REGISTERED SPEED POST AD

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. 195/785/12-RA/4075 Date of Issue: 27.08.2020

ORDER NO.294/2020-CX (WZ) /ASRA/MUMBAI DATED 04.08.2020 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 Grauer & Weil (India) Ltd.
Plot No. 407, GIDC, Vapi

Respondent : Commissioner, Central Excise & Customs, Surat

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against OIA No. CS/38/DMN/VAPI-I/2012-13 dated 28.05.2012 passed by the Commissioner(Appeals-I), Central Excise, Daman.

ORDER

These revision applications have been filed by M/s Grauer & Weil (India) Ltd., Plot No. 407, GIDC, Vapi(hereinafter referred to as "the applicant") against OIA No. CS/38/DMN/VAPI-I/2012-13 dated 28.05.2012 passed by the Commissioner(Appeals), Central Excise, Daman.

2.1 The applicant had filed 05 rebate claims totally amounting to Rs. 4,06,606/- under Rule 18 of the CER, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 and Notification No. 20/2004-CE(NT) dated 06.09.2004. On examination of the claims; the Deputy Commissioner, Division-I, Vapi found that the value shown in some ARE-1's was higher than the FOB value mentioned in the shipping bill and hence the rebate claim was requantified and therefore an amount of Rs. 1123/- was allowable as CENVAT account of the applicant. The Deputy Commissioner vide OIO No. VAPI-I/REBATE/135/2011-12 DATED 25.07.2011 sanctioned rebate claims amounting to Rs. 4,05,483/- in cash and allowed the amount of Rs. 1123/- to be credited in their CENVAT account.

2.2 The Department did not find the OIO No. VAPI-I/REBATE/135/2011-12 DATED 25.07.2011 to be legal, proper and correct and therefore preferred appeal before the Commissioner(Appeals). The Department observed that the exports had been effected under Advance Licence where the applicant had imported raw materials into India under the auspices of Notification No. 94/2004-Cus dated 10.09.2004. It was pointed out that as per condition no. 8 of the said notification, the applicant is not eligible for the benefit of rebate under Rule 18 of the CER, 2002. It was further averred that the applicant had already availed the benefit of export obligation and therefore was not eligible for rebate amounting to Rs. 1,68,149/-. The Department contended that the said rebate claim was inadmissible and therefore the rebate claim was liable to be rejected.

2.3 On taking up the appeal for decision, the Commissioner(Appeals) found that the appeal had been filed within time. With regard to the applicants

contention that Notification No. 19/2004-CE(NT) does not provide any condition that rebate should not be granted if goods are exported under Advance Licence Scheme, the Commissioner(Appeals) found that since the benefit of Rule 18 was not available to the applicant in terms of Advance Licence Scheme, this contention does not hold good. He also found that the case law cited by the applicant was not relevant as the issues in the present case are different. The Commissioner(Appeals) therefore vide his OIA No. CS/38/DMN/VAPI-I/2011-12 dated 28.05.2012 allowed the appeal filed by the Department and set aside the OIO.

3. Aggrieved by the impugned order, the applicant has now filed revision application on the following grounds :

(a) The applicant claimed that the goods had not been exported under Notification No. 94/2004-Cus dated 10.09.2004 but have actually been exported under Notification No. 96/2009-Cus dated 11.09.2009.

(b) They pointed out that condition no. 8 in Notification No. 94/2004-Cus dated 10.09.2004 and condition no. 8 in Notification No. 96/2009-Cus dated 11.09.2009 were substantially different.

(c) Condition no. 8 of Notification No. 94/2004-Cus dated 10.09.2004 bars the benefit of the entire Rule 18 of the CER, 2002; viz. rebate on the final product as well as rebate on inputs. On the other hand, Notification No. 96/2009-Cus dated 11.09.2009 bars only rebate on inputs used in the manufacture of export goods.

(d) The applicant submitted that the ratio of the case law in Shubhada Polymer Products Pvt. Ltd.[2009(237)ELT 623(GOI)] was relevant to the facts of the present case as Notification No. 43/2002-Cus dated 19.04.2002 was similar to Notification 96/2009-Cus dated 11.09.2009.

