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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. 198/113/13-RA-CX/6123 Date of Issue : 20.09.2021

ORDER NO. 347 /2021-CX (WZ)/ASRA/MUMBAI DATED 30.09.2021 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 : Commissioner of Central Excise & Customs, Surat-I

Respondent : M/s ABG Shipyard Ltd

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order In Appeal No. CCEA-SRT-I/SSP-270 & 271/2013-14 dated 31.07.2013 passed by the Commissioner (Appeals), Central Excise & Customs, Surat-I.

ORDER

The instant revision application has been filed by the Commissioner, Central Excise and Customs, Surat I, New Central Excise Building, Opp Gandhi Baug, Chowk Bazaar, Surat I against the against the Order in Appeal No CCEA-SRT-I/SSP-270 & 271/2013-14 dated 31.07.2013 passed by Commissioner (Appeals), Central Excise & Customs, Surat-I with regard to Order-in-Original No SRT-I/ADJ/26/R/2012 dated 14.02.2012 passed by the Deputy Commissioner, Central Excise, Division-IV, Surat-I

2. The brief facts of the case are that the respondent is engaged in manufacturing of Ships falling under Chapter 89 of CETA, 1985. The respondent exported 'Ocean Going Vessel (Ship), 18800 DWT Geared Bulk carrier [Y-263 (ALPPILA)' under Rule 18 of the Central Excise Rules, 2002 read with notification No. 21/2004-CE(NT) dated 06.09.2004 vide ARE-2 No. 02/11-12 dated 15.07.2011 and subsequently filed a rebate claim for Rs. 1,95,87,644/- in respect of duty paid on the various inputs used in the manufacture of exported goods. On scrutiny of the rebate claim, it was observed by the rebate sanctioning authority that while calculating the amount of rebate the respondent had included the duty involved on waste & scrap amounting to Rs. 8,89,101/-, arising out of the inputs taken for manufacturing process which was not admissible for rebate. Accordingly, while sanctioning the rebate claim, the sanctioning authority vide Order in Original No. SRT-1/ADJ/26/R/2012 dated 14.02.2012, sanctioned the rebate claim of Rs. 1,86,98,543/- out of the total claim of Rs. 1,95,87,644/- and rejected the remaining amount of Rs. 8,89,101/-, as being inadmissible.

3. Being aggrieved by the impugned Order in Original, the respondent filed an appeal before the Commissioner (Appeals), Central Excise & Customs, Surat I on the following grounds:

a) The demand on such waste & scrap is premature in as much as waste & scrap has not been cleared from the factory and therefore no liability

arises and that the waste & scrap emerging during the manufacturing process of finished goods are exempt from payment of duty under notification No 85/95 CE dated 18.05.1995.

b) The issue in the present case is squarely covered by the decision of Tribunal in the case of Parekh Aluminex Ltd Vs CCB reported in 2009 (239) ELT 189 (T).

c) The contention of the department to reject to the extent of additional duty of Customs paid on raw material is not acceptable.

d) The demand of Rs. 367/- is also not sustainable.

4. Being aggrieved by the said Order in Original, the applicant also filed an appeal before the Commissioner (Appeals), Central Excise & Customs, Surat I against the impugned Order-in-Original mainly on the following grounds:

a) The respondent did not pay duty on waste & scrap arising during the course of manufacture and thus there was clear violation of the condition No. 4 (c ) of Notification No. 21/2004-CE (NT) dated 06.09.2004 and therefore the entire rebate claim was liable be rejected.

b) The respondent had availed benefit of Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 and has simultaneously availed the benefit of Notification No. 43/2001-CE (NT) dated 26.06.2001 issued under Rule 19 of the Central Excise Rules, 2002 which is not permissible.

c) The reporting date of verification for duty paid indigenous goods procured and utilized for manufacture of the exported vessel cannot be prior to the date of permission of declaration of input output ratio and so the findings of the sanctioning authority were factually incorrect.

d) Duty payment verification on raw material was not completed and the rebate was granted without such verification.

5. The Appellate Authority vide Order in Appeal No. CCEA-SRT-I/SSP-270 & 271/2013-14 dated 31.07.2013 upheld the impugned Order-in-Original No. SRT-1/ADJ/26/R/2012 dated 14.02.2012. The Appellate Authority

while rejecting the appeals by the applicant and the respondents made the following observations.

a) The appellant (respondent before the instant RA) was required to file input output ratio declaration and in such cases there cannot be a one to one ratio and some waste and scrap arises. The respondent misunderstood the issue and considered it as if duty on waste and scrap has been demanded. Since the rebate is to be granted on the inputs involved in the manufactured product, the rebate in respect of waste & scrap of inputs is not permissible. Therefore, the rebate sanctioning authority has correctly rejected the rebate to that extent.

