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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.198/191/2012-RA /5656 Date of Issue: 11.12.19

ORDER NO.341/2019-CX (WZ)/ASRA/MUMBAI DATED 10.12.2019 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 : Commissioner, Central Excise, Raigad.

Respondent : M/s Micro Inks Ltd

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/171/RGD/2012 dated 14.03.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

ORDER

This Revision Application is filed by the Commissioner of Central Excise, Raigad (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. US/171/RGD/2012 dated 14.03.2012 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that M/s Micro Inks Ltd., 512-513, 5th floor, Midas, Sagar Plaza Complex, Andheri-Kurla Road, Opp. J.B. Road, Andheri (East), Mumbai 400 059 (herein after as 'Micro Inks') had filed two rebate claim for Rs. 3,56,012/- (Three Lakhs, Fifty Six Thousand, and Twelve Only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 (as amended) and was issued Deficiency Memo-cum-SCN. The Deputy Commissioner of Central Excise, Rebate, Raigad vide Order-in-Original No. 406/11-12/AC(Rebate)/Raigad dated 19.05.2011 rejected the rebate claims on the grounds that

(i) Goods are not exported from the manufacturer's premises thereby contravened the provisions of Notification No.41/1994-CE (NT) dated 22.9.1994 read with CBEC Circular No.294/10/97-CX dated 30.1.1997.

(ii) Input/Capital goods are cleared as such for export by reversing an amount of credit taken on the same goods.

(iii) The amount so reversed is not included in the definition of duty. Thus duty paid character appears to be not satisfactorily proved.

(iv) Identity of the goods received from the manufacturer and the goods claimed to be exported could not established without relevant invoices issued by actual manufacturer.

(v) Cenvat credit is not admissible as the said goods were not the input/capital goods as the same were not used in or in relation to manufacture of final products.

(vi) In R.C No.11506 dated 15.9.2006 - rebate claiming authority has been mentioned as Maritime Commissioner, Mumbai

(vii) In R.C No.22001 dated 10.1.2007 - rebate claiming authority scored and rewritten and tariff classification of the product given in ARE-1/Invoice does not tally with that given in the Shipping Bill.

Aggrieved, Micro Inks then filed appeal with the Commissioner (Appeals-II), Central-Excise-Mumbai, who vide Order-in-Appeal-No. US/171/RGD/2012 dated 14.03.2012 set aside the Order-in-Original dated19.05.2011 and their appeal was allowed.

3. Consequently, the Department has filed the current Revision Application on the following grounds :

3.1 that Micro Inks has filed the rebate claims in respect of amount reversed on the goods and packaging materials, which had been procured domestically and by import and subsequently, cleared as such for export to foreign country. The goods in question have been cleared as "input as such". However, it is noticed that the exported material cannot not be considered as input, because, the exported product i.e. M.S. Gal Square Tote and Resin & Additives, are not being used in the manufacture of their final product i.e. Printed Ink.

3.2 that the Commissioner(A), has relied upon the order of the Hon'ble Bombay High Court in their own case CCE, Raigad V/s Micro Inks Ltd. and decided in the favour of theirs but the Revenue has not accepted the order, and at present appeal is pending with Hon'ble Supreme Court for final decision.

3.3 that the goods exported are not inputs procured by the manufacturer and are removed as such for export without undertaking any process. In terms of Rule 18 of the Central Excise Rules, 2002, the rebate is admissible of duty paid only on excisable goods manufactured. Further the reversal of credit was not "duty of excise".

3.4 that 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.

3.5 that the goods viz. "M.S. Gal Square Tote and Resin & Additives" were not cleared from the factory of the manufacturer. Micro Inks had cleared the goods after declaring it as 'input as such' for export from their factory premises, which they had not manufactured, but had been manufactured by some other manufacturer and also some goods were imported, 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.

3.6 that as stipulated in Para 8.4, Part 1 of the Chapter 8 of CBEC Excise Manual of Supplementary instructions, since, Micro Inks 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.

3.7 that 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.

3.8 that since the goods cleared for export as input as such, from their premises, the export has not been made directly from the factory premises, as the excisable goods has not been manufactured by Micro Inks Ltd. Therefore, the condition of Notfn.No.19/2004 (NT) dated 06.09.2004 is not fulfilled.

3.9 that the Order-in-Appeal No. US/171/RGD/2012 dated 14.3.2012 therefore does not appear to be proper, legal and correct and is required to be set aside

3.10 that they prayed that Order-in-Appeal dated 14.3.2012 be set aside and to restore and allow the Order-in-Original No.406/11-12/AC (Rebate)/Raigad dated 19.5.2011.

