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SPEED POST



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

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F.No.195/594/2011-RA

Date of Issue:

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ORDER NO. 290 /2020-CX (WZ)/ASRA/MUMBAI DATED 02.03.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Excellence Exports, Surat.

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Respondent : - Commissioner (Appeals), Central Excise, Mumbai-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. M-I/RKS/87/2011 dated 11.03.2011 passed by the Commissioner(Appeals), Central Excise, Mumbai-I.

ORDER

This Revision Application is filed by M/s Excellence Exports, 6/2595,Raghuathpura,Swaminarayan-ni-Wadi, Surat - 395 003(hereinafter referred to as "Applicant") against the Order-in-Appeal No. M-I/RKS/87/2011 dated 11.03.2011 passed by the Commissioner(Appeals), Central Excise, Mumbai-I

2. The issue in brief is that the Applicant, Merchant exporter of processed Man Made Fabrics(MMF) had claimed rebate claims in respect of duty paid on the goods manufactured by M/s Aishwariya Prints Dyg. & Ptg. (P) Ltd, Surat,(herein after as 'Aishwariya Prints') having registration No. AACCA4770AXM001. The goods had been exported through Mumbai Port under ARE-1 No. 389 dated 20.12.2004, and file rebate claim for Rs. 2,75,558/-. The Assistant Commissioner(Rebate), Central Excise, Mumbai-I vide Order-in-Original No. 265/R/2005 dated 15.12.2005 sanctioned the rebate claim amounting to Rs.2,75,558/-. The Commissioner, Central Excise, Mumbai-I reviewed the Order-in-Original dated 15.12.2005, and vide Order dated 07.12.2006 directed the Assistant Commissione(Rebate) to file appeal with the Commisioner(Appeals), Central Excise, Mumbai-I on the following grounds:

- (i) The Applicant vide their letter dated 15.10.2005 had submitted duty payment certificates issued by the jurisdictional Range Supdt. in charge of the Processor viz Aishwariya Prints. It was however, seen from the records that the jurisdictional Range Supdt had not issue clear duty payment certificates for the said claims inasmuch as he did not mentioned these grey units as fake/bogus units, even though he had mentioned that the Cenvat credit had been availed wrongly by the Processor.
- (ii) In another case of M/s Saibaba Exports, the Range Supdt having jurisdiction over Aishwariya Prints vide his letter F. No. AR-111/Annx.-D/2006-07/dated 24.11.2006, addressed to Deputy Commissioner(Tribunal), Central Excise, Mumbai-I, had reported that

the Processor had wrongly availed Cenvat credit in respect of the duty paid on grey cloth manufactured by M/s K.M.C. Fabrics, and M/s M.S.Textiles, and since these units have been declared as fake/bogus, the duty has been got reversed from Aishwariya Prints. Further, on going through the Alert Circulars issued by Surat I Commissionerate vide F.No. IV/12-HPIU-111/9/04-05.Pt.V dated 22.09.2005, it was noticed that the names of the grey supplier/ manufacturer, viz. M/s M.S.Textiles appear therein. The processor Aishwariya Prints, availed Cenvat credit on these invoices issued by the grey manufacturers and later on reversed the same as wrongly availed Cenvat credit.

- (iii) Therefore, the 16 Invoices issued by grey weavers, under which grey cloth was said to have been received by the Processor, to manufacture processed fabrics in respect of the AREIs, and on which the Cenvat credit of Rs.2,80,094/- was availed, are bogus/fake. Although the manufacturer, Aishwariya Prints, has attempted to regularize the payment of duty by remitting the amount of Cenvat credit amounting to Rs. 2,80,094/- fraudulently availed, vide TR6 challan along with interest at a later date on 30.05.2005 and 01.10.2005, the fact remains that the grey weavers were reported to be non-existent and no goods were received under the said bogus invoices received from M/s. K.M.C. Fabrics & M/s. M.S. Textiles. Therefore, there cannot be any corresponding clearance of processed fabrics against such non-existent grey cloth from the Processor to the Applicant either on payment or without payment of duty.
- (iv) Even though the manufacturer has paid /reversed the amount by way of TR6 challan on account of wrong availment of Cenvat alongwith interest at a later date, to negate the fraudulent Cenvat availment, and thus attempted to establish the payment of duty, the fact remains that at the material time, 'the goods' if any, were cleared and exported without payment of duty.

