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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/591/2012-RA/4049 Date of Issue: 21-08-2020

ORDER NO. 303/2020-CX (WZ)/ASRA/MUMBAI DATED 04.03-2020 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 Emami Ltd.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/182/RGD/2012 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Application is filed by the M/s Emami Ltd., 5th Floor, Golden Chamber, New Link Road, Andheri(West), Mumbai 400 053 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/182/RGD/2012 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The issue in brief is that the Applicant, a merchant exporter, had filed 04 rebate claims total amounting to Rs 6,45,087/-. The Applicant was issued deficiency memo cum Show Cause Notice dated 19.08.2010 on the following grounds:

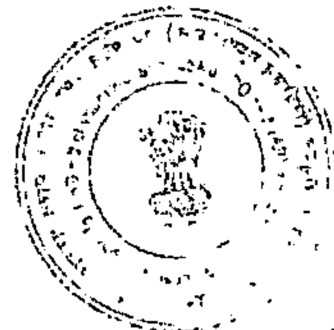
(i) In all the claims the declaration at Sr.No. 3(a), (b) & (c) of ARE-1 were not proper;

(ii) In respect of RC No. 19800 dated 06.12.2007, the FOB value was less than the assessable value shown on Central Excise. Also, the Mate Receipt in respect of this claim shows 605 Ctns which was not tallying with other export document;

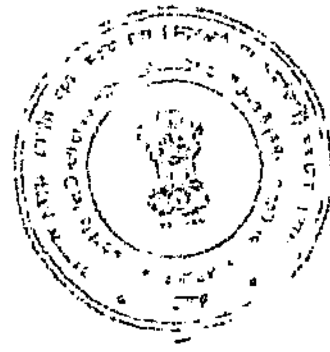
(iii) In respect of RC No. 23086 dated 25.01.2007 and 21168 dated 28.12.2006, the C.H. shown on Central Excise Invoice and export documents are not tallying. Also, the duty amount actually paid and claimed are not tallying..

The Deputy Commissioner, Central Excise (Rebate) Raigad vide Order-in-Original No 220/11-12/DC (Rebate)/Raigad dated 29.04.2011 rejected the rebate claims under the provisions of Section 11B of Central Excise Act, 1944. Aggrieved the Applicant then filed an appeal with the Commissioner of Central Excise (Appeals-II), Mumbai. The Commissioner (Appeals) vide Order-in-Appeal No. US/182/RGD/2012 dated 15.03.2012 upheld the Order-in-Original dated 29.04.2011 and the Applicant's appeal was rejected

3. Being aggrieved, the Applicant then filed the current Revision Application on the grounds that the Commissioner(Appeals) had rejected



their appeal only on one ground i.e. that once the ARE-1 is signed by the assessee, it is the assessment and the same cannot be reviewed. The Applicant submitted that out of the four exports, three exports were container exports and were under the physical supervision of Central Excise Officers. The assessment was done by the department and not by the Applicant. Assessment was in respect of duty payment which was certified by the jurisdictional Range is proper and correct and there is allegation against that. The adjudicating authority reviewed the assessment of the jurisdictional officer arbitrarily without authority and the same was upheld by the Commissioner(Appeals) on false ground. They had claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim on technical grounds is nothing but harassment to the genuine exporter and discouraging export. In respect of condition No.3(a), (b) & (c) in the bottom of the ARE-I, their manufacturer had debited duty under Cenvat credit, therefore, there is no question of not availing the Cenvat credit. They had claimed Rebate of duty on finished goods exported. The goods had been cleared under physical supervision of the Jurisdictional Range Superintendent as these were container exported and on the reverse of the ARE-1 the officers have endorsed the duty payments as well as Container numbers and bottle seal numbers and have also certified the valuation on Export Invoice along with the number of packages on the packing list. The same container had been exported as this can be seen from the Shipping Bill/Bill of Lading/Mate receipt. The Central Excise Invoice clearly shows that goods cleared are finished goods on payment of duty. Any refund claimed for export of export of goods manufactured under Notification No. 41/2001 or 43/2001Central Excise (NT) needs ARE-2 to be prepared and not ARE-1. Since their manufacturer had availed Cenvat credit on the input used in the manufacture of finished goods they cannot simultaneously avails Notification No. 43/2001 on the same goods. Hence the manufacturer had prepared ARE-1 which is only for finished goods export without claiming any concession under any notification. Hence all the discrepancy



