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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

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

F. NO. 195/83/13-RA / 4.669

Date of Issue: ~~08.2021~~
21.09.2021

ORDER NO 279/2021-CX (WZ) /ASRA/Mumbai DATED 25.08.2021 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 Divya Global Pvt. Ltd.,
204, A to Z Industrial Estate,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai - 400 051.

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/671/RGD/2012 dated 22.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

This revision application is filed by M/s Divya Global Pvt. Ltd., 204, A to Z Industrial Estate, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400 051 (hereinafter referred to as “the applicant”) against the Order-in-Appeal No. US/671/RGD/2012 dated 22.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. Brief facts of the case are that the applicant, a merchant exporter, had filed three (3) rebate claims in respect of the goods exported by them. The total amount of rebate claimed was Rs. 1,82,359/- (Rupees One Lakh Eighty-Two Thousand Three Hundred Fifty Nine Only) being central excise duty paid on exported goods. The Rebate Sanctioning Authority while scrutinizing the impugned rebate claims requested the applicant to furnish documentary evidence regarding the availment of input stage credit on the raw materials i.e. grey fabrics, used as input in the manufacture of export goods covered under the above referred ARE-1s. They were also requested to submit relevant documents / certification regarding the actual payment of duty at the input stage i.e. grey fabrics for cross verification. They were also asked to intimate the reasons why their claims should not be rejected on account of the fact that the goods procured by them for export were eligible for full exemption vide Notification No. 30/2004-CE dated 09.07.2004 & thereby covered under Section 5A(1A) of the Central Excise Act, 1944, the implication of which was that duty ought not to have been paid by the processors on the goods cleared for export thereby creating no necessity for filing rebate claims.

2.1 The Rebate Sanctioning Authority vide Order in Original No. 1843/11-12/Dy. Commr. (Rebate)/Raigad dated 19.01.2012 rejected the impugned rebate claim on various grounds as detailed in the impugned Order in Original.

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/671/RGD/2012 dated 22.10.2012 rejected the appeal and upheld the Order in Original on following grounds :-

- a) The duty payment certificate from central excise authorities indicating the debit entries of the duty payments and excise invoice issued under Rule 11 of Central Excise Rules, 2002 are essential to prove the duty payments.
- b) The processor, M/s Mayank Textiles, who processed the goods were figuring in the Alert notices issued by the Assistant Commissioner, Central Excise, Kalyan-I division for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus / non-existent grey manufacturers. The bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter.
- c) The appellate Authority relied on following judgements :-
 - i) Sheetal Export -2011(271)ELT 461 (GOI)
 - ii) 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 adjudicating authority had rejected the claims only on the assumption and presumption that the credit was in dispute.
- 4.2 While exporting the goods the Inspector of Central Excise had verified the payment particulars mentioned in the Cenvat Credit Register maintained by the Mayank Textiles, the manufacturer of export goods i.e. RG23A Part II Entry No. 42 dated 23.06.2005 before leaving the goods from factory and signed on the Invoice No. 061 dated 23.05.2005 in token of having verified the particulars.
- 4.3 The export goods were manufactured from other than Mayank Textile viz. Mayank Exports. Therefore, the name of Mayank Textile (the processor of gray fabrics) is not relevant in this case.
- 4.4 They had submitted duty paying documents along with rebate claims which were not in dispute. Hence they are eligible for rebate.
- 4.5 The applicant, being merchant exporter, had no access to supplier's records. It is available only to the Central Excise officer and not to any private party.

- 4.6 The information was to be verified by the jurisdictional officer on request of the Rebate sanctioning authority. Had that been done then the Adjudicating Authority would not have rejected the claims on vague grounds.
- 4.7 There are special provisions to initiate action against the person obtaining wrong credit to recover such credit, including prosecution. Therefore, to reject the legitimate claims on the basis of Alert circulars is bad in law and without authority of law.
5. A Personal hearing in the matter was granted on 02.01.2018, 18.09.2019, 17.10.2019, 03.02.2021, 17.02.2021, 16.07.2021 and 23.07.2021. 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. 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. The Government observes that the impugned rebate claims were rejected on the basis of following two grounds:-
- a. The duty Payment Certificate from Central Excise Authorities indicating the debit entries of the duty payments and excise invoice issued under Rule 11 are essential to prove duty payment.
 - b. 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, Kalyan-I for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers.
8. The Government also 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, it is found that the Rebate Sanctioning Authority has rejected the rebate claim for non submission of duty payment

certificate by the applicant. In this regard, 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.

