

REGISTERED 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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

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F.No.198/222/12-RA / 5056

Date of Issue: 01.09.2020

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ORDER NO. 307/2020/CX(WZ)/ASRA/MUMBAI DATED 01.09.2020, 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 CENTRAL EXCISE ACT,1944.

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Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. ~~US/337/RGD/2012~~ dated 22.05.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai.

Applicant : Commissioner, Central Excise, Raigad.

Respondent : M/s Garden Silk Mills Ltd. Surat.

## ORDER

This Revision Application is filed by Deputy Commissioner, Central Excise Rebate, Raigad (hereinafter referred to as "the applicant") against Order-in-Appeal No US/337/RGD/2012 dated 22.05.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai.

2. The brief facts of the case is that the respondent M/s Garden Silk Mills Ltd., (PFY Dn.), a manufacturer exporter filed 8 rebate claims for rebate of duty amounting to Rs. 18,11,346/- (Rupees Eighteen Lakh Eleven Thousand Three Hundred Forty Six only) with the applicant under 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE (NT) dated 06.09.2004. The applicant vide Order in original No.521/2011-12/AC (Rebate)/ raigad dated 30.06.2011 sanctioned the said rebate claims amounting to Rs.17,81,267/- (Rupees Seventeen Lakh Eighty One Thousand Two Hundred and Sixty Seven only).

3. During review proceedings, the above Order -In-Original No.521/2011-12/AC(Rebate)/Raigad dated 30.06.2011 was reviewed by the Commissioner of Central Excise, Raigad on the grounds that

*"the goods exported are inputs procured by the manufacturer and removed as such for export without undertaking any process. In terms of Rule 18 of the Central Excise Rules, 2002, Rebate is admissible of duty paid on excisable goods only. Since in 2 cases, no manufacturing process has been undertaken in the factory of manufacturer, such exported goods are not excisable and consequently not eligible for rebate of duty paid on such goods in terms of Rule 18 of Central Excise Rules, 2002".*

It was also observed that :

- (i) In respect of ARE-1 No.554 dated 21.10.10 under the Central Excise Invoice No. EXP 2021 dated 22.10.10 the claimant cleared the Cenvat inputs as such and claimed rebate of duty of Rs. 32,960/-,
- (ii) Under Central Excise Invoice No. Exp 2020 dated 22.10.10 the claimant cleared Cenvat inputs as such and claimed rebate of duty of Rs. 24,856/- and

- (iii) In respect of ARE-1 No. 548 dated 21.10.10 the claimant cleared Input as such under Central Excise Invoice No. 2013 and 2014 dated 21.10.10 and claimed rebate of duty of Rs. 1,86,926/-."

4. Being aggrieved, the applicant filed the appeal before the Commissioner, Central Excise (Appeals-II), Mumbai against the said Order in Original No. 521/2011-12/AC(Rebate)/Raigad dated 30.06.2011 challenging the sanction of rebate claims to the extent of Rs. 32,960/- Rs. 24,856/- and Rs. 1,86,926/- on the above mentioned grounds.

5. The Commissioner, Central Excise, (Appeals-II), Mumbai vide his Order-in-Appeal No.US/337/RGD/2012 dated 22.05.2012 rejected the appeal filed by the department by upholding the impugned Order in Original No. 521/2011-12/AC(Rebate)/Raigad dated 30.06.2011.

6. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application on the following grounds:-

- 6.1 The claimant has filed 2 rebate claims in respect of amount reversed on goods exported which are inputs procured by them and removed as such for export without undertaking any process.
- 6.2 In terms of Rule 18 of the Central Excise Rules, 2002, Rebate is admissible of duty paid on excisable goods only. Since in 2 cases, no manufacturing process has been undertaken in the factory of manufacturer, such exported goods are not excisable and consequently not eligible for rebate of duty paid on such goods in terms of Rule 18 of Central Excise Rules, 2002.
- 6.3 The Central Excise invoices No: 2013-2014 dated 21.10.2010 and 2020-2021 dated 22.10.2010 clearly mention "Cenvat inputs cleared as such" thereon.
- 6.4 The Commissioner (Appeals), has relied upon the order of the Hon'ble Bombay High Court in the case CCE, Raigad V/s Micro Inks Ltd. and decided the issue in the favour of the claimant but the Revenue has not accepted the said order of the Hon'ble Bombay High Court in the case of CCE, Raigad V/s Micro Inks Ltd., and at present the Special Leave petition (civil) filed by the department is pending with Hon'ble Supreme Court for final decision.
- 6.5 The Commissioner (Appeals), has relied upon the order of the Hon'ble Bombay High Court in the case of CCE, Raigad V/s M/s Sterlite

Industries (I) Ltd. and decided the issue in the favour of the claimant but the Revenue has not accepted the said order of the Hon'ble Bombay High Court in the case of CCE, Raigad V/s M/s Sterlite Industries (I) Ltd. and at present the Special Leave petition (civil) filed by the department is pending with Hon'ble Supreme Court for final decision.

