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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.195/61/13 -RA

Date of Issue: 10/08/2018

ORDER NO. 247 /2018-CX (WZ)/ASRA/MUMBAI DATED 03.07. 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 Rishabh Impex

Respondent : Deputy Commissioner, Kalyan-III Dn, Thane-I

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. BR/101/TH-
1/2013 dated 07.02.2013 passed by the Commissioner
(Appeals), Central Excise, Mumbai Zone-I.



ORDER

This revision application is filed by the M/s Rishabh Impex (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BR/101/TH-1/2013 dated 07.02.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

2. The issue in brief is that the appellant had filed 8 rebate claims totally amounting to Rs. 2,89,112/- (Rupees Two Lakh Eighty Nine Thousand One Hundred and Twelve) under Rule 18 of Central Excise Rules, 2002. Deputy Commissioner, Central Excise, Kalyan-III vide his Order-in-Original No.55/2007-18 dated 13.11.2007 rejected claims amounting to Rs. 2,89,112/- under Rule 18 of Central Excise Rules, 2002 on the ground that part consignment had been exported beyond the period of six months and in contravention in para 2(ii) of Notification No. 40/2001-CE (NT) dated 02.06.2001 as amended; non presentation of the triplicate copy of the ARE-1 within 24 hours of the removal of goods from the factory in violation in para 2(iv) of Notification No. 40/2001-CE (NT) dated 02.06.2001 as amended and that the supplier in these exports viz. M/s Deepa Cotton was put under Alert Circular No. 2/2005 dated 07.10.2005 by the Assistant Commissioner Central Excise, Kalyan-I and thus the rebate claims were not free from doubt of their genuineness.

3. Being aggrieved, the applicant filed appeal before the Commissioner(Appeals), Central Excise, Mumbai Zone-I who vide the impugned Order-in-Appeal No. BR/101/TH-1/2013 dated 07.02.2013 upheld the Order-in-Order No.55/2007-18 dated 13.11.2007 and rejected the appeal.

4. Being aggrieved, the applicant filed the instant Revision Application before the Central Government mainly on the following grounds that:

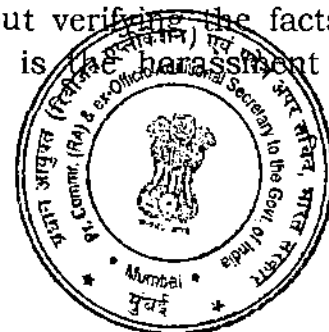


- 4.1 the action taken by the Commissioner (Appeals), Central Excise, Mumbai-I, rejection the appeal and upholding the Order-in-Original without going into merits and facts of the case should be set aside.
- 4.2 it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them compete in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods compete in the International market, the tax element in the exporter's cost is refunded to them through the system of rebate. They have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. This is only a reimbursement. Therefore, a genuine rebate claim should not be denied only on silly technical grounds as is done by the adjudicating authority in the present case. This is nothing but discouraging export.
- 4.3 inspite of referring Order-in-Original No. 57/2007-18 dated 14.2007 where in the said Order-in-Original the adjudication authority has got verified all the grey Central Excise invoices got verified from the jurisdictional Range Supdt and the adjudicating authority vide Para 14 of the said OIO had given the following findings which is reproduced below:
- "14. On going through the above input invoices detailed in the above Table-III, it is noticed that the input invoices highlighted in dark letters are also the one submitted by M/s Deepa Cotton to this office, which have been taken into consideration as per their letter dated 7.11.2007. On correlation of these invoices, they appear to be one and the same and there is no discrepancy noticed between them. In the circumstances, as far as the majority of input invoices pertaining to M/s Deepa Cotton (as detailed in Table III), is concerned, the same has been verified by the Superintendent, Central Excise, Range-II, Kalyan-I Dn. and certified to be duty paid. Hence their genuiness also appear to be in order, which further fulfilled the requirement of the Para Circular No. 5 of Alert Circular No. 2/2005 dated 7th October 2005 bearing F.No. V/KI/PI/Regn-81/2005, issued by the Assistant Commissioner, Central Excise, Kalyan-I Dn. as far as majority of the input invoices submitted by the claimant have also been accounted for in the RG23A-Pt 1 register of the supporting*



manufacturer viz, M/S Dhanalaxmi Fabrics as detailed in Col. No. 5 of the above Table No. 1, hence the genuineness of the same are proved to be reasonable extent."

