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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, Cuff Parade,
Mumbai- 400 005

F NO. 195/482 & 483/12-RA /5070 Date of Issue: 01.09.2020

ORDER NO.305-306/2020-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. Vamatex India Ltd., Mumbai.

Respondent : The Addl.Commissioner of Central Excise, Mumbai-I.

Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. YDB/8-9/M-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

Order

These Revision Applications are filed by M/s. Vamatex India Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order in Appeal No. YDB/8-9/M-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The brief facts of the case are that the applicant had filed two appeals against the Order-in-Original Nos.03/1141/2011-12/Addl. and 04/M1/2011-12/Addl., both dated 23.06.2011 passed by the Additional Commissioner, Central Excise, Mumbai-I, rejecting the rebate claims of Rs.6,93,832/- and Rs.1,38,938/- along with recovery of, interest and imposed equivalent penalties of Rs.6,93,832/- and Rs.1,38,938/- under section 11 AC of Central Excise Act,1944, respectively, on the ground that, they had deliberately indulged in the modus operandi of procuring the bogus/fake invoices without receiving the duty paid excisable goods, availed the cenvat credit and utilized the same for payment of duty for exported goods with the malafide intention to claim the rebate of duty.

3. Commissioner (Appeals), Central Excise, Mumbai Zone-I vide Order in Appeal YDB/8-9/M-I/2012 dated 31.01.2012 rejected both the appeals filed by the applicant and upheld the Order I Original dated 23.06.2011.

4. Being aggrieved with the impugned Order-in-Appeal, the applicant filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds :

4.1 the impugned OIA dismissing the appeal for the alleged delay of 3 days and simultaneously dismissing the appeal on merits is a nullity for which they seek to refer and rely upon relevant law during the personal hearing. None of the grounds adduced in the EA-1 and the case laws relied upon in the EA-1 have been considered or rebutted in the impugned OIA.

4.2 The impugned OIA has been issued without even giving the details of the grey fabrics suppliers who are alleged to be fake vide certain circulars. The copies of these Alert Circulars have not been given to them. They seek to rely upon the Tribunal judgment in Bhagwati Silk Mills, CESTAT Order No./55-185/WZB/AHD/2011 dated 24.01.2011 whereby Honorable CESTAT in para 21 has stated that the department has to furnish the evidences gathered by the department which led to the issue of alert circular. Copy of the said order is enclosed.

4.3 The department should first furnish the copies of the Alert Circulars as well as the evidences gathered which led to the issue of the alert circular before any order is passed.

4.4 Circular No. 460/26/99-CX., dated 11-6-1999 stated that any novel modus operandi by the Commissioners should be reported to the Director General of Anti-Evasion who in turn will issue "alert" to all concerned and ensure quick action. The said instructions were again reiterated at Circular F. No.. 213/19/ 07 - CX- VI dated 04.10.07 and further stated that the commissionerates are still issuing alert circulars instead of sending the draft circulars regarding evasion of cases detected by them to DGCEI. These circulars prove that the excise commissionerates have exceeded their authority while issuing such alert circulars.

4.5 Moreover. the Board had in Circular no 708/24/03-CX dated 23.04.2003 stated that the board has devised a process to provide a simple transparent and hassle free registration process.. According to this process, registration certificates were issued by the department without any verification on the basis on an application made by various traders/ assesses.

4.6 that the impugned order has been issued ex parte without even granting the statutory three personal hearing as prescribed under law. On this basis itself, the impugned order deserves to be set aside. The impugned order cannot state

Quote

"The appellant contended that, the ex-parte order passed by respondent is gross violation of principal of natural justice. I find that, respondent granted personal hearings on 01.03.2011 and 15.03.2011, but neither they attended the same nor submitted any written submission and thus their contention and also relied upon case laws are not acceptable".

Unquote

That the impugned order issued without the three statutory personal hearing is against the violation of the principles of natural justice.

4.7 They had physically received all the goods and have exported the same. The allegation that they had indulged in only paper transaction is totally baseless and without any corroborative evidence.

4.8 The impugned order has been issued without even considering that the manufacturers have already reversed the total credit availed in respect of grey fabrics suppliers which have been declared fake by the department. Since the duty has already been paid by the manufacturers and accepted by the department, there cannot be another demand for the same duty from the appellants. Demanding

the rebate amount sanctioned amounts to double demand for the same duty.