was only clerical mistake. As regard to deficiency at Sr.No. 2 they had cleared 905 boxes which are shown in all the documents except Mate Receipt copy and that the quantity of boxes show in Mate Receipt as 605 was due to typographical error and requested to condone the lapse. As regards to deficiency at Sr.No. 3 that Chapter Heading shown in Central Excise Invoice is 3305/3304, whereas on the Shipping Bill the same are shown as 3304/3305 . The Applicant submitted that it was a typographical error made by the CHA and that the rate of duty and description of goods remain the same and the same may be condoned as the export was in through container and the Central Excise Invoice, ARE-1 tallied with the Shipping Bill/Bill of Lading/Mate Receipt. Once the same goods has been exported, there cannot be any discrepancy in physical container export. Hence the typing/clerical mistakes may be condoned. The fact of duty paid nature of goods and export of such duty paid goods are established, the benefit of rebate cannot be denied. The Applicants have relied upon various case laws in favour of their contentions. The Applicant prayed that the Order-in-Appeal may be set aside and the rebate claim of Rs. 6,45,087/- may be refunded to the Applicant.

4. A personal hearing in the case was held on 14.12.2017, 09.02.2018, and 20.08.2019. On 20.08.2019, the personal hearing was attended by Shri Rahul Thakur, Advocate on behalf of the Applicant, who then requested to refix the personal hearing and the same was granted and the next hearing was fixed on 28.08.2019. However on 28.08.2019, neither the Applicant nor the Respondent attended the hearing. Hence the case is being decided exparte on merit.

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. Government notes that the Notification No.19/2004-CE(NT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be

complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

7. In respect of issue regarding the declaration at Sr.No. 3(a), (b) and (c) being incomplete, Government observes that the Appellant had submitted that their manufacturer had availed Cenvat credit on the input used in the manufacture of finished goods and cannot simultaneously avail Notification No. 43/2001-CE(NT) dated 26.06.2001. Any refund claim for export of goods manufacturer under Notification No. 41/2001 or 43/2001, ARE-2 needs to be prepared and the Applicant had filed ARE-1 for claiming rebate. Government finds that it is an undisputed fact that the impugned rebate claims pertain to rebate of duty paid on final export products. As such, once the fact of duty payment by way of debiting of Cenvat credit and export of such duty goods established, question of violating provision contained in Sr.No. 3(a), (b) and (c) does not arise. There appears to be a wrong ticking of declaration mentioned at Sr.No. 3(a), (b) and (c) and the same can be condoned. Accordingly, the rebate claims cannot be rejected on point of procedural lapse.

8. In respect of RC No. 19800 dated 06.12.2007, the FOB value was less than the assessable value shown on Central Excise. Also, the Mate Receipt in respect of this claim shows 605 Ctns which was not tallying with other export document. The Applicant submitted they are ready to accept the rebate amount on the FOB value and further stated that they had cleared 905 boxes which are shown in all the export documents except Mate Receipt copy and that the quantity of boxes show in Mate Receipt as 605 was due to typographical error and requested to condone the lapse. Government finds the correlation of duty paid goods and export thereof stands established by tallying of particulars to excise documents and export documents, which is verified/certified by relevant excise/customs authorities, hence the typographical error made in their Mate Receipt is condonable.

9. Regarding issue of Chapter Heading shown in Central Excise Invoice is 3305/3304, whereas on the Shipping Bill the same are shown as 3304/3305, Government observes that the rate of duty of Chapter Heading 3305 and of Chapter Heading 3304 is the same i.e. 10% . Government finds the mistake of Chapter heading made in their Shipping Bill prepared is condonable as it is revenue neutral.

10. Government finds that the deficiencies observed by the first Appellate authority are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of Suksha International – 1989 (39) ELT 503 (SC) wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In UOI vs. A.V. Narasimhalu – 1983 (13) ELT 1534 (SC), the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

11. In view of the foregoing, Government finds that the Applicant's rebate claim cannot be held inadmissible on the above grounds. Hence, the Government holds that detail verification of the rebate by the original

adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE 1 as produced by the Applicant in their rebate claim, has to be taken into consideration as the Applicant has submitted that they are ready to accept the rebate amount on the FOB value. The Appellant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

12. In view of the above, Government set aside the impugned Order-in-Appeal No. US/182/RGD/2012 dated 15.03.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

13. The Revision Application is allowed in terms of above.

14. So ordered.

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

ORDER No. 303/2020-CX (WZ)/ASRA/Mumbai DATED 04.03. 2020.

To,
M/s Emami Ltd.,
5th Floor, Golden Chamber,
New Link Road,
Andheri(West),
Mumbai 400 053.

ATTESTED

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

Copy to:
1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.