b) The case law relied upon by respondent speaks about demand of duty on removal of waste and scrap. In the instant case, the issue involved is duty on waste & scrap of inputs which is entirely a different issued and hence the said decision not relevant.

c) As regards the non acceptance of the contention of the department to reject to the extent of additional duty of Customs paid on raw material and that the demand of Rs. 367/- is also not sustainable, the respondent has not explained as to how grounds of the rebate sanctioning authority is not acceptable and not correct.

d) In cases of rebate against export made under ARE-2, the rebate is granted for the duty involved on inputs used in the manufacture of final product exported. If at all, it is found that the duty involved on the quantity of inputs actually used in the final product is less on account of arising of waste & scrap, then the amount of rebate claimed has to be decided after deducting the duty involved on such waste which has been correctly done by the authority. If duty is to be demanded on clearance of waste and scrap, a separate show cause notice is required to be given specifying the classification of such waste & scrap and the rate of duty applicable for the same. No such SCN has been issued in this regard and therefore the ground of the department is not sustainable.

e) Even if the benefit under Notification No. 43/2001 dated 26.06.2001 is denied, the benefit under Notification No. 21/2004 dated 06.09.2004

cannot be denied and no extra benefit has been obtained by availing both the Notifications.

f) In the instant case, the date of granting permission under notification No. 21/2004 dated 06.09.2004 in respect of input output ratio declaration is 17.03.2011 and the date of ARE-2 is 15.07.2011. This proves that the goods were exported only after the permission was granted and therefore, the date of verification cannot be before the date of export and it appears to be a typographical mistake only.

g) The Jurisdictional Range Officer has made effort to verify the duty payment and in absence of duty payment verification, he cannot wait for indefinite period. Even on a later stage, it is found otherwise, the Department is at liberty to take action on the basis of such documents if found.

6. Being aggrieved by the impugned Order-In-Appeal, the applicant has filed this revision application under Section 35EE of the Central Excise Act, 1944 before the Central Government for staying and setting aside the impugned Order-In-Appeal on the following grounds

a) When any goods are cleared by availing any of the notification, conditions laid down in that Notification are to be followed scrupulously so as to make them eligible for availing that exemption. Here, the goods in question i.e. Ocean Going Vessel was cleared by the assessee (respondent) under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 under ARE-2 procedure.

Condition 4(c) of the Notification No.21/2004-CE(NT) dated 06.09.2004 speaks that any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of manufacturer or processor.

The Appellate Authority has failed to appreciate the facts that the assessee has failed to clear the waste/scrap on payment of central excise duty making themselves ineligible for claiming the rebate under this

Notification, therefore, the impugned order passed by the Appellate Authority is not legally correct and is liable to be set aside solely on this ground.

b) That the assessee has availed the benefit of Notification No. 21/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 and Notification No. 43/2001-CE(NT) dated 26.06.2001 issued under Rule 19 of Central Excise Rules, 2002. These two Notifications have been issued under two different Rules of Central Excise Rules, 2002 which envisage two different ways of granting relief to an exporter from the burden of duty. Assessee had the option to opt any of the notification and to avail the relief thereunder by following the procedures laid down in that particular notification he was not having any option to avail the benefit of both the notifications simultaneously. The Appellate Authority has held that this has no impact on rebate claim as documents filed for claiming rebate in order, however, has failed to take note the facts that the procedural infirmity pointed out in the appeal filed by the Revenue does stand and it is not negated in the order.

c) The rebate was granted by the original adjudicating authority without verification of duty payment particulars merely on the ground that nothing adverse had been noticed in the past from any supplier of any raw material, in respect of previous claims, filed by the assessee. There was ample time available for verification of duty payment and rebate should have been sanctioned by the adjudicating authority only after the clear report from the jurisdictional Range Officer.

7. The Respondents filed their written submissions against the Revision application wherein it is prayed that the Revision Application filed by Department be rejected on the following grounds. The gist of the written submissions are summarised as under:

a) The respondent submitted that the procedure and conditions laid down in notification No. 21/2004 - CE(NT) dated 06.09.2004 has been fully followed and therefore rebate has been rightly sanctioned by the Deputy Commissioner and further confirmed by the Appellate Authority by dismissing the department appeal in this regard.

The respondents further submitted that they have followed the prescribed procedure and this fact has been verified by Deputy Commissioner as is evident from reference in the impugned Order-in-Original to a report dated 26.12.2011 issued by Jurisdictional Range Officer (JRO). It has been found by the Deputy Commissioner that the respondents have complied with the procedures and conditions laid down in the notification No.21/2004-CE (NT) dated 06.09.2004. It has been found that the respondents have not claimed any input stage credit on inputs or input services and that rebate is being claimed only in respect of raw materials indigenously procured on payment of excise duty.

