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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.195/27/2022-RA/808

Date of issue: 06.02.2023

ORDER NO. 39 /2023-CX (WZ)/ASRA/MUMBAI DATED 02.02.2023
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. Rishabh Impex

Respondent: Pr. Commissioner of CGST, Belapur.

Subject : Revision Application filed under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. DL/ 107/RGD APP/ 2022-
23 dated 14.07.2022 passed by the Commissioner of Central Tax (Appeals),
Raigad.

ORDER

This Revision Application is filed by the M/s. Rishabh Impex having their office at Behram Mahal 2nd Floor, Near Edward Cinema, 534, Kalbadevi Road, Mumbai - 400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. DL/107/RGD APP/2022-23 dated 14.07.2022 passed by the Commissioner of Central Tax (Appeals), Raigad.

2.1 Brief facts of the case are that the Applicant, had filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dated 06.09.2004. The rebate sanctioning authority, vide Order-in-Original No. 2308/11-12/DC(Rebate/Raigad) dated 28.02.2012, rejected the rebate claims on the grounds that the exported goods were fully exempt under Notification No. 30/2004-CE dated 09.07.2001 and in view of Sub Section (1) of Section 5A of the Central Excise Act, 1944 read with CBEC Circular No. 937/27/2010 CX dated 26.11.2011, the applicant could not have paid duty and did not have the option to pay the duty; Chapter sub heading number and description of Central Excise Tariff declared in excise invoice and in the corresponding shipping bills were not tallying; the declaration of self sealing/ self declaration was not given on the ARE-1; the Duty Payment Certificates from the Central Excise authorities indicating the debit entries of the duty payments were not submitted; the name of the authorized signatory was not appearing on ARE-1; the authority was wrongly mentioned as Refund Section, Meher Building, Chowpatty; copy of excise invoice issued under Rule 11 of the Central Excise Rules, 2002 was not submitted; no declaration was made at Sr. No.3 (a) and & Sr. No.4 in the form ARE-1; signature of master of vessel was not appearing on shipping bill; Photostat copies of shipping bill/mate receipt/bill of lading etc. were not bearing the necessary certificate as "certified true copy" and thus conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled; and no documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by them for payment of duty on the above exports were submitted. Aggrieved, the applicant filed an appeal

which was rejected by the Commissioner (Appeals) vide Order-in-Appeal No. US/541/RGD/2012 dated 05.09.2012.

2.2 Aggrieved by the said Order of Commissioner (Appeals), the applicant filed a revision application under Section 35EE of the Central Excise Act, 1944. The Revisionary Authority, vide Order No. 48/2018-CX(WZ)/ASRA/Mumbai dated 15.03.2018, remanded the matter back to original adjudicating authority with following directions:

- a) The sanction of rebate should be restricted to only those ARE-1 which bear certificate
- b) A confirmation should be obtained from the DGCEI, Vadodara and Surat Commissionerate as to whether any investigation has been carried out against the claimant and if so the outcome of the investigation should be taken into account while causing verification of Duty Payment Certificates
- c) In respect of 9 cases where no declarations at Sr. No.3 of ARE-1 has been made, the claimant should submit supporting documents to the original authority to show that the goods had been manufactured availing facility of Cenvat Credit under the provisions of Cenvat Credit Rules, 2004.

2.3 Considering the above directions, the Adjudicating Authority passed the Order-in-Original No. 04/AC(AA)/2021-22/Belapur dated 08.04.2022. The Adjudicating Authority observed that only five ARE-1s out of total twenty ARE-1s bear the self-sealing certificates. Accordingly, rebate amounting to Rs.7,13,920/- involved in these five ARE1s was sanctioned. Adjudicating Authority rejected the rebate amounting to Rs.9,28,919/- involved in the remaining fifteen ARE-1s. Aggrieved, the Applicant filed an appeal which was rejected by the Commissioner (Appeals) vide the impugned Order-in-Appeal No. DL/107/RGD APP/2022-23 dated 14.07.2022.

