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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. 195/115/WZ/2018-RA

3996

Date of Issue: 02.05.23

ORDER NO.

246 /2023-CEX (WZ)/ASRA/MUMBAI

DATED 28.04.2023 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. Guardian Glass Industries Pvt. Ltd.

Respondent : The Commissioner of CGST & CX, Ahmedabad South

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-Excus-001-App-330-2017-18 dated 21.02.2018 passed by the Commissioner of Central Tax (Appeals), Ahmedabad.

ORDER

This Revision Application has been filed by M/s. Guardian Glass Industries Pvt. Ltd. (hereinafter referred to as "Applicant") against the Order-in-Appeal No. AHM-Excus-001-App-330-2017-18 dated 21.02.2018 passed by the Commissioner of Central Tax (Appeals), Ahmedabad.

2. Brief facts of the case are that Applicant had purchased goods on payment of duty and then exported under rule 18 of the Central Excise Rules, 2002. On scrutiny of claim, it was found that documentary evidences were not submitted for payment of duty claimed as rebate. SCN dated 10.05.2016 was issued to the Applicant which was adjudicated vide OIO No. 78/AC/17-R dated 18.05.2017. Adjudicating Authority denied the rebate claims on the ground that Applicant had failed in adducing the documents that could establish the duty payment of the exported goods. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner of Central Tax (Appeals), Ahmedabad, who vide Order-in-Appeal No. AHM-Excus-001-App-330-2017-18 dated 21.02.2018 rejected their appeal and upheld the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

- i. The learned Commissioner (Appeals) has rejected rebate claim solely on the ground that applicants have failed to satisfy the adjudicating authority with respect to duty paid character of export goods.
- ii. Learned Commissioner (Appeals) in para 6 of the impugned order has held as under: "I find that the appellant has initially purchased the goods on payment of duty from M/s. Hari Om Tempanes, Daman and then exported under its own invoice no. 01 dated 05-06-2015 issued to Laxmanbhal & Co., Seychelles. This invoice do not contain any duty payment details."

With respect to invoice does not contain any duty payment details, it is submitted that invoice issued by applicant is export invoice furnished to establish export. As such invoice of applicant is not central excise

invoice. The applicants have also furnished central excise invoice bearing No. 94 dated 15.04.2015, wherein duty payment particulars are reflected. As such duty payment particulars can be verified from the central excise Invoice of the manufacturer. There is correlation between ARE-1 and invoice No. 94 dated 15.04.2015, whereas export sale invoice was furnished to establish the export.

- iii. Further, learned Commissioner (Appeals) in para 6 has held as under: "I find that said para clearly provides that rebate shall be sanctioned subject to the satisfaction of the rebate sanctioning authority on two aspects viz. actual export of goods under relevant ARE-1 and that goods are of 'duty paid character as certified on the triplicate copy of ARE-1 received from the jurisdictional Supdt. Of Central Excise (Range office). I find that no triplicate copy of ARE-1 appears to have been received from Jurisdictional Range office. Under the circumstances, It is the duty of the claimant to establish that the goods were of 'duty paid' character."

The above findings of the learned Commissioner (Appeals) is beyond the scope of show cause notice and factually not correct. Inasmuch as show cause notice was issued on four grounds, which have been reproduced in para 15 above, however, in these grounds there is no reference of triplicate copy of ARE-1 being not filed. In fact show cause notice was issued on the ground that copy of RG23A Pt.II was not submitted. Further, on perusal of letter F. No. V.70/18-1054/15-Rebate dated 22-03-2016 of Superintendent(Refund), Central Excise, Division-IV, Ahmedabad- I, enclosed as Annexure-A, it would be seen that there is no discrepancy with regard to triplicate copy of ARE-1 not filed. As such learned Commissioner (Appeals) has given the finding which is factually incorrect. Therefore, order passed on such finding may please be quashed and set aside.

- iv. Applicants submitted copy of central excise Invoice of the manufacturer and copy of ER-1 return of the manufacturer of goods for the relevant

period, which establishes payment of central excise duty by the manufacturer. Further, it is not the case of rebate sanctioning authority that central excise duty was not paid on the exported goods. Further, learned Commissioner (Appeals) has admitted that "It is true that retail invoice no. 94 dated 15-04-2015 is covered in invoice no. 1 to 236." However, learned Commissioner (Appeals) still held that applicants have failed to satisfy adjudicating authority on the aspect of duty paid character of the exported goods. Moreover, it is submitted that in spite of documentary evidences in form of central excise Invoice, showing central excise duty and ER-1 return of manufacturer, establishing payment of central excise duty in respect of Invoices 1 to 236, including invoice No. 94, duty payment particulars have been questioned. If learned Commissioner (Appeals) had any doubt about duty payment on export goods, he ought to have remanded matter for verification of duty payment aspect.