- 4.4 all the grey fabrics excise invoice shown in the O-in-O dated 13.11.2007 against which the impugned O-in-A under Revision Application has been filed are in the O-in-O referred above dated 14.11.2007 (passed only a day after by the same adjudicating authority) of theirs. It is not understood how the 2007 report of the Range Supdt. is not applicable in the impugned case which refers the alert circular of 2/2005 which is also referred in the OIO dated 13.11.2007 and 14.11.2007. The O-in-A simply refers that the 2007 O-in-O has been dealt by the O-in-O dated 13.11.2007 which is impugned in this case. Perhaps this O-in-O has been passed by one day prior to the favorable order of 14.11.2007, the adjudicating authority might not have received the report from the Range Supdt. hence passed the impugned order on presumption assumption. However, the Commissioner (Appeals) should have seen this since they had mentioned both the O in O of 13.11.2007 and 14.11.2007 and copy of the O in O of 14.11.2007 was submitted along with the appeal as well as the same was also referred at the time of P.H. (one was a negative order dated 13.11.2007 and other was a favorable order dated 14.11.2007). This is nothing but not applying the mind and harassing the genuine exporter for one of their fault.
- 4.5 in respect of the case of grey purchase of M/s Mahavir Impex, the input Excise Invoice No. 56 dated 17.06.2004 which is shown in the O-in-O and SCN, the same are also got verified from the Range supdt. and found correct and the Rebate was allowed by the adjudicating authority in the O-in-O dated 14.11.2007. This is referred in Para 15 of the O-in-O dated 14.11.2007 issued on 22.22.2007.
- 4.6 in respect of M/s Foram Textiles, Bhiwandi, M/s Sanghivi Enterprise, Bhiwandi and M/s Tanvi Cotton Mills, Bhiwandi, it was nowhere referred that they are bogus/ fake firm. Hence these purchases are need to be treated as proper and correct.
- 4.7 no order should be passed against a claimant of rebate on resumption and assumption without verifying the facts as is done in the impugned case. This is the harassment to the genuine exporter.



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- 4.8 the exports made vide ARE 1 No. 05 dated 14.07.2005, 14 dated 15.07.2005, 6 dated 3..8.2005, 7 dated 18.8.2005 and 8 dated 1.3.2006 grey fabrics purchased from M/s Deepa Cotton upto the month of filing return i.e. July 2005 are proper and correct and has been verified from the jurisdictional Range. There is no allegation in respect of other units except M/s Mahavir which is also got verified and found proper and correct.
- 4.9 the impugned rejection of rebate claim of fabrics exported was also during the same period of these claims and the same manufacturer M/s Deepa Cotton & few others and in respect of all these rejected claims also the main supplier of grey fabrics was M/s Deepa Cotton. All the relevant duty paying documents such as Central Excise Invoices, RG23A Part II and certificate from the concerned jurisdictional Range Supdt of M/s Deepa Cotton, proves that M/s Deepa Cotton is a registered unit with Central Excise and were paying proper duty and filing regular returns from time to time. Further there is no one to one correlation is required in debiting the credit under Cenvat Credit Rules.
- 4.10 the export was made under ARE1s and the jurisdictional Supdt and Inspector of Central Excise have certified the duty payment particulars and RG23A Pt. II E.Nos. in the back of the ARE1. They has also enclosed the extracts of RG23A Pt. II along with the rebate claim. The cognizance of the said valied certificate of duty payment duly endorsed by the jurisdictional officers was also not taken into consideration in the Order-in-Original and Order-in-Appeal.
- 4.11 the Order-in-Original and Order-in-Appeal are passed in a routine and casual manner without verifying the correctness and facts. Inspite of the fact that the duty payment on grey fabrics has been got verified from the jurisdictional Range Supdt of the input supplier. This is not correct. The facts of each case should be been verified and necessary order should have been given.
- 4.12 the goods cleared under ARE1 and Central Excise Invoice directly to the port. Along with the three copies of the ARE1 (in sealed cover) is submitted along with self authenticated copy of shipping Bill E.P. copy, duplicate copy of the C.Ex. invoice, Bill of lading, Export Invoice, packing slop, BRC, Mate receipt are submitted to the Deputy Commissioner along with Form 101 sanction of the claim. Therefore, when all these documents



filed for claiming the rebate claim, only for procedural mistake rejection is not correct. Further, in addition to these documents extract of RG23A Part II under which duty has been debited at the time of export.

