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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.371/05-10/DBK/14-RA / 8215

Date of Issue: 16.12.2022

ORDER NO. ^{HOK-}_{H09}/2022-CEX (WZ) /ASRA/MUMBAI DATED 16.12.2022
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 Shree Mahavir Textile Mills,
Unit No 2, Vimla Bhavan,
Sharma Indl. Estate, Walbhat Road,
Goregaon (East), Mumbai 400 063

Respondent : The Commissioner of Customs, Central Excise and Service
Tax, Surat-I

Subject : Revision Applications filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal Nos. SUR-
EXCUS-001-APP-503 to 508/13-14 dated 01.11.2013 passed
by the Commissioner (Appeals), Central Excise, Customs and
Service Tax, Surat-I

ORDER

These Revision Applications have been filed by M/s Shree Mahavir Textile Mills, Unit No 2, Vimla Bhavan, Sharma Indl. Estate, Walbhat Road, Goregaon (East), Mumbai 400 063 (hereinafter referred to as the 'applicant') against the Orders-in-Appeal Nos. SUR-EXCUS-001-APP-503 to 508/13-14 dated 01.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Surat-I.

2.1. The Revision application pertains to six appeals filed by the applicant against Orders-In-Original No. (1) 05/ADC/PSK/DBK/12-13 dated 29.11.2012 (2) 04/ADC /PSK/DBK/12-13 dated 29.11.2012 (3) 06/ADC/PSK/DBK/12-13 dated 03.12.2012 (4) 07/ADC/PSK/DBK/12-13 dated 03.12.2012 (5) 03/ADC/PSK/ DBK/12-13 dated 26.11.2012 (6) 08/ADC/PSK/DBK/12-13 dated 14.12.2012 issued by the Additional Commissioner. The impugned Orders-in-Original are in respect of 06 drawback applications in respect of six shipping bills, for fixing brand rate under Rule 6(1)/7(1) of the Customs & Central Excise Duty Drawback Rules, 1995, totally involving duty of Rs. 29,26,580/-, which were rejected vide the OIO's mentioned above.

2.2. The above OIO's were passed in re-adjudication proceedings in pursuance of directions of the Hon'ble CESTAT, Ahmedabad's order No. A/1414-1420/WZB/AHD/2011 dated 07.07.2011 remanding the matter to the original adjudicating authority for fresh consideration of all the issues except limitation.

3. The genesis of the instant cases and the Orders-in-Original mentioned supra are as under

3.1. The applicant had filed Drawback application for brand rate Fixation vide their undated letter No.SM/SU-06/99-2000, enclosing various documents. Upon verification of the same by the jurisdictional authority and in terms of the then prescribed procedure, the claims were sent to

Commissioner (Drawback). New Delhi, who later sought the copy of Central Excise Invoice corroborating Commercial Invoices and also the disclaimer certificates in the prescribed format for further processing the claim at their end.

3.2. Pursuant to issue of clarifications issued vide 39/2001-Cus dated 06.07.2001, disputes arose in case of Brand rate applications covering shipping bills under DEPB cum Drawback claims filed by other exporters and some applications were rejected, brand rate letters issued earlier were revoked and pending Brand rate applications were put on hold. The cases filed by the exporters in various High Courts were settled by the order dated 10.01.2007 of the Hon'ble Supreme Court wherein the Apex Court observed that Board circular No 39/99-Cus extends benefit of Brand Rate of Drawback to exports of processed fabrics and re-rolled steel products.

3.3. The drawback claims filed by the applicant in the instant case was forwarded to Mumbai due to the change in procedure for fixation of Brand Rate vide Circular No. 14/Cus-2003 Dt. 6.03.2003

3.4. On through Scrutiny of the said application it was noticed that the application vide letter F.No. SM/SU-06/99-2000 which was undated and did not bear signature /initial or name or rubber stamp of any officer receiving it and only had initials of some person with date 22.09.1999 and the date of receipt of application was not mentioned in the verification report. Letter dated 22.05.2008 and 11.08.2008 were sent to the applicant seeking the explanation for belated filing of application & also for non furnishing/belated submission of disclaimer Certificate of the manufacturer.