4.9 They seek to rely on the ratio laid down by the Tribunal in USHA MARTIN INDUSTRIES LTD. Versus COLLECTOR OF CENTRAL EXCISE reported in 1993 (68) E.L.T. 880 (Tribunal) wherein held that Modvat credit wrongly availed by party when reversed by debit to their RG 23 Account, further payment by them in PLA by cash not to be made. It amounts to double levy of duty- Rule 57-I of Central Excise Rules, 1944.

4.10 The proposal for recovery of rebate granted to them is illegal as they have rightly been granted rebate in respect of exports made.The suppliers of inputs had a valid ECC no issued by Surat-I Commissionerate. It was impossible for the appellants to know that the suppliers were fake firms, particularly when goods/inputs were physically received and payments were accepted through cheques. Moreover, it was the department's job to verify the genuineness of the parties issuing the invoices while issuing central excise registration to them.

4.11 Export rebate is a substantive benefit granted to the exporters. It is a well settled legal position that substantive benefit of rebate in case of export cannot be denied without giving proper details of the grounds on which the rebate is sought to be recovered. The Appellants rely on

KRISHNA FILAMENTS LTD. reported in 2001 reported in 2001 (131) E.L.T. 726 (G.O.I.) wherein it was held that Export rebate claim under Rule 12(1)(b) of Central Excise Rules, 1944 rejected on the ground of non-compliance with conditions 3, 7, 9, 11 and 17 of Notification 42/94-C.E. (N.T.) – Said conditions found to be of a procedural nature. No dispute about substantive grounds of goods having been exported- Procedural lapses condoned and claim allowed subject to verification of documents relating to export of goods and the inputs being duty paid

In re : NON-FERROUS MATERIALS TECHNOLOGY DEVELOPMENT CENTRE reported in 1994 (71) E.L.T. 1081 (G.O.I.) Export rebate not to be denied for technical breach of some conditions and the Collector (Appeals) can invoke the provisions of Rule 12 to condone such technical breach in deserving cases - Rule 12 of the Central Excise Rules, 1944. Export rebate allowed – Non observance of procedure under Chapter IX of the Central Excise Rules, 1944 condoned by Government of India since goods have been actually exported by Air and the quantity exported tallies with that shown in the documents.

IN RE : IKEA TRADING (INDIA) LTD reported in 2003 (157) E.L.T. 359 (G.O.I.)

4.12 The suppliers of inputs under Surat-1 Commissionerate have passed on the burden of duty debited by them to the appellants as per excise

invoice covering the goods. Since all the original documents have been produced and the original authority has himself admitted that the goods have actually been exported as is evident from the original and duplicate copy of the ARE-1 and Shipping Bill certified by the Customs Officers. Since, they have paid the duty on the goods physically exported, the substantive benefit of export rebate cannot be denied to them by seeking to recover the rebate already granted.

4.13 Till date, neither the registration no's granted to the fake firms have been cancelled by the Surat-I Commissionerate. Therefore, based on alert circulars of Surat-I Commissioner, substantive benefit of rebate granted to exporter cannot be sought to be recovered from them.

5. Personal hearing in this case was scheduled on 14.12.2017, 09.02.2018 and 09.10.2019; however neither the applicant nor its authorized representative appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. Hence, Government proceeds to decide the case on merits on the basis of available records. Government observes that there was a delay of 6 days in filing the present Revision Application by the applicant. The applicant in its Application for condonation of delay submitted that they had received the impugned Order in Appeal on 09.02.2012; that they were not conversant with the provisions of the Central Excise Act, and therefore, they appointed a consultant to file a Revision Application; their consultant filed Revision Application but due to dispute, Consultant did not provide information regarding the date of filing of the Revision Application or the acknowledged copy of the application filed; that they were under impression that the Revision Application was filed within the period as prescribed under the said Act; that they had no knowledge of the defect notice dated 07.05.2013 as well, under which the aforesaid delay of 6 days in filing of application was communicated; that no prejudice be caused to them due to mistake of the consultant of the relevant time; that the delay is bonafide and there was no negligence on the part of the applicant in approaching Revision Application Unit, New Delhi within the prescribed period. In view of this, the applicant requested for condonation of delay of 6 days arisen in filing the Revision Application in Revision Application Unit, New Delhi. Since, the applicant filed this revision application 6 days after the initial 90 days period, which falls within condonable limit of 90 days, Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

6. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Orders-in-Appeal. The

issue involved in both these Revision Applications being common, they are taken up together and are disposed of vide this common order.