- 4.13 the rebate is not a kind of any incentive to the exporters, this is a reimbursement of duty paid at the time of export.
- 4.14 all other particulars like gross weight, description, No. of packages all tallied each other with ARE1, Central Excise invoices, Shipping Bill, Bill of Lading, Export Invoice and packing slip. Further ARE1 numbers shown on the Shipping bill and Shipping Bill No. and Mate Receipt Numbers are shown on the ARE1. The Mate Receipt shows Bill of Lading No. and Shipping Bill No. The ARE1 and Shipping Bill are countersigned by the P.O./Supdt of Customs. When physical export is accepted and there is no other allegation simply on a minor technical mistake genuine rebate claims should not be rejected.
- 4.15 the duty on the exported goods has been appropriately paid by the manufacturer and the Merchant Exporter i.e. claimant reimbursed the said amount to the manufacturer. Hence the rebate claims filed by them are proper and correct as proper duty has been paid by the manufacturer. It is also the policy of the Government that no duty should be exported along with the goods. Further even if the merchant exporter is not responsible as the manufacturer is registered with Central Excise and the manufacturer does anything wrong the jurisdictional officers should take appropriate action to recover the duty from the manufacturer as they have received the goods under proper Central Excise duty paid invoice from the registered manufacturer. For any faulty of manufacturer merchant exporter is not responsible. In this connection the Hon.'ble Joint Secretary, Government of India has passed number of Orders. However, in their case duty payment has been verified by the adjudicating authority. In this they relied few case laws.
- 4.16 Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.0.2004 allows rebate of duty on excisable goods exported through a merchant exporter. Since there is no denying the fact that proper duty was paid on the finished product were duly exported, they cannot be penalized for merely for non-compliance of procedures. In this they relied on few case laws.

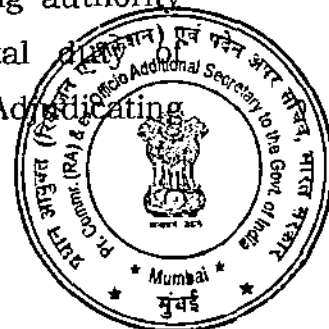


4.17 they prayed that the records, files and documents relevant in the case be called for, considered and the said Order-in Appeal be set aside, dropped and the rebate claim of Rs. 2,89,112/- may be sanctioned and refunded to them.

5. A personal hearing in the case was held on 01.02.2018. Shri R.V. Shetty, Advocate appeared on behalf of the Applicant.. The Applicant pleaded for settling aside the Order-in-Appeal and allowing Revision Application in view of the submission made in RA and synopsis filed at the time of hearing.

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. From the Order in Original passed by the Adjudicating Authority Government observes that the Out of the 8 rebate claims filed by the applicant, the Adjudicating Authority rejected rebate claim filed against ARE-1 No. 376 dated 10.01.2004 and ARE-1 No.310 dated 07.11.2004 on the ground that consignment pertaining to the same had been exported under three different Bills of lading out of which one was dated 24.07.2004/09.08.2005 respectively, thereby indicating that the partial consignment had been exported beyond the period of six months and thus in contravention in para 2(ii) of Notification No. 40/2001-CE (NT) dated 02.06.2001 as amended. In respect of ARE-1 No. 309 dated 07.11.2004, the rebate claim was rejected as the applicant did not present the triplicate copy of the ARE-1 within 24 hours of the removal of goods from the factory as required under para 3 of Procedure for export to all countries and with reference to Para (2) Dispatch of goods by Self Sealing and Self Certification which is in violation in para 2(iv) of Notification No. 40/2001-CE (NT) dated 02.06.2001 as amended. In view of the above the adjudicating authority rejected the 3 rebate claims out of the 8, involving total **Rs.1,77,555/-**. As regards the remaining 5 rebate claims Adjudicating



authority observed that exports in these cases took place after July 2005 when the input supplier in these exports viz. M/s Deepa Cotton was put under Alert Circular No. 2/2005 dated 07.10.2005 by the Assistant Commissioner Central Excise, Kalyan-I. In respect of these 5 Rebate claims Adjudicating Authority observed that "as the exports took place after the period of July 2005, thus the department is not in a position to arrive at definite conclusion that the goods exported in July 2005 and after July 2005 were not the one manufactured out of the inputs supplied by M/s Deepa Cotton after July 2005. Therefore, The adjudicating Authority concluded that he is not satisfied about the genuineness of the above rebate claims pertaining to July 2005 and thereafter as the major supplier of grey fabrics appears to be M/s DEEPA Cotton are placed under suspect list from July 2005 onward, hence the said claims amounting to **Rs,1,11,557/-** are liable for rejection being not substantiated and not free from doubt of their genuineness.