The respondents submitted that the impugned Order-in-Appeal passed by the Appellate Authority is legal and proper and the revision application filed by the department is liable to be set aside.

b) The contention of the department in the instant revision application that the Respondent have violated condition no 4(c) of the notification No. 21/2004- CE (NT) dated 06.09.2004 is incorrect and not sustainable.

The Respondents submitted that there is no violation of the aforesaid condition of the Notification in as much as in law no duty is payable on waste and scrap so generated and therefore in law said condition would attract only when in law duty is payable and not paid.

The Respondents submitted that in the present case the department has already deducted the amount not paid towards waste & scrap from the present rebate claim. Therefore, there is no violation of condition no.4(c) of the notification and that the department cannot reduce the rebate claim by an amount equal to duty payable on waste and scrap from the sanctioned rebate claim and at the same time deny entire rebate claim on the ground of violation of condition no.4(c) of the said Notification.

The Respondent therefore submitted that having recovered duty on waste and scrap and same not being now challenged by the Respondent in present proceedings the rejection of entire rebate claim is incorrect.

c) The Respondent submitted that the contention of the department that benefit of both the notifications cannot be availed simultaneously is incorrect and that nowhere does Notification No. 21/2004-CE(NT) dated 06.09.2004 or Notification No. 43/2001CE(NT) dated 26.06.2001 state that the Respondent are precluded from availing the benefit of another notification if they are eligible for the same.

d) As regards the contention of the Department that the rebate was erroneously granted by the adjudicating authority without due verification of duty payment particulars on the ground that nothing adverse was found in the past from any supplier of raw material in respect of previous claims filed by the respondent, Respondent has submitted that as observed by the Appellate Authority, the range officers and authority have taken necessary steps to conduct duty payment verification but unreasonable delay was caused and the original adjudicating authority deciding the rebate claim could not have waited for indefinite periods for the duty payment verification report as that would have caused gross injustice to the respondents.

Respondent further submitted that duty payment verification in the present case had been done and was found to be in order and therefore questioning the duty payment verification is wholly unjustified and incorrect. The Respondents submitted that all statutory documents with the department required by them to proceed with the claim were submitted.

8. Personal hearing in the matter was granted on 28.12.2017, 09.10.2019, 03.12.2019, 09.02.2021, 23.02.2021, 18.03.2021, 25.03.2021, 20.04.2021, 06.07.2021 and 20.07.202. However, no one appeared for the personal hearing so fixed on behalf of department/respondent. Since sufficient opportunity to represent the case has been given, the case is taken up for decision on the basis of available documents on record.

9. Government has carefully gone through the relevant case records available in case files, oral & written submissions of the applicants and respondents and perused the impugned Order-in-Original and Order-in-Appeal.

9.1 Government notes that the issue to be decided in the instant revision application are 1) whether the Condition 4 (c ) of Notification No 21/2004-CE(NT) dated 06.09.2004 has been violated by the respondent, 2) whether the respondent had the option of availing of the benefit of Notification No 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 and Notification No. 43/2001-CE (NT) dated 26.06.2001 simultaneously and 3) whether the grant of the rebate without verification of duty payment particulars merely on the ground that nothing adverse had been noticed in the past from any supplier of any raw material was in consonance with the prescribed procedure.

9.2. In this regard, for proper understanding of issue, the relevant provisions of notification No. 21/2004-C-E (N.T.) dated 06.09.2004 has been reproduced as under:

*" In exercise of the powers conferred by of rule 18 of the Central Excise Rules, 2002 and in supersession of the Ministry of Finance, Department of Revenue, notification No.41/2001-Central Excise (N.T.), dated the 26th June, 2001[G.S.R.470 (E) dated the 26thJune, 2001], the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: -*

*(1) **Filing of declaration.** - The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

*(2) **Verification of Input-output ratio.** - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.*

*(3) **Procurement of material.** - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*

*Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers.*

*(4) **Removal of materials or partially processed material for processing.** - The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise may permit a manufacturer to remove the materials as such or after the said materials have been partially processed during the course of manufacture or processing of finished goods to a place outside the factory -*

*(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the finished goods and return the same to his factory without payment of duty for further use in the manufacture of finished goods or remove the same without payment of duty in bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory of the manufacture or process; or*

*(b) for the purpose of manufacture of intermediate products necessary for the manufacture or processing of finished goods and return the said intermediate products to his factory for further use in the manufacture or process of finished goods without payment of duty or remove the same, without payment of duty for export, provided that the waste, if any, arising in the course of such operation is also returned to the factory of manufacturer or processor;*

*(c) any waste arising from the processing of materials may be removed on payment of duty as if such waste is manufactured or processed in the factory of the manufacturer or processor.*