3. Hence, the Applicant has filed the instant Revision Application mainly on the following grounds:

- a) That the impugned rebate claims are rejected only on one ground that the manufacturer from whose premises the fabrics cleared for export did not put the endorsement of self sealing certificate without going into other merits of the case as under.
- b) Regarding self-sealing, Applicants state and submit that Notification No. 19/2004-CE (NT) dated 06.09.2004 has two parts one part is "Conditions and limitations" and second part is "Procedures". The conditions are mandatory and are not condonable but the procedures can be condoned. Applicants have fulfilled all the conditions.
- c) That the manufacturer/ assessee started export during that time only and they were taking the guidance of the Departmental officers how to export accordingly they were preparing the ARE1. Same is the case with the Applicants. In the process they were not aware that they have to make the endorsement of self sealing on the ARE1. After export within 24 hrs, they have submitted the ARE1 Triplicate and Quadruplicate copies of ARE1 to the Jurisdictional Range Superintendent and he has certified on the back of Triplicate copy and handed over the same in the sealed cover to submit to the Rebate authority. No objection of 'Self Sealing' was also raised by the Range Superintendent. This procedure was going on and objection of 'sealing' was not raised at any time by the Superintendent of Central Excise. In fact he has signed the back of the ARE1 to show that goods cleared for export and proper duty has been debited from RG23A Part-II account. The Rebate authority also called for the duty payment certificate from the jurisdictional Range Superintendent, same was also received by him. In view of the same both Department as well as the Applicants were unaware of the procedure and in the interest of justice this needs to be condoned when the physical export & proper duty payment not in dispute. The BRC from the Bank is also received in respect of all the exports. Hence rejection on this ground is not proper and correct.
- d) That they have submitted all the duty payment certificates duly endorsed by the Jurisdictional Range Superintendent in respect

of all the exports. This is also certified by the Adjudicating Authority in the impugned Order in Original vide Para 14C. Further there is the endorsement on the ARE1 on the back side of the ARE1 by the Range Superintendent showing therein RG23A debit E.No. & date and proof of export. If the Deputy Commissioner (Rebate) had any doubt he should have got the same verified from the concerned Range.

- e) Regarding endorsement on the ARE1 on the last of the ARE1 in respect of 3(a), (b) and (c) & Sl. No. 4. the Hon'ble Revision Authority, GOI, R.A. has passed Order treating this as procedural mistake. All these conditions have been fulfilled and further on all the ARE1s there is the endorsement by the manufacturer that "Availed Cenvat Credit". The duty payment from CENVAT CREDIT has been accepted by the Original Authority in the impugned OIO. The Range Superintendent has also endorsed on back of the each ARE1, RG 23A Pt.II E.No. certifying that the duty has been paid through Cenvat account.
- f) All these Rebate claims are filed in January and February, 2005 and no letter or any objection raised for a long time or sanctioned the rebate claims in spite of repeated request for sanction of rebate claims till the issue of deficiency memo dated 02.02.2012 i.e. first letter received after 7 years of filing. This is the only correspondence Applicants have received against these rebate claims i.e. after 7 years. This itself shows the injustice happened to the Applicants.
- g) that the duty on the exported goods has been appropriately paid by the manufacturer and the Merchant Exporter i.e. applicant reimbursed the said amount to the manufacturer. Hence the rebate claims filed by the Applicants are proper and correct as proper duty has been paid by the manufacturer. It is also the policy of the Government that no duty should be exported alongwith the goods. Further as the manufacturer is registered with central excise and if the manufacturer does anything wrong the jurisdictional officers should take appropriate action to recover the duty from the manufacturer as the Applicants have

received the goods under proper central excise duty paid invoice from the registered manufacturer. For any fault of manufacturer merchant exporter is not responsible. The Applicant seeks to place reliance on the following decisions of the Tribunal/Government of India in a catena of orders including GOI Order No. 140/12-CX dated 17.02.2012 in respect of Commissioner of Central Excise, Mumbai-I vs. Krishna Exports, Surat, Gujarat ELT 497 (Trib.), Commissioner of C. Ex. & Customs vs. D.P. Singh-2011 (270) E.L.T.321 (Guj).