- (v) In terms of Notification No.19/2004(N.T.) dated. 06.09.2004, as amended the rebate shall be granted subject to condition that the goods shall be exported after the payment of duty. In this case, the processor availed Cenvat credit on fake/ bogus invoices and the said credit was utilized for payment of duty, which is ab initio null and void and therefore the goods exported by the Applicant were on the basis of bogus/ fake documents and thus ineligible for claiming rebate.
- (vi) Under the circumstance, the Order-In-Original No. 265/R/05 dated 15.12.2005 passed by Assistant Commissioner (Rebate), Mumbai-I, sanctioning rebate amounting to Rs. 2,75,558/- in respect of ARE-1 No.389 dated 20.12.2004, is not proper, correct and legal, and hence the said order needs to be set aside.

The Commissioner(Appeals), Central Excise, Mumbai-I vide Order-in-Appeal No. M-I/RKS/87/2011 dated 11.03.2011 set aside the Order-In-Original dated 15.12.2005 and allowed the departmental appeal with consequential relief.

3. Aggrieved, the Applicant filed the current Revision Application on the grounds that they had purchased the grey fabric from two weavers namely M/s K.M.C. Fabrics, and M/s M.S.Textiles and had done the process of grey fabrics from Aishwariya Prints, manufacturer who, after issuance of Central Excise Invoices and debiting the duty from the accumulated Cenvat credit account of Aishwariya Prints, then supplied the said processed fabric to the Applicant. Vide Alert Circular F.No. IV/12-HPIU-III/9/04-05 Pt.V dated 22.05.2006 issued by the Surat-1 Commissionerate, the said two weavers were declared as fake/bogus unit. As Aishwariya Prints had availed Cenvat credit on the invoices issued by these two weavers, Aishwariya Prints reversed/paid the same vide TR.6 Challan with interest which is on record in the impugned Order-in-Appeal. There is no one to one correlation of Cenvat credit, when it is paid from the pool of amount of Cenvat credit as held by the Hon'ble Supreme Court in the case of CE Pune Vs Dai ichi Karkaria Ltd [1999(112) ELT 353 (SC)]. Aishwariya Prints, was never declared fake/bogus.

Hence the rebate claimed by the Applicant on the basis of invoices issued by Aishwariya Prints is legal and had legally passed the Cenvat credit to the Applicant for export. In this they relied on the GOI Order No. 304-307/07 dated 18.05.2007 in the case of M/s Shyam International, Mumbai and GOI Order No. 315/07 dated 18.05.2007 in the case of M/s Krishna Exports, Surat. Hence, the ratio of the above judgment should squarely applicable to their present case. Further, in the entire Order-in-Original and impugned Order-in-Appeal there is no charge or allegation that the transactions between the Applicant and Aishwariya Prints were not at arm length or not in the nature of transaction in the normal course of the business or non-bonafide and influence by any extra commercial consideration. The export documents i.e. ARE-1 No. 398, dated 20.12.2004, Shipping Bills, Bills of Lading, Mate Receipt, etc. was duly signed and sealed by the Customs Authority, and all the documents were submitted to the Assistant Commissioner(Rebate), Central Excise, Mumbai-I and there is no dispute that the subject goods had been genuinely exported by the Applicant and made the payment to Aishwariya Prints of export goods inclusive of duty. Hence the legal claim of the Applicant cannot be denied, when the department had accepted that the fact that export of finished goods had actually taken place. The Applicant prayed that the Order-in-appeal be set aside and the Order-in-Original be restored in the interest of justice.

4. A personal hearing in the case was held on 27.11.2019 which was attended by Shri Mukund Chouhan, Advocate on behalf of the Applicant. The Applicant reiterated the grounds made in their revision application and submitted that the Commissioner(Appeals) order was exparte on departmental appeal. The payment had been done through TR 6 Challan and Cenvat credit and the claim was sanctioned in 2005.

5. 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.

6. On perusal it is observed that the Applicant, Merchant Exporter had purchased the grey fabrics from two weavers namely M/s K.M.C. Fabrics, and M/s

M.S.Textiles and had done the processing of grey fabrics from Aishwariya Prints. After issuance of Central Excise Invoices and debiting the duty from their accumulated Cenvat credit account, Aishwariya Prints then supplied the processed fabric to the Applicant. The Applicant then exported the said goods and filed rebate claim of Rs. 2,75,558/- and the Assistant Commissioner(Rebate), Central Excise, Mumbai-I vide Order-in-Original No. 265/R/2005 dated 15.12.2005 sanctioned the rebate claim amounting to Rs. 2,75,558/- (however due to typographical error in the Order the amount was shown as Rs. 3,98,460/-). Aggrieved, the Department then file appeal with the Commissioner(Appeals) on the grounds that vide Alert Circular F.No. IV/12-HPIU-III/9/04-05 PLV dated 22.05.2006 issued by the Surat-1 Commissionerate, the said two weavers were declared as fake/bogus unit and Aishwariya Prints had availed Cenvat credit on the invoices issued by these two weavers. The Commissioner(Appeals) set aside the Order-in-Original and allowed the departmental appeal.