(e) The applicant submitted that they were eligible for refund of CENVAT credit under Notification No. 11/2002-CE(NT) dated 01.03.2002. However, the Commissioner(Appeals) has not given any finding on their submissions in this regard.

(f) The applicant stated that as per the amendment in Notification No. 43/2002-Cus dated 19.04.2002, the exporter cannot claim rebate of duty paid on materials used in the manufacture of resultant products under Rule 18. Therefore, the case law of Shubhada Polymer Products Pvt. Ltd.[2009(237)ELT 623(GOI)] was applicable to the facts of the present case.

(g) They submitted that Notification No. 96/2009-Cus was an exemption notification for import of goods under Advance Licence and had nothing to do with grant of rebate of duty paid on export of finished goods.

(h) It was further averred that the conditions of Notification No. 19/2004-CE(NT) dated 06.09.2004 were required to be complied with, failing which the rebate claim could be rejected. In the present case the rebate claim had been rejected on the basis of the condition of Customs Notification No. 96/2009-Cus dated 11.09.2009.

(i) The applicant placed reliance upon the decision of the Commissioner(Appeals) in the case of Bhageria Dye Chem Ltd. wherein it had been held that if the condition of a Customs Notification had been violated, the Commissioner of Customs was the proper authority to take action in terms of such notification.

(j) The applicant submitted that there was no condition in Notification No. 19/2004-CE(NT) dated 06.09.2004 which stipulated that rebate of duty paid on export goods is to be rejected if the goods are exported under Advance Licence Scheme. It was further averred that the said notification was an independent notification which provides the conditions, limitations and procedure for export of goods and grant of rebate of duty paid on export goods. In the present case, they had not violated any condition, limitation or procedure of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and therefore the rebate claim should be allowed.

4. Thereafter, the applicant submitted letter dated 27.05.2013(received on 06.06.2013) stating that the impugned OIA was received by them on

08.06.2012 and that they had sent the revision application was sent by Speed Post on 22.08.2012 and therefore their revision application was within the time limit. The applicant was first granted a personal hearing on 21.11.2017 whereupon the applicant requested for adjournment stating that their consultant was out of Mumbai. The applicant was then granted personal hearings on 27.12.2017. The applicant again vide their letter dated 26.12.2017 stated that they had received the documents related to the above matter on 27.12.2017 and therefore they be granted adjournment for further 15 days. The applicant was again granted a personal hearing on 09.10.2019 which they again failed to appear for. The Department has also failed to appear for hearing on the appointed dates.

5. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. Before going into the facts of the case, it would be appropriate to examine the issue of delay in filing revision application. The applicant has stated that the impugned order was received by them on 08.06.2012 and they had thereafter filed revision application by Speed Post on 22.08.2012. It is observed from the record of this office that the revision application was actually received in this office on 30.08.2012. Since there is nothing on record to suggest that the applicant had actually received the impugned order before 08.06.2012, the benefit of doubt must be extended to the applicant. In the circumstances, it is held that the applicant has filed the revision application within 90 days of receipt of OIA. Therefore, there is no delay in filing revision application.

6. The issue involved in the present revision application is that the applicant who is an Advance Licence holder has sought to avail rebate of duty paid on the export goods. While the applicant has claimed that they have availed the benefit of Customs Notification No. 96/2009-Cus dated 11.09.2009, the Department has alleged that the applicant has availed the benefit of Notification No. 94/2004-Cus dated

10.09.2004. In the impugned order, the Commissioner(Appeals) has denied the applicant the benefit of rebate on the exported goods by holding that they have availed the benefit of Notification No. 94/2004-Cus dated 10.09.2004 for import of raw materials under Advance Licence Scheme.