7. Government observes that the applicant had filed the rebate claims of Rs.6,93,832/- and Rs.1,38,938/-. The original authority vide Orders in Original No. 07/R/06 dated 10.01.2006 and 08/R/06 dated 10.01.2006, respectively sanctioned the said rebate claims. Meanwhile, the investigations at Surat had revealed that there were bogus and fake companies floated only with an intention of passing cenvat credit. The investigation carried out by the Division A of Central Excise Mumbai-I Commissionerate revealed that the applicant had purchased grey fabrics from some of the suppliers mentioned in the alert circulars and it was found that majority of suppliers were bogus / fake and non-existing at their given addresses. During the investigations some of the suppliers were traced and their statements under Section 14 of the Central Excise Act, 1944 were recorded wherein they inter alia admitted that they had not supplied any goods but had supplied only duty paying documents to the applicant and they categorically admitted that no goods were supplied with their Cenvatable invoices issued in favour of the applicant. Thus, it appeared that the applicant managed to procure duty paying documents without accompanying the goods in Order to avail Cenvat Credit Facility with intent to avail benefit of rebate of duty which was not due to them. It thus appeared that the applicant had availed Cenvat Credit on fake/bogus/fictitious documents and utilized the same for payment of duty on the exported goods. Thus the sanction of rebate in such case, amounted to sanction against non payment of duty and appeared to be erroneously sanctioned / paid to the applicant. Accordingly, Show cause Notices bearing No. V.Adj(54)DCN/15-4/2007 and V.Adj(54)DCN/15-5/2007 both dated 08.01.2007 were issued to the applicant proposing to recover erroneously sanctioned rebate of Rs.1,38,938/-and Rs.693,832/- respectively , alongwith interest and also proposing to impose penalty on the applicant in terms if Section 11 AC of the Central Excise Act, 1944.

8. The said Orders in Original No. 07/R/06 dated 10.01.2006 and 08/R/06 both dated 10.01.2006 were thereafter, reviewed and the department filed appeal before the Commissioner (Appeals) who vide Orders in Appeal No.VSK/28-29/M-I/2010 dated 22.04.2010 set aside both the Orders in Original.

9. As the Commissioner (Appeals) vide Orders in Appeal No.VSK/28-29/M-I/2010 dated 22.04.2010 decided the issue on merits the Adjudicating authority. i.e. Additional Commissioner, Central Excise, Mumbai-I held that the sanction and

payment of rebate totally amounting to Rs.1,38,938/-and Rs.6,93,832/- to the applicant was erroneous and same was required to be recovered from the applicant under Section 11A of the Central Excise Act,1944 following the Order of Commissioner of (Appeals) dated 22.04.2010. Accordingly, Additional Commissioner, Central Excise, Mumbai-I confirmed the demand of erroneously sanctioned rebate of Rs.1,38,938/-and Rs.693,832/- alongwith interest and also imposed equal penalty on the applicant under Section 11 AC of the Central Excise Act,1944 vide Orders in Original No. 03/MI/2011-12/Addl. And 04/MI/2011-12/Addl. both dated 23.06.2011, respectively. On appeal being filed by the applicant against these Orders in Original, Commissioner (Appeals), Central Excise, Mumbai Zone-I vide Order in Appeal YDB/8-9/M-I/2012 dated 31.01.2012 rejected both the appeals filed by the applicant and upheld the Order In Original dated 23.06.2011. Now, the applicant has filed the instant Revision Application against the same on the grounds mentioned at para 4 above.

10. Government observes that the applicant in his grounds of this application has contended that they seek to rely upon the Tribunal judgment in Bhagwati Silk Mills, CESTAT Order No./55-185/WZB/AHD/2011 dated 24.01.2011 whereby Honorable CESTAT in para 21 has stated that the department has to furnish the evidences gathered by the department which led to the issue of alert circular; that the department should first furnish the copies of the Alert Circulars as well as the evidences gathered which led to the issue of the alert circular before any order is passed; that the proposal for recovery of rebate granted to them is illegal as they have rightly been granted rebate in respect of exports made and the suppliers of inputs had a valid ECC no issued by Surat-I Commissionerate; that it was impossible for them to know that the suppliers were fake firms, particularly when goods/inputs were physically received and payments were accepted through cheques. However, Government from the impugned Orders in Original and Orders in Appeal observes that during the investigation of the case the statements of some of the suppliers were also recorded under Section 14 of Central Excise Act, 1944, wherein they admitted that they had not supplied any goods but had supplied only duty paying documents to the applicant. The statement of Shri Vikas N. Jwahar, Director of M/s.Vamatex india Ltd., (the applicant) was recorded on 10.08.2006, under section 14 of Central Excise Act, 1944, wherein he admitted that, he had not checked the genuineness of the cenvatable invoices supplied with the goods purchased by them and he also never visited the factory premises/manufacturing process of any of the supplier of fabrics. He further admitted that, the invoices, on