4. Against the grounds in Revision Application, Micro Inks in their cross objection submitted that :

4.1 that the contention in para 7.1 namely that M.S. Gal Square Tote and Resin & Additives, are not inputs for printing inks being manufactured by them was never raised in the Memo-Cum-SCN-Call for Personal hearing issued by the Dy. Commr.(Rebate), Raigad nor it formed part of Order-in- Original No. 406/11-12/AC (Rebate)/Raigad dated 19.5.2011 (issued on 03.06.2011 and received on 17.06.2011). Hence, the Deptt. Cannot canvass a new contention outside the Memo-Cum-SCN-Call for Personal hearing. Here they relied on the case law of Commr. of CEx. Chandigarh Vs Shital International [2010 (259) ELT 165 (SC)] –

> *"17. As regards the process of electrifying polish, now pressed into service by the revenue, it is trite law that unless the foundation of the case is laid in the show cause notice, the revenue cannot be permitted to build up a new case against the assessee. (See: Commissioner of Customs, Mumbai Vs. Toyo Engineering India Ltd –(2006).7 SCC 592 = 2006 (201)ELT 513 (S.C.); Commissioner of Central Excise, Nagpur Vs. Ballarpur Industries Ltd. (2007) 8 SCC 466 = 2007 (215)ELT 489 (S.C.)*

and Commissioner of Central Excise, Bhubaneshwar-I Vs. Champdany Industries Limited -)2009) 9 SCC 466 + 2009 (241) ELT 481 (S.C.). Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show cause notice dated 22nd June 2001 relating to the assessment year 1988-89 to 2000-01. However, in the show cause notice dated 12th December 2000, the process of electrifying polish finds a brief mention. Therefore, in light of the settled legal position, the plea of the learned counsel for the revenue in (2006) 7 SCC 592 (2007) 8 SCC 89 (2009) 9 SCC 466 that behalf cannot be entertained as the revenue cannot be allowed to raise a fresh plea, which has not been raised in the Show Cause notice nor can it be allowed to take contradictory stands in relation to the same assessee."

The aforesaid contention is without prejudice to their contention that M.S. Gal Square Tote and Resin & Additives, are inputs for printing inks being manufactured by them and the new allegation made in the revision application by the revenue is false.

4.2 That the contention in para 7.2 of the grounds of appeal namely, that Commissionr(Appeals) has relied upon a Bombay High Court Order which is in challenge before Supreme Court is an initio illegal and perverse as well a amounting to judicial indiscipline in as much until the Bombay High Court judgement holds the field, all judicial/ quasi-judicial authorities lower in hierarchy to the High Court are bound by it.

4.3 That the contentions in para 7.3 of the grounds of appeal that the exported goods are not goods manufactured by them and the credit reversal is not "duty of excise" in terms of Rule 18 of CER have already been considered and dismissed in a plethora of case:

(i) 2011 (270) ELT 360 (Bom) – Commr. C.Ex. Raigad Vs Micro Inks Ltd.

(ii) 2007 (216) ELT 493 (Commr.Appl) IN RE : Ispat Industries Ltd.

(iii) 2007 (272 ELT 353 (Mad) – Ford India Pvt Ltd Vs Assistant Commr of C.Ex. Chennai.

(iv) 2011 (272) ELT 473(GOI) – IN RE: Honda Motorcycles and Scooters India (P) Ltd.

4.4 That the contentions in para 7.4 of the grounds of appeal, namely that credit reversed is not "duty" in terms of Rule 3(4) has already been negative by judicial authorities in cases cited in para 4.3 above. Again they relied on the CESTAT decision in Garsim Industries Ltd Vs Commr. of C.Ex. [2003 (155) ELT 200 (Tri-Del)]

4.5 That the contentions in para 7.5 of the grounds of appeal, namely that exported goods were not directly exported from the manufacturer who manufactured there goods in an illegal ground vide precedents in para 4.3 above as per which rebate which was held eligible though input/ capital goods exported from the recipients' factory and not from the manufacturer's factory.

4.6 That the contentions in para 7.6 of the grounds of appeal, namely that they had not cleared the goods on payment of central excise duty is an inference contrary to facts as they have reversed Cenvat credit on inputs/ CGs removed as such for exported and the said reversal is payment of duty vide judicial precendents quoted in para 4.3 and 4.4 above.

4.7 that the further contention that the determination of duty paid character of the subject goods is not established is a contention which is malicious and mischievous. When goods have been exported on reversal of credit taken and under cover of ARE-1, such absurd contentions cannot be advanced by the Revenue.

4.8 That the contentions in para 7.7 of the grounds of appeal, namely that since so manufacturing process has taken place in the factory of manufacture (exporter?) and hence the exported

goods are not "excisable" and consequently not eligible for rebate is a false proposition in terms of the fact that thee is no dispute about payment of duty by reversal of credit availed on exported goods. For goods to be "excisable goods", they are required to be mentioned in the tariff and nothing more. Excisable goods becoming input to them cannot make them non-excisable. Nor reversal of credit without "manufacture" can make them non-excisable.