- v. It is submitted that rebate claim has been rejected merely under assumption that central excise duty might not have been paid in spite of applicants having furnished copy of central excise Invoice of the manufacturer under which central excise duty was paid and copy of ER-1 return of the manufacturer, showing payment of central excise duty in respect of invoices bearing No. 1 to 236 including invoice No. 94 dated 15-04-2015 under which goods were cleared for export. Here it is submitted that department could have verified the particulars of duty payment, if there is any doubt. However, without any verification or any adverse information from the jurisdiction of the manufacturer, rejecting rebate claim, merely under assumption is bad in law. Therefore, order passed by learned Commissioner (Appeals) may please be quashed and set aside.
- vi. The learned Commissioner (Appeals) in para 6.1 of the order has observed that "it is not clear as to from where the subject goods exported". With respect to above observation, at first place it is submitted that such issue was not raised in the show cause notice, as may be seen from the show cause notice as well as the grounds

reproduced in para 15 above. Further, it is submitted that goods were exported by applicants from ICD, Khodiyar after goods were cleared by the manufacturer from his factory. In fact there is no dispute with regard to export of goods. As such order of rejecting rebate claim may please be quashed and set aside. .

vii. Applicant requested to set aside the impugned OIA and to grant consequential relief.

4. Personal hearing in this case was scheduled on 12.10.2022, 02.11.2022, 07.12.2022 and 21.12.2023. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions. Therefore, Government proceeds to decide this case on merits on the basis of available records.

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

6. On perusal of the records, Government finds that issue to be decided in the present case is whether the rebate is admissible to the Applicant under rule 18 of the Central Excise Rules,2002.

7. With regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported. The second is that the goods are of a duty paid character. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

8. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

9. In the instant case, Government notes that export of goods are not in dispute. The only contention is on the count of duty payment of exported goods. In this regard, Government finds that Applicant has adduced the invoices, ER-1 return of the Manufacturer in order to substantiate their claim of duty payment. Appellate Authority in their order acknowledged the fact that retail invoice under which the said goods were purchased by the Applicant reflects in the ER-1 return of the Manufacturer. Appellate Authority further observed that duty of the goods can not be presumed to be paid only on account of recording the said invoice in the statutory return of Manufacturer. In this regard, Government notes that once the liability in respect of duty has been declared in the statutory return, manufacturer is bound to pay the same. If at all, it has not been paid, the JRO can demand the duty so short paid. Therefore, Government observes that the fact of duty payment in respect of the goods in question can be verified by the JRO.

10. In view of above, Government holds that rebate is admissible to the applicant subject to establishment of the fact of duty payment. Therefore, Government sets aside the impugned Order in Appeal No. AHM-Excus-001-App-330-2017-18 dated 21.02.2018 passed by the Commissioner of Central Tax (Appeals), Ahmedabad and remands the matter back to the Original Authority to establish the fact that whether the duty has been paid or not by confirming it with the counterpart/Jurisdictional Range Officer.

16. Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

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

ORDER No. 246 /2023-CEX (WZ) /ASRA/Mumbai Dated 28.04.23

To,

1. M/s. Guardian Glass Industries Pvt. Ltd., Gokul Warehouse Complex, Balaji Eastate, Narol-Isanpur Road, Ahmedabad-382445.
2. The Commissioner CGST & CX, Ahmedabad South, 7th Floor CGST Bhavan, Rajasva Marg, Ambavadi, Ahmedabad-380015.

Copy to:

1. The Commissioner (Appeals), Central Tax, 7th Floor, GST Bldg., New Polytechnic Ambevadi, Ahmedabad-380015.
2. Shri. PG Mehta(Advocate), 4, Padma Chambers, Ist Floor, Opp. Gandhinagar Rly Station Ellisbridge, Ahmedabad-380009.
3. Sr. P.S. to AS (RA), Mumbai.
4. ~~Guard~~ file.