which they had availed credit are proved to be fake and bogus and issued by fictitious/non-existing supplier. The credit availed on such fictitious invoices was wrong and same was not eligible to be used for payment of duty against clearance of finished goods manufactured and cleared by them as deemed manufacturer against claim for rebate under erstwhile provisions of Rule 12B of Central Excise Rules; that they had taken Cenvat Credit on fictitious documents. Therefore, he agreed to reverse/pay back such wrongly availed Cenvat credit and confirmed that the amount of Cenvat Credit wrongly utilized by the applicant is Rs.58,00,701/-. Government observes that there is nothing on record to show that this admission has not been retracted by Shri Vikas N. Jwahar, Director of the company till date. It is a well-settled position in law that admitted facts need not be proved which is laid down in the decision of the Hon'ble Madras High Court in the case of Asst. Collector of Customs v. Govindasamy Raghupathy [1998 (98) E.L.T. 50 (Mad.)]. Here it has to be stated that there is also no retraction of any of the statements. Statements recorded under Section 14 of the Central Excise Act, 1944 is a valid piece of evidence under Section 25 of the Evidence Act as held by the Hon'ble Apex Court in the case of Romesh Chandra Mehta v. State of West Bengal [AIR 1970 SC 1940 = 1999 (110) E.L.T. 324 (S.C.)].

11. Government observes that since the suppliers of grey fabrics did not exist the transactions shown as supplier of grey fabrics on central excise invoices are fraudulent and bogus transactions created on paper to wrongly avail the Cenvat credit for the purpose of bogus payment of duty and irregular/fraudulent availment of rebate claims.

12. In similar circumstances, in case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 had upheld the rejection of rebate claim by lower authorities. Further, Division Bench of Hon'ble High Court of Gujarat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No 101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], filed by party has upheld the above said GOI Revision order dated 01-06-2011. Government also observes that the contention of the applicant that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty . The same arguments came to be considered by the Division Bench of Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in Diwan Brothers Vs Union of India [2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and

while denying the rebate claim on actually exported goods, the Division Bench has observed as under :

> *"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."*

13. Government also relies on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks & Anr reported as 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances i.e., when a processor is a party to a fraud, wherein cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, it was held that "since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid therefrom" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments. In view of this, none of the GOI orders relied upon by the applicant holding that substantial benefit of rebate cannot be denied on technical grounds/procedural lapses cannot be made applicable to the instant cases.

14. The applicant has also contended that the impugned order has been issued without even considering that the manufacturers have already reversed the total credit availed in respect of grey fabrics suppliers which have been declared fake by the department and since the duty has already been paid by the manufacturers and accepted by the department, there cannot be another demand for the same duty from them and that demanding the rebate amount sanctioned amounts to double demand for the same duty. In this regard it is observed that the applicant has never brought on record the details of the total amount of credit reversed by the manufacturers either before the lower authorities or even before this authority and as such there is no evidence available on record to this effect. Therefore, the

case laws relied upon in support of such claim are out of place. Moreover, in the instant proceedings what is recovered from the applicant is erroneous rebate sanctioned vide Orders in Original No. 07/R/06 dated 10.01.2006 and 08/R/06 dated 10.01.2006, as it is proved that the goods purportedly exported were not duty paid. The Commissioner (Appeals) in his impugned Order has also correctly observed that there is no evidence on record that the applicant have paid the duty on such goods.

17. In view of the foregoing discussion, Government does not find any infirmity in Orders-in-Appeal No. YDB/8-9/M-I/2012 dated 31.01.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I and upholds the same.

18. The Revision Applications are dismissed being devoid of merits.

19. So, ordered.

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

ORDER No. 305-306 /2020-CX (WZ) /ASRA/Mumbai 04.03.2020

To,
M/s. Vamatex India Ltd.,
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2. The Commissioner CGST & CX (Appeals-I), 9th Floor, Piramal Chambers, Jijibhouy Lane, Lalbaug, Parel, Mumbai 400 012.
3. The Assistant Commissioner of CGST & CX, Divison –II, Mumbai South, 15th Floor, Air India Building, Nariman Point, Mumbai 400 021.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.