- h) The Applicants state and submit that they have received all the duty payment certificates and also the same has been independently called by the A.C. (Rebate) from the jurisdictional Range Superintendent. There is no allegation that the duty debited at the time of export is not proper and correct. Once duty paid character of the export goods has been accepted there is no question of non applicability of Section -3. Further physical export of goods has been accepted.
- i) The Applicants state and submit that these are same goods and it is certified by the central excise officers as well as Customs authorities. The ARE1 No. is shown on the Shipping Bill and the S.B. No. shown on the ARE1. Both these entries are certified by the Customs Authorities. When the physical export is certified, even if there is any clerical mistakes are there this needs to be condoned in the interest of justice. Hon. Joint Secretary, R.A. G.O.I. has passed many order in respect of condonation of procedural mistakes if any in the interest of export, Applicants rely on the same. In this connection Applicants rely on CBEC Circular No. 81/81/94 -CX dated 25.11.1994.
- j) The Applicants state and submit that Section 3 of the Act i.e. duty should be paid by the manufacturer. In this the Applicants are merchant exporters and not manufacturer. Therefore, any duty is required to be recovered from, to be recovered from manufacturer. Further in this connection Applicants rely on the following Orders:- 2005(186)ELT100(Tr.-Mumbai) Prachi Poly Products Ltd. vs. CCE, Raigad; 2005(184)ELT397(Tr.-De1hi)-

CCE, Jalandhar vs. Aggarwal Iron Industries; 2005(191) ELT-899 (Tri. -Del.) - Parasrampuriah Synthetics Ltd. vs. CCE, Jaipur.

- k) The Applicants have exported the goods under ARE1 and submitted the Triplicate copy of ARE1s within 24 hours as required. After export submitted rebate claim along with all the required documents. Out of this Shipping Bill, ARE1 in original and Duplicate, Custom Certified Export Invoice and Packing made by slip on all these documents endorsement have Customs Authorities showing that whatever goods cleared under Rebate claim ARE1 has been duly exported. Along with the Applicants has also submitted the Triplicate copy of ARE 1 received from the Range Superintendent in sealed cover and Original copy of the Central Excise Invoice showing therein the Description of goods cleared, quantity cleared, duty payable etc. all these particulars are shown on the ARE1 and description and quantity is also shown on the S.B. and export Invoice. The ARE1 No. and date is mentioned on S.B. and S.B. No. and date shown on the ARE1 both these are signed by the Customs authorities to show the same goods are exported. The Applicants have also received the foreign remittances on export and Original BRCs submitted to the Rebate authority. There is no allegation that whatever cleared for export has not been exported. It is also accepted that the goods cleared under ARE1 has been exported. The remaining allegation is procedural which needs to be condoned in the light of the following Orders of GOI, Tribunal and Judgments: GOI Order No. 514/2006 dated 30.6.2006 — M/s. Ambica Knitting; M/s. Banner International Order No. 255/07 dated 27.4.07; M/s. Vipul Dye Chem Ltd. Order No.873/2006 dated 29.9.2006; M/s. Britannia Industries Ltd, Mumbai. Order No. 380382/07 dated 29.06.2007.
- l) Rule 18 of Central excise Rules, 2002 read with Notification No.19/2004 CE (NT) dated 06.09.2004 allows rebate of duty on excisable Goods exported through a merchant exporter. Since there is no denying the fact that proper duty was paid on the finished products were duly exported, the Applicants can't be

penalised for merely for non-compliance of procedure Applicants rely on the following judgments:- Krishna Filaments Ltd 2001 (131) ELT 726 (GOI) and CBEC Circular No. 510/06/2000-CX., dated 3-2-2000.

- m) The Applicants state and submit that the amount of interest paid on the amount of rebate sanctioned for the delay is @6% p.a. Actually this is not correct as per the law settled by the Hon'ble S.C. and Courts the interest amounts needs to be paid @12%p.a.

In the light of the above submissions, the applicant prayed to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 10.11.2022. Shri Sreepal Jain, Partner and Shri R.V.Shetty, Advocate, attended the online hearing and submitted that their part rebate claim was rejected mainly because there was no self sealing.

