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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.195/295 & 296/2013-RA

6005

Date of Issue:

13/12/19

352-353  
ORDER NO. /2019-CX (WZ)/ASRA/MUMBAI DATED 13.12.2019 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.

Applicants : M/s Metal Concepts (India).  
M/s Flamingo Overseas

Respondent : Commissioner of Central Excise(Appeals) Mumbai Zone-II.

Subject : Revision Application filed, under Section 35EE of the Central Excise  
Act, 1944 against the Order-in-Appeal No. BC/389-390/BEL/2012-  
13 dated 21.11.2012 dated 12.12.2012 passed by the Commissioner  
of Central Excise(Appeals) Mumbai III.

ORDER

These two Revision Applications are filed by the Shri Surinderpal Agarwal Proprietor, M/s Metal Concepts (India) and M/s Famingo Overseas, C/o, House No. 22/A, Zaruba Oark, Opp. Aushakti Nagar, Mankhurd/Deonar, Mumbai 400 088 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/389-390/BEL/2012-13 dated 21.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai III.

2. The issue in brief is that Shri Surinderpal Agarwal is the proprietor of M/s Metal Concepts (India) and M/s Famingo Overseas. Both the firms are Merchant Exporters and are having the same office address.

2.1 During the period between November 2003 and November 2004, the Applicants had exported consignments of stainless steel washers under the Advance Licence Scheme and DEPB Scheme.

2.2 The Applicants then entered into understanding with M/s Leena Ice and Cold Storage Pvt. Ltd (herein after as 'M/s Leena Ice') who was registered with the Central Excise Department. M/s Leena Ice was declared as the supporting manufacturer of the Applicants to the licensing authority.

2.3 On the basis of the understanding, M/s Leena Ice had supplied finished goods namely, Stainless Steel washer (herein after as 'SS washer') made out of 304 grade of stainless steel and the goods were cleared for export under ARE-1 and under claim for rebate. The Central Excise duty as applicable in respect of the export clearance was paid by M/s Leena Ice.

2.4 After export of the said, the Applicants then filed claims of rebate of Central Excise duty and the Rebate Sanctioning Authority then sanctioned the claims of rebate.

- 2.5 An information was received by the Assistant Commissioner(Preventive), Central Excise, Belapur that the Applicant had fraudulently availed rebate of Central Excise duty on export of 'Bajaj' autorickshaws.
- 2.6 During the course of the enquiry, it was found that the Applicants had exported some consignments of SS washers and other product of stainless steel from the manufacturing unit of M/s Leena Ice. Further on visiting the manufacturing unit of M/s Leena Ice on 25.04.2005, the department found that there was no evidence of manufacturing activity in the premises of M/s Leena Ice.
- 2.7 Hence the issued Show Cause Notice F.No.V/Adj(SCN)15-89/Addl.Commr./06-07/Bel dated 02.03.2007 was issued to M/s Metal Concepts (India) and M/s Flamingo Overseas for fraudulent availed rebate/ erroneously refunded Central Excise duty amounting to Rs. 9,94,299/- and Rs. 4,54,493/- respectively should not be demanded and recovered along with interest and penalty should not be imposed.
- 2.8 The show cause notice was adjudicated by the Additional Commissioner, Central Excise, Belapur vide Order-in-Original No.Belapur/Bel II/R-I/19/PAK/ADC/2008-09 dated 16.12.2008 wherein in respect of M/s Metal Concepts (India) and M/s Flamingo Overseas, the demand of Rs. 9,94,299/- and Rs. 4,54,493/- respectively was confirmed with interest and equal penalty in terms of  
—— Section 11AC of Central Excise Act, 1944. ———
- 2.9 Aggrieved, the Applicants then filed appeal with the Commissioner of Central Excise (Appeals), Mumbai Zone-II, who vide pre-deposit Order No. YDB/Stay/56 to 60/Bel/2009 dated 16.10.2009 directed the Applicants to pre-deposit 50% duty and 50% of penalty within four weeks of receipt of the order. The Applicants vide their respective letters both dated 29.12.2009 prayed for modification of interim order by waiving pre-deposit of duty and penalty. The Commissioner of

Central Excise (Appeals), Mumbai Zone-II then vide Order-in-Appeal No, YDB/26 to 29/Bel/2010 dated 19.01.2010 dismissed the appeals for non-compliance with the provisions of Section 35 of the Act.

2.10 Aggrieved, the Applicants then filed two Revision Application and the Revisionary Authority vide Order No. 269-272-CX dated 19.03.2012, wherein the pre-deposit was reduced to 25% of rebate demand and penalty in each case and directed the Applicants to deposit the same with 4 weeks of the receipt of the order

2.11. The Applicants then filed Writ Petition No. 5385 of 2012 and 5392 of 2012 with the Hon'ble Bombay High Court. The Hon'ble High Court vide order dated 23.07.2012 remanded the case. The Commissioner of Central Excise (Appeals) Mumbai-III vide Order-in-Appeal No. BC/389-390/BEL/2012-12 dated 21.11.2012 rejected the appeals.

3. Being aggrieved, the Applicant has filed the current Revision Application on the following grounds :

3.1 That the statements which was referred to and relied upon by the Department in the impugned proceedings are retracted and further they are supported by various documents and statements of certain other persons which have sufficiently come on the records and showed that, the raw material has been supplied by raw material suppliers and the goods were manufactured by the supporting manufacturers of the Applicants by carrying out certain processes in their own factory and thereafter getting the finished goods manufactured at the various job workers premises.

