods used in the manufacture or processing of export goods, on their exportation out of India, to any country except Nepal and Bhutan, subject to the conditions of filing of declaration and verification of the input/output ratio by the jurisdictional Asst/Dy. Commissioner to satisfy himself that there is no likelihood of evasion of duty. Therefore the condition of filing of declaration of input/output ratio is not just a procedural requirement but a mandatory requirement. Having not complied with this mandatory requirement, the appellant is not correct to contend that the adjudicating authority has passed an illegal order.

The Commissioner (Appeals) in the impugned Order also relied on Hon'ble Supreme Court Judgements in the case of Sh. Harchand Shri Gopal- 2010 (260) ELT 3 (S.C.) (para 22) and CCE, Chandigarh V Mahaan Dairies - 2004(166) E.L.T. 23 (S.C.) wherein it has been held that "*in order to claim benefit of a Notification party must strictly comply with the terms of the Notification*". While deciding the question whether non filing of declaration of inputs in said Annexure-24 is sufficient cause to reject the claim or otherwise, Commissioner (Appeals) relying on the GOI Order in the case of National Wire Industries 2012 (278) ELT 141(GOI) held that declaration of inputs in the said Annexure-24 is mandatory for availing the benefit of rebate under the Notification No.21/2004-CE(NT). On the basis of these observations, the Commissioner (Appeals) rejected the appeal filed by the applicant.

5. Being aggrieved and dissatisfied with the impugned Order the applicant has filed Revision Application on the following grounds:

(i) The Ld. Commissioner (Appeals) has held that the declaration was sent to Asstt. Commissioner, Central Excise & Customs, Adarshdham Building, Division - Daman and not to Asstt. Commissioner, Division, Vapi - I and therefore he agrees that the said declaration was not filed with the proper person before the proper office and thus the question arose as to whether the non filing of declaration is sufficient cause to reject the claim or otherwise. The Ld. Commissioner thus rejected the appeal on the ground that the condition of filing of declaration has not been followed.

(ii) The declaration in terms of Notification 21/04 was filed to the Asstt./ Deputy Commissioner, Central Excise & Customs. Adarshdham Building,Division - Daman. Wherein they had clearly stated the name of M/s Supreme Industries, the address of Supreme Industries and its Central Excise Registration number. The office of the Asst./ Deputy Commissioner Central Excise & Customs. Adarshdham Building,Division Daman and office of Asstt. Commissioner, Division, Vapi - I both fall under the same Commissionerate i.e. Daman Commissionerate. Hence, even if the declaration was not filed before the proper officer the same should have been forwarded by the office of the Division - Daman to Division-Vapi as the letter clearly stated the name, address and central excise registration number of M/s Supreme Industries and there was no difficulty in forwarding the same to the jurisdictional Division. Moreover, the Asstt. Commissioner, Vapi could have easily verified the fact of filing of declaration by them from Asstt. Commissioner, Daman. However instead he chose to reject the refund claim which is illegal. In such circumstances the rebate cannot be denied on the ground of non filing of declaration.

(iii) Even if it is assumed that no declaration as required under Notification No 21/04 was filed then too the refund should not have been denied as the submission of declaration is procedural requirement. The foremost requirement for filing rebate claim is export of goods which is not in dispute and hence the impugned order is not legal. The Applicant is eligible for rebate as per SION and hence the refund should be allowed. It is also an undisputed fact that they have got their export goods manufactured from the job-worker "Supreme", who have furnished their disclaimer certificate. Therefore it is crystal clear that they had followed the mandatory requirements, and the alleged non filing of declaration which is only procedural should be condoned.

(iv) The admissibility of rebate amount could have been ascertained taking the norms provided in Sr No J 359 of SION, instead of raising any other question in this respect. This submission gets support from para- 3.2 of part- V of Chapter 8 of The CBEC Supplementary Instructions, which is re-produced below :-

Para 3.2 It is clarified that for the sake of convenience and transparency, input output norms notified under the Export Import Policy may be accepted by the Department unless there are specific reasons for variation. However, in case, the input output norms notified under the Export- Import Policy does not include all the materials used in export goods, the claim under this scheme should not be denied merely on that ground."