7. Government notes that in wake of recent frauds committed by the manufacturer/ exporters, the jurisdictional Excise Authorities had carried out verification of duty payment particulars. The contention of the Commissioner (Appeals) for rejecting the appeals was that

*10. ....Further, the duty debited from a Cenvat account, in which Cenvat credit has been accumulated on the basis of fake/ bogus documents/ invoices, cannot be termed as payment of duty and hence I hold that the subsequent export of goods by the respondent-assessee is without payment of duty and as such the exported goods cannot be considered as duty paid. Consequently, question of sanctioning rebate claims on such non-duty paid goods does not arise, at all."*

8. Government observes that the name of the name of the grey fabric weavers namely M/s K.M.C. Fabrics, and M/s M.S.Textiles was figuring in the Alert notices issued by the Surat-1 Commissionerate and Aishwariya Prints had taken Cenvat credit on the invoices issued by the two weavers. The jurisdictional Range Superintendent of Aishwariya Prints vide letter F.No. AR-III/Annex.-D/2006-07 dated 24.11.2006 addressed to the Deputy Commissioner(Tribunal), Central

Excise, Mumbai-I had reported that the said processor had wrongly availed Cenvat credit in respect of the duty paid on grey cloth manufactured by M/s K.M.C. Fabrics and M/s M.S.Textiles, and since these units have been declared as fake/bogus unit, the duty has been got reversed from Aishwariya Prints. Thus when the documents are found to be of bogus/fake nature, the Cenvat credit availed by the processor against such invoices become valid. Government finds that the wrongly availed Cenvat credit in r/o M/s K.M.C. Fabrics, and M/s M.S.Textiles was reversed through Cenvat credit account and TR 6 Challan along with interest by Aishwariya Prints correspondingly the duty was paid through Cenvat credit in respect of the exported goods cleared by Aishwariya Prints to the Applicant.

9. The Government notes that Aishwariya Prints, was never declared fake/bogus unit and there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders-in-Original in this case against Aishwariya Prints or the Applicant by the Central Excise Commissionerate by the Central Excise Surat-I Commissionerate. In the present case, the impugned Order-in-Appeal has merely proceeded on presumption that, the Applicant 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. Hence denial of rebate based on presumptions and assumptions is not legally sustainable. Government therefore, is of considered opinion that the against the Order-in-Appeal No. ~~M-I/RKS/87/2011~~ dated 11.03.2011 passed by the Commissioner(Appeals), Central Excise, Mumbai-I lacks appreciation of evidence and hence is unjustifiable.

10. Government observes that the benefit of rebate claim cannot be denied on the basis of conjecture. GOI vide its Order No. 501/2009-CX, dated 29-12-2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International observed that

*“.....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26 6 01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order in original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices.....”*

*The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.....”.*

~~A similar view has also been taken by GOI in its Order No. 351/2010-CX, dated 26.02.2010 in F. No. 195/130/2007-RA-CX in respect of M/s Shcetal Exports.~~

11. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification into the allegations of alert Circulars is required to be carried out. This verification is also necessary to establish the genuineness of the Cenvat credit availed and subsequently utilized by the Applicant for payment of duty towards the above exports. Further, since the

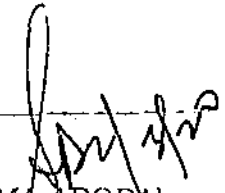


Order-in-Appeal was exparte, the Applicant is also directed to submit relevant records/documents to the Commissioner(Appeals) for verification.

12. In view of the above, Government set asides the impugned Order-in-Appeal No. M-I/RKS/87/2011 dated 11.03.2011 and remands back the case to the Commissioner (Appeals), Central Excise, Mumbai-I to decide the same afresh, after due verification of documents and pass the order expeditiously.

13. The Revision Application is disposed off in terms of above.

14. So, ordered

  
(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 290 /2020-CX (WZ)/ASRA/Mumbai DATED 02.03.2020.

To,  
M/s Excellence Exports,  
6/2595,Raghuathpura,  
Swaminarayan-ni-Wadi,  
Surat - 395 003

Copy to:

1. Commissioner(Appeals), Central Excise, Mumbai-I.
2. The Commissioner of GST & Central Excise,13 & 15<sup>th</sup> Floor, Air India Bldg, Nariman Point, Mumbai 400 021.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.