8. Government also observes that the Commissioner (Appeals) while upholding the Order in Original vide his impugned order observed as under:-

05. *"it is seen that the goods were exported under cover of ARE-1, cleared from the factories viz. M/s Dhanalaxmi Fabrics Ltd. And M/s Sharada Synthetics Ltd. Dombivli. On enquiries made from the jurisdictional Range Superintendent regarding genuineness of the duty payment in respect of goods exported under subject ARE1s, it is seen that both manufacturer of the exported goods have produced invoices of Gray fabrics used for manufacture of final product. The appellant have purchased the said Gray fabrics from M/s Deepa Cotton Shankleshwar Compound, 1286, Gala No.4, Ground Floor, Narpoli, Bhiwandi. But it is found that M/s Deepa Cotton is declared as bogus/fake firm vide Alert Circular No.2/2005 dated 7th October 2005 issued by the Assistant Commissioner, Central Excise Kalyan-I Division under F.No.V/ KI/ PI/ Rn-81/2005. Thus the Central Excise duty shown to have paid on the raw material is fraudulent and automatically the Cenvat credit taken by the manufacturer of the said goods is not admissible. Therefore, The*



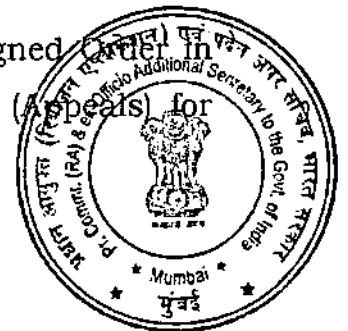
duty paid from the Cenvat Account towards the impugned export is as good as not paid.

06. Thus the duty paid vide ARE-1s by the manufacturers by utilizing the Cenvat credit fraudulently availed cannot be termed as duty paid in terms of Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act, 1944. The decision of O-I-O in the similar issue of the same adjudicator allowing the rebate as relied and referred by the appellant is already discussed by respondent and no new evidence brought by appellant, hence this argument is not tenable.

07. In view of foregoing the arguments taken and relied upon case laws by the appellant do not come to their help. Thus the appeal filed by the appellant is devoid of merits, hence Order-In-Original passed by lower authority does not need any interference.

9. Government, thus observes that Commissioner (Appeals) findings are silent on the vital aspect of rejection of first 3 rebate claims amounting to **Rs.1,77,555/-** discussed in para 7 above, by the adjudicating authority. Government also observes that the ground for rejection of remaining 5 Rebate claims amounting to **Rs.1,11,557/-** by the original authority was on the basis of alert Circular as the major supplier of grey fabrics appeared to be M/s Deepa Cotton, thereby rendering the said rebate claims doubtful. However, there is nothing on record to show that there was any further investigation/issuance of show cause notices and Order in original in this case by the Central Excise Thane-I Commisionerate. Therefore, the conclusion arrived at by the Commissioner (Appeals) that *the central Excise duty shown to have paid on the raw material is fraudulent and automatically the Cenvat credit taken by the manufacturer of the said goods is not admissible and therefore, the duty paid from the Cenvat Account towards the impugned export is as good as not paid* is not based on proper appreciation of facts. In view of the above, Government is of the considered opinion that the Order-in-Appeal does not give any clear or considered finding based on an analysis of facts on record leading to the aforesaid conclusion.

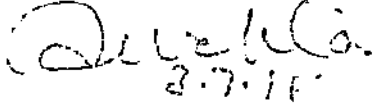
10. In the circumstances the Government sets aside impugned Order in Appeal and matter is remanded back to the Commissioner (Appeals) for



giving findings on all grounds which have been raised before him and pass a well-reasoned order after following the principles of natural justice.

11. The revision application is disposed of in terms of above.

12. So ordered.



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

ORDER No. 247 /2018-CX (WZ)/ASRA/Mumbai DATED 03/07/2018.

To,
M/s Rishabh Impex,
Behram Mahal, 2nd Floor,
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ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Central Goods and Service Tax, (Thane-Rural) Commissionerate 4th Floor, Utpad Shulk Bhavan, Plot No. 24-C, Sector - E, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.
2. Commissioner, Central Goods and Service Tax, (Appeals) Raigad, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400 012.
3. The Deputy / Assistant Commissioner (Rebate Central Goods and Service Tax, (Thane-Rural)
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