*(5) **Procedure for export.** - The goods shall be exported on the application in Form A.R.E. 2 specified in the Annexure to this notification and the procedures specified in Ministry of Finance (Department of Revenue) notification No.19/2004-Central Excise (N.T.), dated the 6th September, 2004 or in notification No. 42/2001-Central Excise (N.T.), dated the 26th June, 2001 shall be followed.*

*(6) **Presentation of claim of rebate.** - The claim for rebate of duty paid on materials used in the manufacture or processing of goods shall be lodged only with the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction of the place approved for manufacture or processing of such export goods."*

9.3. On perusal of records, Government infers that the goods have been cleared for export following the conditions / procedure prescribed under Notification No. 21/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002. Further, the Rule 18 of Central Excise Rule, 2002 provides that where any goods are exported, the Central Government may by Notification, grant rebate of duty paid on such excisable goods or duty paid on material used in manufacture / processing of such goods and the rebate shall be subject to such condition or limitation, if any, and fulfilment of such procedure, as may be specified in the Notification. The said procedure is spelt out in Notification No. 21/2004-CE (NT) dated 06.09.2004 as amended and provides for rebate from the whole of the duty paid on excisable goods used in the manufacturer or processing of export goods under the said notification. Fulfilment of the conditions laid down in the Notification is mandatory.

9.4. Government notes that from the records of the case, the respondent has adhered to the conditions of the Notification no 21/2004-CE(NT) dated 06.09.2004 and have filed the declaration of input-output ratio for claim of rebate of duty paid on inputs used in the manufacture of exported goods, submitted the rebate claim in proper form and the description of goods and quantity shown in the ARE-2 tally with the shipping bill submitted by the respondent

9.5 Government observes that as regards the violation of condition 4 (c ) of Notification no 21/2004-CE(NT) dated 06.09.2004, it is an admitted fact that the respondent had not paid duty amounting to Rs. 8,45,905/- leviable on the wastage/scrap arising out of raw material consumed in the goods exported under Notification No 21/2004 CE-(NT) dated 06.09.2004 and the same has been reduced from the rebate claim sanctioned to the respondent.

9.6 Government observes that the respondent has availed of the benefit of Notification no 21/2004 CE-(NT) dated 06.09.2004 and Notification no 43/2001-CE (NT) dated 26.06.2001. As per the Notification no 21/2004 CE (NT) dated 06.09.2004, conditions and the procedure for the grant of rebate of duty paid on excisable goods used in the manufacture or processing of goods, on their export out of India, to any country except Nepal and Bhutan have been prescribed whereas notification No 43/2001-CE (NT) dated 26.06.2001 notifies the conditions, safeguards and procedures for procurement of the excisable goods without payment of duty for the purpose of use in the manufacturing or processing of export goods. The government observes that purpose of the notifications are independent of each other and issued under separate Rules. Government further observes that the two notifications are mutually exclusive and nowhere, in either of the notifications, is it mentioned that each of them cannot be availed simultaneously with the other.

9.7. Government also observes that as per the conditions of the Notification No. 21/2004-CE (NT) dated 06.09.2004, the respondent has filed the declaration of input-output ratio for claim of rebate of duty paid on inputs used in the manufacture of exported goods and the same has been duly verified and approved by the Deputy commissioner, C. Excise, Division IV, Surat-I vide letter dated 17.03.2011 and the respondents have followed the conditions of the of the said permission granted by the Deputy Commissioner barring the non payment of duty on waste/scrap arising out of raw material consumed in the goods exported under Notification No 21/2004 CE-(NT) dated 06.09.2004 and the same has been reduced from rebate claim. Government notes that the applicant is open to conduct and complete the verification of the correctness of the duty paid on the duty and recover duty from the respondent in the event of any discrepancy.

10. From the discussion in the forgoing paras, the Government finds that the respondent had fulfilled the statutory conditions laid down under the impugned Notification without any lapse on their part and thereby followed

the basic procedure of export. The Government, therefore, holds that the respondent had fulfilled the obligatory conditions and thereby followed the procedure as required under impugned notification. Hence, the Appellate Authority was justified in rejecting the appeal of the applicant and upholding the Order in Original.

11. The revision application is disposed off on the above terms.

Shrawan 30/9/21

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

ORDER No.347/2021-CX (WZ) /ASRA/Mumbai DATED30.09.2021

To,

The Commissioner of CGST,
Surat –I, New Central Excise Building,
Opp, Gandhi Baug, Chowk Bazaar,
Surat-395 001.

Copy to:

1. M/s ABG Shipyard Ltd,
   Corporate office:- 13, Mathew Road, Charni Road East, Opera House, Girgaon, Mumbai 400 004
2. The Commissioner of CGST (Appeals), Surat, 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat-395017 (Gujarat).
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.