F. NO. 195/458/13-RA

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GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
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8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F. NO. 195/458/13-RA/4220 Date of Issue: 12.08.2021

ORDER NO.259/2021-CX (WZ) /ASRA/Mumbai DATED 09.08.2021 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 Supreme (India) Impex Limited,
Supreme House, 823/2, Road No. 8,
GIDC, Sachin, Surat.

Respondent : Commissioner of CGST, Belapur Commissionerate.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. US/842/RGD/2012 dated 23.11.2011 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

This revision application is filed by M/s M/s Supreme (India) Impex Limited, Supreme House, 823/2, Road No. 8, GIDC, Sachin, Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/842/RGD/2012 dated 23.11.2011 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed nine (9) rebate claims in respect of the goods exported by them. The total amount of rebate claimed was Rs. 17,22,933/- (Rupees Seventeen Lakh Twenty Two Thousand Nine Hundred Thirty Three Only) being central excise duty paid on exported goods. The Rebate Sanctioning Authority while scrutinizing the impugned rebate claim noticed following discrepancies -

a) The Chapter Sub Heading of the goods exported mentioned on the Excise invoices was different from Chapter Sub Heading declared on the corresponding Shipping Bills.

b) In ARE-1, no time of removal of the goods for export is mentioned in the relevant column. It was also seen that the date of issue of the ARE-1 was different from and subsequent to the date of issue of some of the corresponding Central Excise invoices. It was not clear as to when the goods were removed for export from the factory of the processor and why the ARE-1 had been prepared at a date later than the Excise invoice.

c) In some of the ARE-1 pertaining to the above claims, the mandatory certificate regarding self sealing of the export goods to be given by the manufacturer in the ARE-1, it is merely mentioned that the goods had been packed and no mention is made regarding sealing of the goods which indicated that the goods were not sealed before export.

d) From the documents submitted with the claims, it is seen that the duty amounts claimed as rebate had arisen out of duty debited though Cenvat. Therefore, the claimant was asked to furnish the relevant documentary evidence/ certification regarding payment of

central excise duty at input stage (on grey fabrics) used in the manufacture of the export goods.

e) The Bank Realization Certificate had not been submitted.

The Rebate Sanctioning Authority vide Order in Original No. 1802/11-12/Dy. Commr. (Rebate)/Raigad dated 14.01.2012 rejected the impugned rebate claim.

3. Being aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner (Appeals-II), Central Excise, Mumbai-II. The Appellate Authority vide Order in Appeal No. US/842/RGD/2012 dated 23.11.2012 rejected the appeal and upheld the Order in Original. The appellate authority while passing the impugned order in appeal observed that:-

a) The rejection of on the ground that the provision of self-sealing / self certification is not followed, it was found these provisions were mandatory provisions and the applicant had not followed the procedure as laid down in paragraph 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and paragraph 6.1 of the Chapter 8 of the CBEC Manual.

b) Similarly rejection on the ground that the BRC was not submitted, it created a doubt that whether they are having the BRC or not as after the clear finding of the adjudicating authority, the same was not submitted in appeal.

c) The adjudicating authority had rejected the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processor. The name of the applicant was figuring in the Alert Notices issued by the Assistant Commissioner, Central Excise, Surat-I for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers. Hence the bonafide nature of transaction was imperative for admissibility of the rebate claim filed by the merchant exporters.

d) The appellate Authority relied on following judgements :-

i) Sheetal Export -2011(271)ELT 461 (GOI)

ii) Jhawar Internationa 2012 (281) ELT 460 (GOI)

iii) UOI Vs. Rainbow Silks- 2011(274) ELT 510 (Bom.)

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

4.1 The impugned order had been issued ex parte without even a personal hearing to them and that the applicant had not received either the show cause notice or the deficiency memo or the personal hearing notices from the first adjudicating authority.

4.2 The show cause notice along with all the relevant documents should be given to the applicants to enable them to proceed with the legal proceedings effectively.

4.3 The applicants had given the letter intimating the change in address in 2009 and the department had also accepted communication from them from their new address in 2010. As such department cannot go back in 2012 and state that they were not aware of the new address of the applicant.

4.4 The department's findings in para 9.0 to 9.2 of the findings regarding challenge to alert circulars etc. are bereft of any merit as much as original authority had passed an ex-parte order.

4.5 Though submission of the BRC is not a statutory requirement, they are still submitting the BRC for all the rebate claims.