8.2 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.

8.3 The Government finds that the applicants have filed photocopies of the following documents along with revision application in respect of export clearances under impugned ARE-1s:-

a) The Central Excise Invoice duly signed by the Inspector I/c of the factory of manufacturer.

b) The relevant ARE-1s where in the duty payment has been certified by the Central Excise Officers.

c) The relevant pages of Cenvat Register.

8.3 The documents filed as above along with revision application show that the duty has been duly discharged and debited by the manufacturer as certified by the Central Excise Officers. However, the above documents submitted along with Revision Application are not self attested. Therefore, the same are required to be verified to determine its authenticity, validity etc. The applicant is directed to submit the relevant documents in original to enable verification of the same to the original authority for consideration in accordance with provisions of law.

9. Further, 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 and also the name of the applicant

was figuring in the Alert Notices issued by the Assistant Commissioner, Central Excise, Kalyan-I for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers.

9.2 The Government notes that the Order in Appeal has relied on the judgement of the Hon'ble Bombay High Court in Union of India v/s Rainbow Silks -2011 (274) E.L.T. 510 (Bom.) which noted that during the course of the physical verification of firms, as a part of an investigation into the grant of fraudulent rebate, 71 firms at Surat were found to be bogus and non-existent.....Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and such credit was utilised to pay duty. The Order in Appeal also relied on the judgement in the case of M/s Sheetal Exports - 2011 (271)ELT 461 (G.O.I) quoting that, there is nothing on record nor the merchant exporters have produced any evidence documents to prove that their transactions were transparent and bonafide in nature and are not influenced by any extra commercial consideration and there was no involvement of the applicant in committing the said fraud.

9.3 Both the above quoted judgements are not applicable in the present case; in the case of Rainbow Silks, a show cause notice was issued to the manufacturer supplier i.e. the processor alleging therein credit has been taken based on invoices issued by bogus and fictitious firm. There was a clear admittance that, the processor had not received the grey fabrics from the supplier but had received it through exporter-assessee. In the said case, it was held that, the impugned Order proceeded on the basis that there was no allegation of want of bonafides but the records indicated otherwise and rebate claims were rejected. As against the same, in the present case, the impugned Order has merely proceeded on presumption that, the Applicants may be a party to the fraudulent availment of credit, without any evidence to that effect, nor do records indicate anything to the effect that any show cause notice was issued to the applicant alleging bogus purchase or wrong availment of credit. In the other case of Sheetal Exports rebate referred to in the Appellate order, claims filed by merchant exporter were rejected on the ground that, the merchant exporter had purchased the goods from a manufacturer who was found to have no manufacturing activity and the duty paying documents were found to be bogus on investigation. The facts in the present case, again are at variance with the referred judgement.

9.4 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.

9.5 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 that 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. "

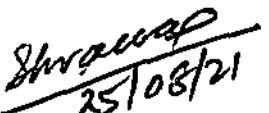
Thus, the Government notes that Hon'ble High Court has laid down the principles that rebate claim cannot be denied to merchant exporter if he is not party to fraud committed at manufacturer or input supplier end and he has paid duty on valid duty paying documents.

9.6 Further, the 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.

10. In view of above discussion, Government sets aside the impugned Order-in-Appeal No. US/671/RGD/2012 dated 22.10.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai 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 i.e. duty paying documents etc. for verification. The original authority will complete the requisite verification expeditiously within eight weeks from the date of receipt of this order and pass a speaking order after receipt of said documents from the respondent and following the principles of natural justice.

11. Revision application is disposed off in above terms.


25/08/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 279/2021-CX (WZ) /ASRA/Mumbai DATED 25.08.2021

To,

M/s Divya Global Pvt. Ltd.,
204, A to Z Industrial Estate,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai - 400 051.

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.