- 6.6 The reversal of amount, which is equivalent to the amount of duty credit originally availed in terms of Rule 3(4) of the Cenvat credit Rules, 2002 does not fall within the meaning of duty.
- 6.7 The said goods were not cleared from the factory of manufacturer. The claimant had cleared the goods after declaring is as 'input as such' for export from their factory premises, which they had not manufactured, but had been manufactured by some other manufacturer, thus the export have not been made directly from the factory premises who actually manufactured it. Also when no duty on manufactured goods was paid, no rebate is admissible.
- 6.8 As stipulated in Para 8.4, part 1 of the Chapter 8 of CBEC Excise manual of Supplementary Instructions, since, the claimant has not cleared the manufactured goods on payment of Central Excise duty for export, the determination of duty paid character of the subjected goods is not established as the reversal of credit was not "duty of excise".
- 6.9 In terms of Rule 18 of the Central Excise Rules, 2002, the rebate is admissible of duty paid on excisable goods only. Since in respect of the above said goods, no manufacturing process has been undertaken in the factory of the manufacture, such exported goods are not excisable and consequently not eligible for rebate of duty paid on such goods in terms of Rule 18 of central Excise Rules, 2002.
- 6.10 That since the goods cleared for export as input as such, from the claimant premises, the export has not been made directly from the factory premises of the manufacturer, as the excisable goods has not been manufactured by the claimant. Therefore, the condition of Notfn.No.19/2004 (NT) dated 06.09.2004 is not fulfilled.

7. A Personal hearing in the matter was fixed on 20.11.2019. Shri Mayur Shroff, Advocate, appeared for the personal hearing on behalf of the respondent. He submitted that issue is already decided by Hon'ble Bombay High Court in Micro Inks Ltd. Case [2011(270) ELT 360(BOM)] and SLP filed by the department against the said judgment is dismissed by Hon'ble Supreme Court. Besides, he also submitted and relied on GOI orders No. 159/14-CX 22.04.2014 in Re: M/s Miraj

Powers Services, and 1772-1773/12-CX dated 24.12.2012 in Re: M/s Brakes India Ltd.

8. 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. Government observes that there was a delay of 6 days in filing the present revision applications by the applicant department. 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.

9. Government observes that the issue involved in the instant Revision Application petition has been decided by this authority in the following orders holding that rebate of an amount equal to Cenvat Credit reversed under rule 3(5) of Central Excise Rule 2004 on export of inputs/capital goods as such, will be admissible under Rule 18 of Central Excise Rules, 2002.

- Government of India Order No. 18/09 dated 20.1.2009 in the case of M/s Sterlite Industries (I) Ltd. Department filed W.P. No. 2094/2010 against said order before Hon'ble Bombay High Court who vide order dated 24.3.2011 [2017(354) E.L.T.87 (Bom.)] upheld the said GOI Revision order.
- Government of India Revision order No. 873/10-CX dated 04.06.2010 in the case of Micro Inks Ltd. Department filed W.P. No. 2195/20 10 against this order before Hon'ble Bombay High Court who vide order dated 23.3.2011 [2011 (270) E.L.T. 360 (Bom.)], upheld the said GOI Revision order.

Government observes while deciding W.P. No. 2195/2010 in CCE, Raigarh v. Micro Ink Ltd., which is also relied upon by the Commissioner (Appeals) for dismissing department's appeal, the Hon'ble Bombay High Court vide its Order dated 23.03.2011 observed as under :

*"16. Since rule 3(4) of the 2002 Rules is pari materia with Rule 57(1)(ii) of the Central Excise Rules, 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India*

*that the assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.*

*17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does lose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No. 283/1996, dated 31st December, 1996 has held that amount paid under Rule 57F(1)(ii) of Central Excise Rules, 1944 (which is analogous to the Cenvat Credit Rules, 2002/Cenvat Credit Rules, 2004) on export of inputs/capital goods by debiting RG 23A Part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.*

10. Government observes that the ratio of the aforesaid orders of Hon'ble High Court of Bombay are squarely applicable to the present case. However, the department in its present revision application has contended that the Hon'ble Bombay High Court Orders in the case of CCE, Raigad V/s M/s Sterlite Industries (I) Ltd. and in CCE, Raigad V/s Micro Inks Ltd. which decided the issue in the favour of the claimant had not been accepted by the department and the Special Leave petition (Civil) filed against these orders by the department is pending with Hon'ble Supreme Court for final decision.

11. However, Government notes that the Special Leave to Appeal (C) No. 6120/12 filed by the department against Hon'ble Bombay High Court order dated 24.3.2011 in the case of M/s Sterlite Industries (I) Ltd. and the Special Leave to Appeal (C) No. 5159 of 2012 filed against Hon'ble Bombay High Court order dated 23.03.2011 in the case of M/s Micro Inks Ltd. have been dismissed by Hon'ble Supreme Court vide Judgment dated 14.09.2012 [2017(354)E.L.T. A26 (SC)] and 25.11.2013 [2017(351)E.L.T. A 180 (S.C)] respectively. Moreover, Hon'ble Supreme Court Order dated 25.11.2013 in the case of M/s Micro Inks Ltd. has been accepted by the Commissioner, Central Excise Raigad Commissionerate on 07.01.2014 and hence the Hon'ble Bombay High Court's Order in CCE Raigad v/s Micro Inks Ltd. 2011 (270) E.L.T. 360 (Bom.), has attained finality.

12. Following ratio judgment of the same, Government holds that the Order-in-Appeal No US/337/RGD/2012 dated 22.05.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai is proper and legal and hence upholds the same.

13. The revision application is thus dismissed being devoid of merits.

14. So, Ordered.

  
(SEEMA ARORA)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 307/2020-CX (WZ) /ASRA/Mumbai DATED 04.03.2020

To,

The Commissioner of Central Goods & Service Tax, Belapur,  
CGO Complex, Sector 10, C.B.D. Belapur,  
Navi Mumbai -400 614.

Copy to:

1. M/s Garden Silk Mills Ltd. (PFY Division), Tulsi Krupa Arcade, Puna-Kumbharia Road, Dumbhal, Surat 395 010.
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file,
6. Spare Copy.