4.6 The allegation of rejection of the rebate claim on the basis of the name of the applicant figuring in the Alert Notices issued by Asstt. Commissioner, Central Excise, Surat-I for availment of Cenvat Credit on the basis of the invoices issued by bogus non-existent grey fabrics manufacturers is barred by limitation. They sought to rely upon the judgement of the High

Court of Gujrat in the case of Prayagraj Dyeing and Printing Mills Pvt. Ltd. & ors. Vs. UOI.

4.7 There is no denial of the fact that the said goods having been physically exported, the applicant cannot be made liable for any alleged fake invoices issued. The applicant relied upon following judgements :-

a) Garima Enterprises (P) Ltd. Vs. CCE, Delhi-IV- (182) ELT 106 (Tri. Del.)

b) Haryana Steel Alloys Vs. CCE, New Delhi- 2002(148) ELT 377 (tri. Del.)

4.8 Since the department had not taken an action against the grey fabrics suppliers, the denial of rebate to the applicant is illegal.

4.9 They also demand interest under the provisions of Section 11BB of the Central Excise Act, 1944.

4.10 The applicant have filed the application for condonation of delay for filing of Revision Application against the impugned Order in Appeal along with the instant Revision Application.

5. A Personal hearing in the matter was granted on 07.01.2021, 14.01.2021, 21.01.2021, 10.02.2021, 24.02.202, 18.03.2021 and 25.03.2021. However, no one appeared for the personal hearing so fixed on behalf of applicant / department. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

6. The Government notes that the impugned order in appeal was received by the applicant on 10.12.2012 and the instant Revision Application was filed 20.03.2013. The Government observes that the applicant has given sufficient cause for not filing the instant Revision Application within a period of three months from the date of receipt of the impugned Order in Appeal. Government first proceeds to discuss issue of delay in filing this revision application. The chronological history of events is as under:

(a)	Date of receipt of impugned Order-in-Appeal dated 23.11.2012 by the applicant	10.12.2012
(b)	Date of filing of revision application by the applicant	20.03.2013

From the above position, it is clear that applicant has filed this revision application after 10 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act,1944 the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government, in exercise of power under Section 35EE of Central Excise Act,1944 condones the said delay and takes up revision application for decision on merit.

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. The Government observes that the impugned rebate claims were rejected on the basis of following three grounds :-

a. In ARE-1, no time of removal of the goods for export is mentioned in the relevant column. It was also seen that the date of issue of the ARE-1 was different from and subsequent to the date of issue of the corresponding Central Excise invoices.

b. The Bank Realization Certificate had not been submitted.

c. The applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processor. The name of the applicant was figuring in the Alert Notices issued by the Assistant Commissioner, Central Excise, Surat-I for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers.

9. 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 as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. 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.

9.2 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.

9.3 The Government observes that deficiencies such as to comply with provision of self-sealing and self-certification as laid down in para 3(a) (xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 are condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. Such correlation can be done by cross reference of ARE-1s with shipping bills, quantities/weight and description mentioned in export invoices/shipping bills, endorsement by Customs officer to effect that goods actually exported etc. If the correlation is established between export documents and Excise document, then export of duty paid goods may be treated as completed for admissibility of rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

9.4 In the instant case, the deficiency i.e. date of removal differs in ARE-1 from that of Excise Invoice as pointed out by the adjudicating authority while rejecting the impugned rebate claim is merely procedural infractions and the

same should not result in the deprival of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002.. Thus, the contention of the department had been inclined towards procedural infractions on the part of applicant. Export oriented schemes like rebate/drawback are not deniable by merely technical interpretation of procedures, etc. As such, the rejection of the impugned rebate claims on the ground of no time of removal of the goods for export is mentioned in the relevant column and or the date in Central Excise Invoice differs from that of ARE-1 is not just and proper.

10. Further, it is found that the applicant had submitted the relevant Bank Realization Certificates vide their letter dated 17.01.2007 which was duly acknowledged by the department. Thus Government finds that the applicant have submitted the copies of BRCs along with the Revision Application stating that they have realised the export proceeds within prescribed time. Therefore, rejection of the rebate claims on the ground of non submission of BRCs does not sustain in the instant case. However, the BRCs submitted along with Revision Application are not self attested. Therefore, the BRCs are required to be verified to determine its authenticity, validity etc. The applicant is directed to submit the relevant BRCs in original to enable verification of the same to the original authority for consideration in accordance with provisions of law.

11. The Government finds that there is no dispute to the factual details on record for the completion of exports and filing of claims of rebate in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CD(NT) dated 06.09.2004. However, the adjudicating authority had rejected the rebate claims on another ground that the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processor an also the name of the applicant was figuring in the Alert Notices issued by the Assistant Commissioner, Central Excise, Surat-I for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers.