4.9 That the contentions in para 7.8 of the grounds of appeal, namely that exports were not made directly from the manufacture is a painful repetition and has been already answered in para 4.3 and 4.5 above.

4.10 That the contentions in para 7.9 of the grounds of appeal, is not a ground but the relied sought by the Revenue. The same cannot be granted in view of the contentions/ replies in the above paras.

4.11 that in view of the foregoing, they prayed that the revision application filed by the Revenue deserves to be set aside both on grounds of facts and law with consequential relief of grant of rebat with interest for the period commencing from three months from the date of application to the date of payment as per law. They relied in the case of 2012 (281) ELT 132 (GOI) – RE: Reliance Industries Ltd.

5. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	OIA No. & dt	Revision Application	Date RA recd and No. of delay	Application for COD date
1	US/171/RGD/2012 dt 14.03.2012 (Recd on 10.04.2012)	198/191/2012	10.04.2012 02 days delay	Filed on 11.08.2015

Hence defect memo was issued to the Appellant to file Miscellaneious Application for Condonation of Delay (herein after as 'COD') and the Appellant then on 11.08.2015 filed the Application for COD.

6. A personal hearing in the case was held on 22.11.2017, 22.05.2018, 10/11.02.2018 and 20.08.2019. However no one attended the hearing. Hence the case taken up for disposal.

7. 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.

8. Government first proceeds to take up the application for COD in filing the current Revision application by the Applicant. On perusal of the COD application it is stated there was delay in filing the Revision Application due to postal delay. In the interest of justice, Government condones the delay of 02 days and proceeds to examine the case on merits.

9. Government observes that issue in the current Revision application is

(i) whether the inputs which was cleared for export 'as such' on reversal of Cenvat credit under Rule 3(4) of CCR, such reversal of Cenvat credit can be treated as payment of duty or not.

(ii) Whether the inputs which was cleared for export 'as such' without undertaking any manufacturing activity, such exported goods can be treated as export of 'excisable goods' or not;

(iii) Whether the identity of exported input goods under ARE-1 form can be correlated with the input goods brought into the factory or not.

10. On perusal of records, it is observed that Micro Inks, manufacturer exporter, had purchased inputs/packing material i.e. M.S. Gal Square Tote and Resin & Additives from M/s Yamuna Machine Works P. Ltd., Vapi and also imported them. They then removed the subject inputs/packing materials 'as such' from their factory for export under ARE-1 by reversing

the credit of duty availed on these 'inputs as such' under Rule 3(4) of the CCR. And then, they filed the two rebate claims of duty in respect of amount reversed on the 'inputs as such'.

11. Government notes that all the 3 points of issues raised by the Department in the current Revision Application has already been decided in by this authority in the case of Micro Links vide GOI Revision Order No. 873/10-CX dated 04.06.2010. Against this order, the department had then filed Writ petition No. 2195 of 2010 before the Hon'ble Bombay High Court, who decided the matter vide Order dated 23.03.2011 [2011 (270) ELT 360 (Bom)] and the department's petition was dismissed -

Rebate – Export of inputs/ capital goods on payment of duty by reversing the credit of duty availed on such inputs/ capital goods under Rule 3(4) of Cenvat Credit Rules, 2002 – If duty is paid by reversing the credit it does not lose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that duty is paid by reversing the credit – C.B.E.& C.'s Circular No. 283/96, dated 31.12.1996 – Pleas that identity of exported inputs/ capital goods could not be correlated with the input/ capital goods brought into the factory, not acceptable since the goods were exported under Are-1 form and same were duly certified by Customs authority – Rule 18 of Central Excise Rules, 2002 – Rules 3(5) and 3(6) of Cenvat Credit Rules, 2004 [para 17, 18].

Petition dismissed.

12. Government further notes that Department had filed Special Leave Petition with the Supreme Court against the above judgment dated 23.03.2011 of the Hon'ble High Court vide Writ petition 2195 of 2010 in the case of CCE Vs Micro Inks Ltd. The Hon'ble Supreme Court has dismissed the Special Leave to Appeal (Civil) No. 5159/2012 filed by the Department vide order dated 25.11.2013 –

"Order

Delay condoned.

We find no reason to entertain this Special Leave Petition, which is , accordingly, dismissed."

Hence the issue had attained finality and thus the case/ issue is Res-Judicata.

13. In view of the above, Government finds no legal infirmity in the impugned Order-in-Appeal No. US/171/RGD/2012 dated 14.03.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai and hence upholds the same.

14. The Revision Application is therefore rejected being devoid of merits.

15. So ordered.

10/12/19

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

ORDER No. 341/2019-CX (WZ)/ASRA/Mumbai DATED 10.12.2019.

To,
M/s Micro Inks Ltd.,
512-513, 5th floor, Midas,
Sagar Plaza Complex,
Andheri-Kurla Road,
Opp. J.B. Road, Andheri (East),
Mumbai 400 059.

Copy to:

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