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

6. Government observes that that the main issues on which the impugned Revision Application has been filed are rejection of rebate claims due to ARE-1s not bearing the self-sealing certificates and lesser rate of interest i.e. 6% p.a. instead of 12% p.a. paid for delay in sanctioning of rebate.

7.1. Government observes that the impugned OIO was issued by the Original authority on the directions of Order No. 48/2018-CX(WZ)/ASRA/Mumbai dated 15.03.2018 of Revisionary Authority. Since this Order of Revisionary Authority has not been challenged by the

Applicant or the Department, it attains finality and therefore subsequent proceedings cannot travel beyond it.

7.2 Further, Government observes that this aspect as well as the interest issue have been dealt by the Appellate Authority and Government concurs with it. The relevant Paras 13 & 14 of impugned Order-in-Appeal are reproduced hereunder:

13. *Adjudicating Authority also observed that the remaining fifteen ARE-1s were not eligible for rebate as per direction of the Government of India as they did not bear the self-sealing certificates. The total rebate claimed involved in the above ARE-1s are Rs.9,28,919/-. Accordingly Adjudicating Authority rejected the rebate amounting to Rs.9,28,919/-. I find the adjudicating authority rejected the above rebate amount in terms of the directions given in the Government of India's order no. 48 /2018-CX (WZ) /ASRA/Mumbai dated 15.03.2018 in the appellant's own matter. Also judicial discipline demands the lower authority follows the decision of the higher authority. Once it is decided by the Government of India that the appellant is not entitled to rebate in respect of ARE1, which did not bear the self-sealing certificates, the lower authority cannot sanction such refund as it would constitute judicial indiscipline. In view of above I find that the rejection of rebate in respect of ARE 1, which did not bear the self-sealing certificates by adjudicating authority is proper and also I do not find any reason to interfere it.*

14. *The Appellants contended that amount of interest paid on the amount of rebate sanctioned for the delay is @6% p.a. Actually this is not correct as per the law settled by the Hon'ble S.C. and Courts the interest amount needs to be paid @12% p.a. I observe that the Adjudicating Authority has sanctioned interest in terms of Board's - Circular No.670/61/2002-CX dated 01.10.2002 as stipulated grant of interest on delayed rebate. Further the interest @6% in the instant case was sanctioned by the Adjudicating Authority as per Notification No. 67/2003-CE(NT) dated 12.09.2003. The rate of interest in case of*

delayed payment of service tax/ Central Excise is fixed by the Central Govt. and Notifications are issued accordingly from time to time conveying the rate of interest on such delayed payments of tax. The contention of the Appellant for demand of higher side of interest @ 12% in case of delayed rebate is not sustainable. In view of the above I find the Adjudicating Authority has rightly sanctioned interest @ 6% as per Notification No. 67/2003-CE(NT) dated 12.09.2003. The contents of the said Notification is reproduced as under:-

"In exercise of the powers conferred by Section 11 BB of the Central Excise Act 1944 (1 of 1944) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.17 /2002 Central Excise (NT) dated the 13th May, 2002 (G.S.R.353(E) dated the 13th May, 2002), except as respect things done or omitted to be done before such supersession, the Central Government hereby fixes the rate of interest at six percent per annum for the purpose of the said section."

8. In view of the findings recorded above, Government upholds the Order-in-Appeal No. DL/ 107/RGD APP/ 2022-23 dated 14.07.2022 passed by the Commissioner of Central Tax (Appeals), Raigad and rejects the impugned Revision Application.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 39 /2023-CX (WZ)/ASRA/Mumbai dated 02.02.2023

To,
M/s. Rishabh Impex,
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Copy to:

1. The Commissioner of CGST, Belapur,
1st Floor, CGO Complex,
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2. Adv. R.V.Shetty,
10, Chandra Niwas,
Marol CHS Ltd.,
At junction of Church Road,
Andheri-Kurla Road,
Mumbai – 400 059.

3. ~~Sr. P.S. to AS (RA), Mumbai~~

4. Guard file

5. Notice Board.