In view of such specific clarification, the rebate claim should have been sanctioned on the basis of norms under Sr. No J 359 of SION, without denying rebate on the ground of non filing of declaration and rebate cannot be denied to them as held in the following judgments:-

- 2006 (204) E.L.T. 632 (G.O.I.) IN RE : MODERN PROCESS PRINTERS Order Nos. 527-528/2005, dated 18-11-2005 [para 6.3]
- 1998 (99) E.L.T. 387 (Tribunal) BIRLA VXL LTD. Versus COLLECTOR OF CENTRAL EXCISE, CHANDIGARH [pare 4]
- 1993 (66) E.L.T. 497 (Tribunal) COLLECTOR OF CENTRAL EXCISE Versus T.I. CYCLES OF INDIA [para 3] [pare 4]
- 2006 (205) E.L.T. 1093 (G.O.I.) IN RE : COMMISSIONER OF CENTRAL EXCISE, BHOPAL [pares 2.2, 7.1, 7.2, 7.3, 8, 9] [pare 7.4]
- 1996 (87) E.L.T. 141 (Tribunal) COLLECTOR OF CENTRAL EXCISE, CHANDIGARH Versus KANWAL ENGINEERS [Para 4]
- 2002 (147) E.L.T. 626 (Tri. - Del.) WONDERSEAL PACKING Versus COMMISSIONER OF CENTRAL EXCISE, NAGPUR [paras 1, 4].
- 1991 (55) E.L.T. 437 (S.C.) MANGALORE CHEMICALS & FERTILIZERS LTD. Versus DEPUTY COMMISSIONER [pars 7] [para 11] [para 12]
- 2003(156)E.L.T. 777(Tri-Kolkata) Commissioner of Central Excise, Jamshedpur V Tisco (Tube Division) [para 5]
- 2006(203)E.L.T. 321 (G.O.I.) in Re: Barot Exports [para 7,8,9].

(v) From the above it is apparent that legitimate rebate claim cannot be denied to an exporter on the ground of procedural lapses. Moreover, the Hon'ble Supreme Court in case of Shariff Uddin V/s Abdul Gani Lone reported in 2003 (156) ELT 168 (Bombay) AIR 1980 (SC) 303 has categorically held that "a procedural rule ordinarily should not be construed as mandatory if the defect in that act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by recording such permission to rectify the error, later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence it would be difficult to hold that the requirement is not mandatory and specified consequence should not follow.

The Hon'ble Joint Secretary (Revisionary Authority) in the following Judgments emphatically held that when the fact of export is not in dispute, the claim of rebate cannot be disallowed.

- 2012(276)E.L.T. 113(G.O.I.) In Re: P.K.Tubes & Fittings Pvt. Ltd. [para 8,9].
- 2012(276)E.L.T. 116(G.O.I.) In Re: GSL (INDIA) LTD.[paras 4.2,8]
- 2012 (276) E.L.T. 127 (G.O.I.) IN RE : A.G. ENTERPRISES [pares 7, 9]
- 2012 (276) E.L.T. 131 (G.O.I.) IN RE : ACE HYGIENE PRODUCTS PVT. LTD. [para 8]

(vi) Most pertinently in their own case this Hon'ble Authority itself in its Order No. 14/13-CX dated 07.01.2013, Government has held that the rebate can be sanctioned on the basis of SION. Copy of the order dated 07.01.2013 was annexed to the submissions.

(vii) As regard judgments relied upon by the Ld. Commissioner(Appeals) for rejecting rebate, the applicant submitted that the same are not sustainable as they are

not relevant to the case. The reliance placed upon the judgment of Hon'ble Supreme Court in the case of Sh. Harchand Shri Gopal 2010 (260) ELT 3 (SC) is not relevant as the chapter X procedure has to be followed for claiming exemption. In that case the conditions were mandatory and not procedural whereas in the present case in identical issues it has been held umpteen times by the revisionary authority and the Hon'ble Supreme Court that the procedural requirements are condonable. Therefore, the case of M/s Harchand Shri Gopal states supra is not applicable. Similarly the reliance placed upon the case of CCE Chandigarh-I V/s Mahaan Dairies 2004 (166) ELT 23 is not applicable as the judgment relates to condition of SSI exemption under Notification No. 8/98-CE, in respect of brand/trade name owner. The conditions prescribed in Notification 8/98-CE are mandatory. Therefore, this judgment does not take away the right of the Applicant to get their legitimate rebate.

(viii) Similarly the decision in RE: National Wire Industries 2012 (278) ELT 141 (GOI) is not applicable as in the said case the assessee declared raw material in Annexure-24 as M.S. Rods but raw material procured by them was found to be galvanized wire. The rebate was disallowed for mis-declaration which is not the issue in this case.

In view of the above submissions the applicant prayed that rebate of Rs 2,45,841/- be allowed and the impugned Order-in-Appeal be set-aside.

6. A Personal hearing held in this case was held through video conferencing which was attended online by Shri B.B. Mohite, Consultant on behalf of the applicant. He submitted that issue is only regarding filing of declaration which was filed through speed post. He further contended that even if declaration was not filed it was only a procedural requirement which cannot take away substantive right as the factum of export & duty payment is not in doubt. He stated that he would be mailing written submissions.

7. 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.