3.5. In reply the applicant enclosed a photo copy of the said undated letter Ref: No. SM/SU-06/99-2000 mentioned above. The applicant also averred that had produced the manufacturers' disclaimer application and stated that the copies were not traceable in their office as documents as regard

Brand rate application are missing and that they are unable to furnish the same again.

3.6. After granting the personal hearing on 17.10.2008 to the applicant, the Adjudicating Authority vide Order-in-Original No. 46/ADJ/JCVKS/OA/08-09 dated 04.12.2008 rejected the application as regard export vide Shipping Bill No. 012956 dated 01.07.1999 & 23 other shipping bills as on merits and involving an amount of Rs. 3,63,752/-

3.7. Aggrieved by the Orders-in-Original, the applicant preferred an appeal before the Commissioner (Appeals), who vide order No. RKA/806-812/SRT-I/2009 dated 18.11.2009 passed common Orders-in-Appeal against seven Orders-In-Original Nos. 144-145-146-147-148/ADJ/JC-VKS/OA/08-09 dated 04.12.2008 and 01-02/ADJ/JC-VKS/OA/09-10 dated 25.06.2009. In this OIA, it was held that requirement of one to one relationship between inputs, on which duty is paid with export goods cannot be compromised as it is the very basis on which brand rate is fixed. On issue of limitation, it was observed that application was filed on 19.04.1999 wherein there is a reference to Circular dated 25.06.1996 which was indicative of back dating. It has been held that no evidence as to the date of application is forthcoming Order-in-Original finding that the claims were filed after limitation and the appeal was rejected

3.8. Aggrieved by the Orders-in-Appeal dated 18.11.2009, the applicant filed an Appeal before CESTAT, WZB, Ahmedabad, who vide a Common Order No. A/1414-1420/WZB/AHD/ 2011 dated 07.07.2011 passed the Order remanding the matter back to the Original Authority for fresh consideration of all issues except limitation. It was also directed ensure that adjudication is completed within, period of 60 days from receipt of the order. While passing this order Hon'ble CESTAT has observed that Original Authority should once again consider the drawback claims in terms of CBEC Circular issued in 1999 as decided by High Court and also take into

consideration the verification report already submitted and give opportunity to the Appellant to present their case, if Authority still find that the drawback claims are not admissible or there are certain omissions.

3.9. Aggrieved by the order dated 07.07.2011 of Hon'ble CESTAT, Ahmedabad, the Department filed Appeals 1517 to 1523 of 2011 in Hon'ble High Court of Gujarat at Ahmedabad. Of the 7 Appeals filed, vide High Court Oder dated 15.02.2012, 6 Appeals (1517-1522 of 2011 were dismissed without going in the merit on the ground that duty effect of these Appeals was less than Rs. 10 lacs.

3.10. In view of the six appeals being dismissed by the Hon'bl High Court of Gujarat on monetary limits, the impugned Orders-In-Original mentioned at Para 2.1 have been issued as per CESTAT's order dated 07.07.2011

4. Aggrieved by the impugned Orders-in-Original, the applicant filed appeals before the Commissioner(Appeals) Central Excise, Customs and Service Tax, Surat I. The Appellate Authority vide Orders-in-Appeal Nos SUR-EXCUS-001-APP-503 to 508/13-14 dated 01.11.2013 rejected the appeals.

5. Aggrieved by the Orders-in-Appeal, the applicant has filed this Revision Application under Section 129DD of the Customs Act, 1962, on the following grounds:

5.1. That the Appellate Authority, despite being asked to decide the matter after taking into consideration the verification report submitted, rejected the appeal for want of original copies which could not be produced due to the fire incident;

5.2. That the documents, even if they were Xerox copies were duly verified by the Jurisdictional Officers, and therefore, the authenticity of the same

could not have been doubted by the present jurisdictional authorities after a lapse of 14 years;

5.3. That Circular No. 8/2001 CUS dated 20.02.2001, stated that there will be one verification report against a Brand Rate application, and therefore it was binding on the department to sanction the Brand rate claims without a second verification.

5.4. That CESTAT vide Order dated 07.07.2011 (issued on 16.08.2011) directed to decide the Brand rate applications by taking in to account the verification report already submitted by the authorities in the year 2000 and by not taking in to account the Order of CESTAT, the Adjudicating Authority and Appellate Authority have committed an act of contempt of Court.