7.1 The applicant has made some arguments to contend that the export of goods under claim of rebate is governed by Notification No. 19/2004-CE(NT) dated 06.09.2004 and that they have not violated any conditions thereof. It has also been contended that in the absence of any specific condition in Notification No. 19/2004-CE(NT) dated 06.09.2004 to forbid grant of rebate where import of raw materials have been made under Advance Licence, rebate of duty paid cannot be denied. In this regard, the Government observes that this contention is superfluous as the Department cannot be expected to overlook something that was within its knowledge. Once the Department was aware of the fact that the applicant was barred from the benefit of rebate in terms of a Customs exemption notification, it would be absurd to presume that the Department would still go ahead and grant rebate for lack of a specific prohibition in a procedural notification issued under the provisions of Central Excise Statute. In this regard, Government places reliance upon the judgment of the Hon'ble Delhi High Court in the case of International Tractors Ltd. vs. CCE & ST[2017(354)ELT 311(Del)] which involved rebate claims filed by that assessee and simultaneously availed the benefit of exemption Notification No. 93/2004-Cus dated 10.09.2004 entirely barring rebate under Rule 18 of the CER, 2002. The said judgment has been upheld by the Hon'ble Supreme Court by dismissing the Special Leave to Appeal filed by M/s International Tractors Ltd. In the said judgment of the Hon'ble High Court of Delhi, their Lordships observed that the reference to Rule 18 in Notification No. 93/2004-Cus dated 10.09.2004 is a conscious and deliberate inclusion and that a party

cannot be allowed to avail the benefit of both when the intention seems to be to permit only one.

7.2 The applicant has also advanced the argument that they were eligible for refund of CENVAT credit under Notification No. 11/2002-CE(NT) dated 01.03.2002 issued under Rule 5 of the CCR, 2004 and that the Commissioner(Appeals) has not given any finding on this submission. In this regard, it is observed that this argument is a hypothetical assertion. The benefit of refund under Rule 5 of the CCR, 2004 is available only to manufacturers exporting under bond/letter of undertaking. In the present case, the applicant has exported goods on payment of duty and has filed claim of rebate. Therefore, the benefit of refund of unutilized CENVAT credit in terms of Rule 5 of the CCR, 2004 is clearly not available to them. This argument raised by the applicant fails at the threshold and is rendered inconsequential.

8.1 Coming to the main issue, the Government observes that there is no clarity on record placed about the fact of the precise exemption notification which was being availed by the applicant for import of raw materials in terms of the Advance Licence held by them. Government observes that there is a palpable difference in the bar on benefits of Rule 18 of the CER, 2002 on Advance Licence holders under Notification No. 94/2004-Cus dated 10.09.2004 and Notification No. 96/2009-Cus dated 11.09.2009. The Notification No. 94/2004-Cus dated 10.09.2004 bars the benefit of entire Rule 18 of the CER, 2002; i.e. both rebate of duty paid on raw materials as well rebate of duty paid on final products. However, Notification No. 96/2009-Cus dated 11.09.2009 bars only rebate of duty paid on raw materials used in the manufacture of export goods. It does not bar the rebate of duty paid on the final product.

8.2 Therefore, the admissibility of rebate claims in this case hinges solely on the exemption notification which the applicant has availed of for import of raw materials. If they have availed the benefit of

Notification No. 94/2004-Cus dated 10.09.2004, the applicant would not be eligible for the benefit of rebate of duty paid on their final product. However, if the applicant has availed the benefit of Notification No. 96/2009-Cus dated 11.09.2009, the applicant would be eligible for the benefit of rebate of duty paid on their final product.

9. In the light of the above facts, Government directs the rebate sanctioning authority to carry out a verification and identify the exemption notification which has actually been availed by the applicant for import of raw materials in terms of the Advance Licence held by them by coordinating with the customs authorities. The case is remanded back to the rebate sanctioning authority to carry out this exercise within a period of six weeks from the date of communication of this order. Needless to say, the applicant must co-operate with the rebate sanctioning authority by providing the documents that may be called for by the rebate sanctioning authority. The admissibility of the rebate claim is to be decided based on the outcome of this verification and notification availed.

10. Revision Application filed by the applicant is disposed off in the above terms.

11. So ordered.

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

ORDER No.294/2020-CX (WZ) /ASRA/Mumbai DATED 04.03.2020.

To,
M/s Grauer & Weil (India) Ltd.
Plot No. 407, GIDC, Vapi

Copy to:
1. The Commissioner of CGST & CX, Surat
2. The Commissioner of CGST & CX(Appeals), Surat
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)