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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, Cuffe Parade,
Mumbai- 400 005

F. No. 195/37/2017-RA | 5003

Date of Issue: 03.08.2023

ORDER NO. 333 /2023-CX (SZ) /ASRA/MUMBAI DATED 27.07.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Ashima Dyecot Pvt. Limited,
Texcellence Complex, Khokhara Mehmedabad,
Ahmedabad.

Respondent : The Commissioner of Central Excise & CGST,
Ahmedabad South, 7th floor, CGST Bhavan, Rajasava
Marg, Ambawadi, Ahmedabad - 380 015.

Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
313/2009 (Ahd-I) CE / RLM/ Commr (A)/ Ahd dated
29.10.2009 passed by the Commissioner (Appeals - I),
Central Excise, Ahmedabad.

ORDER

The subject Revision Application has been filed by M/s Ashima Dyecot Pvt. Limited, Ahmedabad (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 29.10.2009 passed by the Commissioner (Appeals - I), Central Excise, Ahmedabad. The said Order-in-Appeal disposed of an appeal filed by the Commissioner, Central Excise, Ahmedabad - I against the Order-in-Original dated 30.12.2008 passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division - V, Silvassa.

2. Brief facts of the case are that the applicant were manufacturers of CF and MMF falling under Chapter 52 and 55 of the CETA, 1985. The applicant procured raw material such as grey fabrics, dyes and chemicals duty free under notification no.51/2000-CUS and 43/2002-CUS under the Quantity Based Advance License Scheme. They also procured grey fabrics without payment of duty from a 100% EOU. The applicant thereafter exported the processed fabrics, manufactured using such inputs procured without payment of duty, under the DEEC Scheme. The applicant availed Deemed Credit under notification no.7/2001-CE(NT) dated 01.03.2001, 53/2001-CE(NT) dated 29.06.2001 and 6/2002-CE(NT) dated 01.03.2002 on the grey fabrics procured by them which they used to pay duty on the final products exported by them. The applicant thereafter claimed rebate of the duty so paid under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004 which was sanctioned to them by the original authority. Thereafter, a total of eight Show Cause Notices were issued to the applicant seeking to recover the rebate so sanctioned on the grounds that as no duty was paid on the inputs, deemed credit availed by them on such inputs was inadmissible and hence the rebate claim of duty paid using such inadmissible credit was not allowed to the applicant. The original authority vide Order-in-Original dated 30.12.2008 dropped the demand so raised. Aggrieved, the Department filed an appeal against the same before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal. The Commissioner (Appeals) vide the impugned Order-in-Appeal dated 23.10.2009 found that no duty was paid on the raw material used to

manufacture the goods exported and hence held that Deemed credit on such inputs was not available to the applicant and that they were ineligible to claim rebate of the same.

3.1 Aggrieved, the applicant filed an appeal before the Hon'ble Tribunal against the impugned Order-in-Appeal, however, the Tribunal vide its Order dated 10.01.2017 disposed of the same as non-maintainable while giving liberty to the applicant to file the same before the appropriate forum. Thereafter, the applicant has filed the subject Revision Application on 14.03.2017, along with an application seeking stay of the impugned Order-in-Appeal, on the following grounds: -

(a) That they were issued a Show Cause Notice denying the rebate of duty which was granted by a separate order on the ground that payment made from deemed credit account was not proper payment as they could not have taken deemed credit; they submitted that rebate granted cannot be undone merely because duty was debited from wrong head; that in case they had wrongly utilized Cenvat credit which was not available to them then a Show Cause Notice should have been issued to them for reversal of such credit and not for reversal of the rebate benefit which was granted under a different set of rules for export of goods;

(b) They submitted that notification no.6/2002 granted deemed credit on raw material used in the manufacture of processed fabrics; that the same did not cover grey fabrics which were imported by them; that the original authority had correctly relied on the decisions of Damini Printers Pvt. Ltd vs CCE, Noida [2005 (191) ELT 653] and Mangal Textile Mills (I) P Ltd. [2003 (159) ELT 464] as in these decisions the Tribunal had allowed deemed credit on yarn content even when the inputs were not directly utilized by the manufacturers which was true in their own case too; that even if any one of the above raw-material is received, even without payment of duty, then also the manufacturer was eligible for the deemed credit as he has otherwise received other raw-material on payment of duty; hence their appeal should be allowed on these grounds;