5.5. That after 10/15 years of original verification it is humanly impossible to produce original documents as the Appellants had to return the original invoices after verification by the Department to the original consignee ie. the branch office or depot of the manufacturer who had brought the goods in bulk under one excise invoice and which was then sold to several buyers.

5.6. That realising difficulty of producing original documents, authorities at other Commissionerates had issued Brand Rate approval letters to various parties without verification of the original duty paying documents and when exporters who had exported the same products, under the same scheme, along with the appellant are allowed Brand rate of duty drawback without any original duty paying documents, rejecting the application of the appellant for want of original duty paying document is not only illegal but also a blatant violation of the constitution. The Appellants applications should be treated exactly like the other exporters who could not produce the original documents in the second verification.

5.7. That despite the case being adjudicated in appeal twice and inspite of CESTAT order dated 16.08.2011, none of the authorities have given any

findings as regards the verification already conducted by the authorities in 1999-2000.

In view of the above, the applicant prayed for setting aside the impugned order and pass any other and further relief as may deem necessary and fair in the circumstances be granted to the appellant by issuing specific order for release of brand rate approval letters on the basis of original verifications reports and the matter may please be heard & decided with the least possible delay.

6. Personal hearing was scheduled in this case for 18.09.2018, 02.02.2022, 09.02.2022, 23.02.2022 and 30.03.2022. However, no one appeared before the Revision Authority for personal hearing either online or physically on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7.1. Government observes that the instant case has been going back and forth to the OAA and AA. The instant revision application has been filed against the Orders-in-Appeals in respect of OIO's issued pursuant to the order of CESTAT dated 07.07.2011.

7.2. Government notes that the revision application filed by the applicant contends that the claims have been rejected for their inability to produce the original documents due to a fire in their premises, despite the order of the CESTAT directing that the matter be decided after taking into consideration the verification report submitted earlier; that even the xerox copies submitted were duly verified by the Jurisdictional Officers, and therefore, the authenticity of the same could not have been doubted after

lapse of around 14 years by the present authorities; that in other cases, Commissionerates have issued Brand Rate approval letters to various parties without verification of the original duty paying documents and when exporters who had exported the same products, under the same scheme, the same has to apply in the instant case; that as per Circular No-8/2001 CUS dated 20.02.2001 it was binding on the department to sanction the Brand rate claims without a second verification.

7.3. Government notes that the impugned Orders-in-Appeals, in deference to the Order of the Hon'ble CESTAT, has arrived at the findings without going into the aspect of limitation and non submissions of original documents and has made observations about the lack of intent on the part of the applicant in submission of the prescribed documents within the stipulated time frame.

7.4. Government notes that in the instant case, based on the records, it is evident that the Adjudicating authority has examined the claims on merit on the strength of documents and verification reports of the department and have rejected the claims. Government also notes that the Appellate Authority has delved into the various aspects of the Orders-in-Original under which the claims had been rejected and also addressed the grouse of the applicant as regards the implementation of the order of the Hon'ble Supreme Court and has held that the adjudicating authority had rejected the drawback claims on merits because of violations of Circulars issued on the issue.

7.5. In view of the above, Government is of the considered opinion that the grounds of the appeal in the revision application have been dealt with in the Orders-in-Original in a lucid and detailed manner and does not merit any interference by the Government.

8. In view of the above observations, Government upholds the impugned Orders-in-Appeal Nos. SUR-EXCUS-001-APP-503 to 508/ 13-14 dated 01.11.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Surat-I and rejects the appeal filed by the applicant.

9. The Revision Applications are rejected being devoid of merit.

Shree
16/12/22
(SHRAWAN KUMAR)

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

ORDER NO. ²⁴⁰⁴⁻2409/2022-CEX (WZ) /ASRA/MUMBAI DATED 16.12.2022

To,

M/s Shree Mahavir Textile Mills,
Unit No 2, Vimla Bhavan,
Sharma Indl. Estate, Walbhat Road,
Goregaon (East), Mumbai 400 063

Copy to :

1. The Commissioner of CGST, Surat, New Central Excise Building, Chowk Bazaar, Surat 395 001
2. The Commissioner of CGST, Surat Appeals, 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Centre, Althan, Surat 395 017
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.