8. Government observes that the rebate claim of the applicant was rejected as the adjudicating authority found that any manufacturer desirous of claiming rebate of duty paid on the raw material under Rule 18 of CER, 2002 is required to file a declaration under Notification No. 21/2004-CX(NT) dated 06.09.2004 in the form of Annexure-24, before the commencement of manufacturing of goods to be exported which was not filed by the actual manufacturer of the goods in this case, i.e. M/s Supreme. The adjudicating authority also found that even the declaration sent by the applicant through speed post was not received by the proper officer. Commissioner

(Appeals) while upholding the rejection of rebate claims observed that the condition of filing of declaration of input/output ratio is not just a procedural requirement but a mandatory requirement and having not complied with this mandatory requirement, the applicant cannot contend that the adjudicating authority has passed an illegal order.

9. The applicant interalia contended that declaration in terms of Notification No. 21/2004-CX(NT) dated 06.09.2004 was filed by them with the Asstt./ Deputy Commissioner, Central Excise & Customs. Adarshdham Building, Division –Daman, wherein they had clearly stated the name of M/s Supreme Industries, the address of Supreme Industries and its Central Excise Registration number; that the office of the Asst./ Deputy Commissioner Central Excise & Customs. Adarshdham Building, Division Daman and office of Asstt. Commissioner, Division, Vapi - I both fall under the same Commissionerate i.e. Daman Commissionerate; that even if the declaration was not filed before the proper officer the same should have been forwarded by the office of the Division - Daman to Division-Vapi as the letter clearly stated the name, address and central excise registration number of M/s Supreme Industries and there was no difficulty in forwarding the same to the jurisdictional Division; that the Asstt. Commissioner, Vapi could have easily verified the fact of filing of declaration by them from Asstt. Commissioner, Daman; that the foremost requirement for filing rebate claim is export of goods which is not in dispute and they are eligible for rebate as per SION (the admissibility of rebate amount could have been ascertained taking the norms provided in Sr No J 359 of SION); that they have got their export goods manufactured from the job-worker "Supreme", who have furnished their disclaimer certificate and therefore it is crystal clear that they had followed the mandatory requirements and the alleged non filing of declaration which is only procedural should be condoned.

10. Government observes that GOI vide Order No. 340/2014-CX, dated 14-10-2014 in Re: Jocund India Ltd. [2015 (330) E.L.T. 805 (G.O.I.)] had while dealing with a similar issue observed as under :-

"7. Government observes that the original authority had rejected claim of duty paid on inputs used for manufacturing of final export product on the ground that the applicant failed to get input output ratio approved in r/o duty paid materials used in the manufacture of final product before its export and hence, violated the provisions of the Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. The appellate authority has upheld impugned Order-in-Original. Now, applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that as per the Notification No. 21/2004-C.E. (N.T.) read with Chapter 8 of C.B.E. & C.'s Excise Manual of Supplementary Instructions, a manufacturer intending to claim input rebate should file a declaration with the jurisdictional Deputy/Assistant Commissioner of Central Excise for verification and approval of input-output ratio prior to export of the goods and obtain the permission of the Deputy/Assistant Commissioner of Central Excise for manufacture or processing and export of finished goods. Government notes that in this case, the applicant had fired declaration, which was subsequently allowed by the jurisdictional Central Excise Authority after impugned exports. However, the Government finds that Government of India in case of *Murli Agro Products Ltd., Nagpur* reported in 2006 (200) E.L.T. 175 (GOI), has held that even if exporter failed to file input-output declaration, substantial benefit of rebate cannot be denied, if other condition of notification are complied with. In this case, there is no dispute that any other condition of the said Notification was not complied with. Government notes that as provision of para 3.2 of part V of Chapter 8 of C.B.E. & C. Excise Manual of Supplementary Instructions the input-output norms notified under Export Import policy may be accepted by department unless there are specific reasons for variation. Government also observes that the substantial benefit of rebate of duty paid on inputs cannot be denied due to procedural infirmities as long as the goods in question are exported and other parameters are fulfilled. Under such circumstances, Government finds that input-output ratio allowed by jurisdictional Assistant Commissioner subsequent to export may be taken into account and rebate may be allowed accordingly."

11. Following the ratio of the aforesaid GOI Order and in view of the observation of GOI discussed above, Government holds that the rejection of the rebate claim on account of non-filing of declaration with the proper officer cannot be sustained.

12. Accordingly, Government modifies and sets aside the Orders-in-Appeal No. SRP/169/DMN/2012-13 dated 27.12.2012 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Daman.

13. The Revision Application is allowed with consequential benefits.

Shrawan 9/7/21

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

ORDER No243/2021-CX (WZ) /ASRA/Mumbai DATED 09.07.2021

To,

M/s CIL Textiles Pvt. Ltd.,
302, Oasis Trade Centre, 22/20,
Y.N.Road, Indore, (M.P.) – 452 020.

1. The Commissioner of GST & CX, Daman, 2nd Floor, Hani's landmark, Vapi Daman Road, Chala, Vapi 396 191.
2. The Commissioner of GST & CX, (Appeals), 3rd Floor, Mgnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.