11.2 Government notes that such like issue has already been decided by the revisionary authority vide GOI Order No. 304-307/07 dated 18.5.07(F.No.198/320-323/06) in the case of M/s Shyam International Mumbai. In this case revision application was filed by department i.e. CCE Mumbai against the orders-in-appeal No. 326 to 329/M-III/2006 dated 18.05.06 passed by Commissioner of Customs and Central Excise (Appeals) Mumbai Zone-II. In the said GOI Order it was held that the merchant exporter cannot be denied the rebate claim for the reason that manufacturer has availed Cenvat Credit wrongly on the basis of bogus duty paying documents when there is no evidence to show that the applicant merchant exporter was party to fraud committed in fraudulent availment of cenvat credit.

11.3 Government notes that similar-issue was involved in the case of M/s Roman Overseas decided by Government vide G.O.I. order No. 129/10-CX dated 07.01.10 relying on said G.O.I. order No. 304-307/07 dated 18.05.07 in the case Shree Shyam international Mumbai. The above mentioned G.O.I. order No. 129/10-CX dated 07.01.10 was challenged by department in a writ petition filed before Gujarat High Court. The Hon'ble High Court of Gujrat vide order dated 31;03.11 reported as 2011 (270) ELT 321 (Guj.) has upheld the said G.O.I. order dated 07.01.2010. The para No. 10 to 15 of said judgment are reproduced below :-

> *"10. From the material on record noted above, we find that insofar as respondent M/s Roman Overseas is concerned, it had purchased goods after payment of duty to the manufacturer. On such duty, respondent M/s Roman Overseas was within its rights to claim cenvat credit which was passed on by the seller of the goods i.e. M/s Unique Exports. It is of course a fact that such goods were not duty paid. Fact however, remains that there are no allegations that respondent M/s Roman Overseas was part of any such fraud, had any knowledge of the fact that duty was not paid or t hat it had failed to take any precaution as required under sub-rule(3) of Rule 9 of Cenvat credit Rules which reads as under.*
>
> *In view of above discussion, we find that respondent M/s Roman Overseas cannot be denied the benefit of rebate claims. Particularly, when there are no allegations that*

respondent M/s Roman Overseas either had knowledge or had even failed to take basic care required in law or in general terms to verify that goods were duty paid.

language of Rule 18 however, may pose some question. In particular, it may be contended that Rule 18 envisages rebate for duty paid. Term duty paid as per the department would .be duty paid to the. Government and not otherwise and when no duty is paid, there can be no rebate. In our views, however Rule 18 also can be looked from this angle. Insofar as respondent M/s Roman Overseas is concerned, it had paid full duty partly by paying duty directly to the Government and partly by availing cenvat credit. To do so, they had made payment of part duty to seller of goods. Insofar as respondent M/s Roman Overseas is concerned, therefore, entire duty is paid by them of which it is claiming rebate of the duty paid on excisable goods upon eventual export.

3)

.....

4) Reliance was placed on decision in case of Sheela Dyeing & Printing Mills P. Ltd. vs. CCE & C, Surat;(reported in 2008 (234, ELT408 (GO, wherein issue involved was whether while taking cenvat credit on inputs, the applicant had taken reasonable steps to ensure that goods are duty paid. It was in this background relying on sub-rule (2) of Rule 7 of Cenvat Credit Rules, Court found that appellant had failed to take such care. In the present case, we have already noticed that such averments and allegations are not on record. In fact findings are to the contrary.

.14.In the result, we are of the view that impugned orders require no interference. "

Government notes that Hon'ble High Court has laid down the principles that rebate claim cannot be denied to merchant exporter if he is not party to fraud committed at manufacturer or input supplier end and he has paid duty on valid duty paying documents.

11.4 Government, in this case notes that there is nothing on record to show that there was any further investigation / issuance of show cause notices, confirmation of demand of irregular Cenvat Credit etc. by the concerned Commissionerate against the applicant or the processors supplying grey fabrics to them. This verification from the original authority was also necessary, to establish whether the Cenvat credit availed & subsequently

utilized by the processor/manufacturer for payment of duty towards the above exports was genuine or otherwise.

12. In view of above discussion, Government modifies impugned Order-in-Appeal to the extent discussed above and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRC, duty paying documents etc. for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order after receipt of said documents from the respondent and following the principles of natural justice.

13. Revision application is disposed off in above terms.

Shrawan 9/8/21

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

ORDER No.359/2020-CX (WZ) /ASRA/Mumbai DATED09.08.2021

To,

M/s Supreme (India) Impex Limited,
Supreme House, 823/2, Road No. 8,
GIDC, Sachin, Surat.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.