- (c) That it was not open to the Department to read a clause into notifications to the effect that if inputs are clearly recognized as non-duty paid, then deemed credit would not be available;
- (d) That Deemed credit was not earmarked for any specific input prescribed therein and that it was not the scheme of the notification that if a particular input is not duty paid, then the entire deemed credit will be disallowed; that the legislature had adopted a comprehensive approach and sought to provide for a composite rate of deemed credit irrespective of quantity of inputs used or irrespective of whether relevant particular input is used or not or irrespective of the duty paid nature on any particular input; that hence there was no question of going into the issue whether any particular input is duty paid or not;
- (e) That the Commissioner (Appeals) had assumed that all the inputs are non-duty paid and no deemed credit should be allowed; that the view of the Commissioner (Appeals) that deemed credit was only on fibers and yarns was incorrect as the notification itself mentions various inputs besides fibers such as colour chemicals, packaging materials, etc. and hence even if the fibres or yarn are non-duty paid they would still be eligible to claim deemed credit as the same was available on composite basis on all raw material;
- (f) That it has not been alleged that all inputs used in the export of goods were non-duty paid, that it is submitted that besides grey fabrics there were innumerable inputs which they had procured from the local market which were duty paid and hence the Commissioner (Appeals) had incorrectly held that all the inputs were procured duty free by them; thus the Order-in-Appeal deserves to be quashed;
- (g) That the grounds of unjust enrichment do not arise in this case as many inputs which have suffered duty have been used in the exported product;
- (h) That the notice itself was barred by limitation as they had taken Cenvat much earlier and had utilized the same for export purposes and that rebate of the said duty payment was also sanctioned much earlier before the

issuance of the Show Cause Notice; hence Department could not deny the benefit granted earlier by invoking larger period applicable when entire benefit was granted by the Department and upheld by various authorities; that the Department was not supposed to open new litigation on new grounds by invoking larger period.

3.2. The applicant vide their mail dated 15.03.2023 made further submissions, wherein they reiterated their earlier submissions and sought to place reliance on the following decisions: -

- M/s Ankur Steel vs CCE, Allahabad [2015 (322) ELT 178 (SC)]
- CCE, Nagpur vs RSR Mohita Spinning & Weaving Mills [2006 (198) ELT 419 (Tri-.Mumbai)]
- Shri Narayan Dyeing & Printing Mills vs CCE, Surat [2011 (270) ELT 689 (Tri. Ahmd)]
- Hardeep Synthetic Mills P. Limited vs CCE, Surat - I [2012 (278) ELT 655 (Tri-Ahmd.)]

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside.

4. Personal hearing in the above case was held on 27.02.2023. Shri Nirav Shah, Advocate appeared online on behalf of the applicant and submitted that the delay may be condoned as they had initially approached CESTAT. He further submitted that inputs other than grey fabrics were also used which were duty paid. He further submitted that duty paid nature of grey fabrics was not required. He requested two-week time for making additional submissions.

5. Government has carefully gone through the relevant records, the written and oral submissions and perused the Order-in-Original and the impugned Order-in-Appeal. Government finds that the Hon'ble Tribunal vide its Order dated 10.01.2017 had given liberty to the applicant to file the present appeal which they have done on 14.03.2017, which is well within

the permissible time limit prescribed for filing such Application. Government thus proceeds to examine the issue on merits.