3.2 That the invoices under which the raw material had been received by supporting manufacturers did not contain the specific grade of the raw material whereas the goods manufactured and exported under the Shipping Bills in question had been examined and no issue of any kind whatsoever had been raised by the Customs or by the licensing

authority. Further, no opportunity of cross-examination of the said suppliers of raw material was given to the Applicants.

- 3.3 That it is the case of the Department that the suppliers of raw material invoices had stated that they have supplied 310 grade of stainless steel while the specific requirement of the Applicants was of 304 grade. The Applicants submitted that it is common knowledge that the price of stainless steel of 310 grade is far higher than the price of 304 grade. No supplier would supply such high value material as against the requirement of low value material. The facts of payments to the said suppliers, which is for 304 grade also is not disputed.
- 3.4 That referring to the statements of the transporters, the Applicants was not given an opportunity to cross-examine such transporters and therefore, in view of the settled position in law that no statement can be relied upon without giving the notice an opportunity to cross-examine such persons.
- 3.5 That the Applicants and one of the directors of the supporting manufacturer also had been cross-examined and they had very clearly brought on record that the supporting manufacturer had carried out certain manufacturing activities and thereafter the semi processed material had been send to the premises of the job workers where the finished goods were manufactured. In such a situation, more specifically when payments made to such job workers had not been ~~disputed~~ and the statements of the said job workers support the case of the Applicants was well as the supporting manufacturer, without bringing such statements on record, the allegations in the show cause notice could not have been upheld.
- 3.6 That the documents/ statements referred to in the show cause notice was not provided to the Applicants. Having referred to such statements that have been recorded, the department cannot shy away from providing the Applicants with copies of such documents which

are absolutely essential for them to make a reasonable and effective representation against certain serious allegations made in the notice.

- 3.7 That in the present case, rebate had been sanctioned in connection with the exports made during the period November 2003 to November 2004. The rebate amount had been sanctioned during the very same period when the investigation apparently for certain fraud where stated. It is therefore, open for the Department to review the sanctioned rebate orders. Since, the said orders were not reviewed and therefore had attained finality.
- 3.8 That the exports had been made against Advance Licences. The imports and exports had been made and the Export Obligation Discharge Certificate had been issued by the licensing authority after due verification by the Customs. No issue regarding the technical specification and characteristics had been raised either by the Customs department or by the licensing authority. This is inspite of the fact that apparently a specific reference had been made and the copies of certain documents had been forward by the Central Excise Department to the Customs in this case.
- 3.9 They prayed that the Order-in-Appeal be set aside with consequential relief to the Applicant.

4. A personal hearing in the case was held on 01.10.2019 which was attended by Shri Vinit P Dubey, Advocate on behalf of the Applicants. The Applicants submitted that in both the firms i.e. M/s Metal Concepts (India) and M/s Flamingo Overseas, Shri Surinderpal Agarwal, Proprietor is the same who is a Merchant Exporter.

5. 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.

6. Government observes that during the period November 2003 to November 2004, M/s Metal Concepts (India) and M/s Flamingo Overseas were sanctioned rebate amounting to Rs. 9,94,299/- and Rs. 4,54,493/- respectively. During the same period an information was received by the Assistant Commissioner(Preventive), Central Excise, Belapur that the Applicant had fraudulently availed rebate of Central Excise duty on export of 'Bajaj' autorickshaws. Hence on investigation of the case, the Applicant was issued SCN and vide Order-in-Original dated 16.12.2008 demand was confirmed. Here the Applicant submitted that the rebate orders were not reviewed and therefore had attained finality. Government finds that the said ground is not correct and proper as the said rebate claims were also reviewed during the investigation and hence SCN dated 02.03.2007 was issued for recovery of the rebate claims sanctioned and confirmed.

7. It is observed that Shri PAS Pillai, Director, M/s Leena Ice vide his various statements has confessed that M/s Leena Ice used to receive only Central Excise Invoices for raw materials but they never received any raw materials, neither in their factory not the same was received by any other person on behalf of M/s Leena Ice. Even the transporters had categorically stated that their vehicle were never used for the transportation of the goods mentioned in the respective input invoices from the suppliers premises to the unit of M/s Leena Ice. Further, the grade of stainless steel inputs and the resultant output shown to have been exported was of a different grade. Thus, Government observes that the investigation carried by the Department could establish successfully that no goods were manufactured and sent by M/s Leena Ice and hence the rebate claims filed by the Applicants were false. The contentions raised by the Applicants before this authority were also raised before Commissioner(Appeals) who has discussed each of the said submissions and given the findings. Government is in agreement with the said findings of Commissioner(Appeals). Further, Government agrees with the view that all the facts related to this case came to light only after investigation by

the department, else the said evasion would have gone unnoticed. Accordingly, the demand and penalty has been rightly imposed.

8. In view of the above, Government finds no infirmity in the impugned Orders-in-Appeal Nos. BC/389-390/BEL/2012-13 dated 21.11.2012 and therefore upholds the same.

9. The Revision Applications filed by the Applicants are dismissed being devoid of merit.

10. So ordered.



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

ORDER No. <sup>352-353</sup> /2019-CX (WZ)/ASRA/Mumbai DATED 13.12.2019.

To,  
Shri Surinderpal Agarwal Proprietor,  
M/s Metal Concepts (India) and  
M/s Famingo Overseas,  
House No. 22/A, Zaruba Oark,  
Opp. Aushakti Nagar,  
Mankhurd/Deonar,  
Mumbai 400 088

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.