6. Government finds that the short issue involved is whether the applicant, a manufacturer and exporter, can claim rebate of the central excise duty paid using deemed Cenvat credit, when they had procured inputs including grey fabrics without payment of duty in the first place. Government finds that the applicant in the present case had admittedly procured inputs without payment of duty under the provisions of notification no.51/2000-Cus and 43/2002-Cus under the Quantity Based Advance License Scheme. Given this undisputed fact, Government finds force in the findings of the Commissioner (Appeals) that as no duty was paid on the raw material, there was no question of taking credit on deemed basis as these inputs were clearly recognizable as non-duty paid. Government finds that the Commissioner (Appeals) has correctly held that since the inputs procured had not suffered any duty the applicant would not be eligible to avail deemed credit and hence, they would not be eligible to claim the rebate of the duty paid by them using such irregularly availed Deemed credit.

7. On examining the entire issue, Government finds that the applicant has adopted this modus operandi to take unfair advantage of the Deemed Credit facility, extended by the Government to alleviate the problems faced by genuine manufacturers. Government finds that the applicant chose to operate under the QABAL Scheme, wherein they were allowed to procure inputs without payment of duty and also at the same time availed the benefit of Deemed Credit Scheme that was made available to those manufacturers who had procured inputs from the local market which were deemed to have been subjected to proper central excise duty. Government finds that by resorting to such unfair means the applicant claimed rebate of duty which was never paid in the first place. Government notes that the applicant had applied for rebate under Rule 18 of the Central Excise Rules, 2002 which provides for rebate of duty paid on the goods which have been exported. Thus, two primary requisites for being eligible to claim rebate are

that duty should be paid on the goods and the same should be exported. In the present case the fact of the goods being exported is not in doubt, however, as discussed above, it is clear that duty has not been paid on the goods exported by the applicant inasmuch as the applicant used Deemed credit, which was not available to them, to pay such duty. Government finds that in this case there was no payment of duty on the goods and when the goods are non-duty paid, rebate on export thereof cannot be granted. Government has examined the decisions cited by the applicant and finds that they pertain to cases wherein it has been held that evidence towards duty payment should not be insisted for allowing Deemed credit, which Government finds will not be applicable to the instant case as here the inputs are admittedly procured without payment of duty. Further, as regards the claim of applicant that the Show Cause Notices were time barred, Government finds that the same has been appropriately dealt with by the Commissioner (Appeals), wherein he found that Show Cause Notices seeking to recover rebate granted in the month April 2003 were issued in the month of January 2004 and, hence, were well within the time limit prescribed by Section 11A of the Central Excise Act, 1944. Thus, Government does not find merit in this submission and rejects the same.

8. Government finds that even assuming for the sake of argument that the applicant was eligible to claim the Deemed credit availed by them, it would lead to a situation wherein the applicant would have an unfair advantage over other exporters of the same material, as the others would have procured inputs which have suffered duty vis-à-vis the applicant who procured the same without payment of duty. This definitely cannot be the intent of the legislation governing this issue. Thus, Government does not find any merit in the submissions put forth by the applicant to claim that they were eligible to claim Deemed credit on inputs which were procured without payment of duty.

9. Government finds support in the decision of the Hon'ble High Court in the case of UOI vs Rainbow Silks [2011 (274) ELT 510 (Bom)] had set aside

an Order which had allowed the plea of an exporter that they should not be denied rebate for the incorrect availment of Cenvat credit by the manufacturer. Government finds that in this case the applicant themselves had availed credit which was not available to them. Thus, Government finds that the decision of the Commissioner (Appeals) is in consonance with the above decision which is squarely applicable to the issue on hand.

10. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal and upholds the same. The subject Revision Application is rejected.

Shrawan Kumar
27/7/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 333/2023-CX (WZ) /ASRA/Mumbai dated 27.07.2023

To,

M/s Ashima Dyecot Pvt. Limited,
Texcellence Complex, Khokhara Mehmedabad,
Ahmedabad.

Copy to:

1. Commissioner of Central Excise & CGST, Ahmedabad South, 7th floor, CGST Bhavan, Rajasava Marg, Ambawadi, Ahmedabad - 380 015.
2. The Commissioner (Appeals-I) Central Excise, Central Excise Bhavan, 7th floor, Near Polytechnic, Ambavadi, Ahmedabad - 3800 015.
3. Sr. P.S. to AS (RA), Mumbai.

J. Guard file