

REGISTERED SPEED POST



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, Cuff Parade,
Mumbai- 400 005

F.No. 195/1399/12-RA / 5489

Date of Issue: 18.09.2020

ORDER NO. 444 /2020/CX(WZ)/ASRA/MUMBAI DATED 16.03.2020, 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Vikram Knittex Pvt. Ltd., Surat.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/515/RGD/2012 dated 24.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This revision application has been filed by M/s Vikram Knittex Pvt. Ltd., Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/515/RGD/2012 dated 24.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The case in brief is that the applicant had filed an appeal against order-in-original No. 1834/11-12/DC (Rebate)/Raigad dated 17.01.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad rejecting 12 rebate claims filed by the applicant collectively for Rs.21,65,430/- on the ground that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act 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. The adjudicating authority also rejected the claims on other grounds such as BRC was not submitted, Duty Payment Certificates was not submitted, Chapter sub heading of Central Excise Tariff declared in excise invoice and in the corresponding shipping bills was not tallying; customs endorsed export invoice and Packing List was not submitted; copy of bill of lading not submitted etc. The adjudicating authority further observed that the applicant had failed to submit the 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

3. Vide Order-in-Appeal No. US/515/RGD/2012 dated 24.08.2012, the Commissioner (Appeals), rejected the appeal filed by the applicant on grounds mentioned in impugned Order.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, mainly on the following grounds:

- 4.1 The Commissioner (Appeals) has failed to take into consideration material placed before him and failed to appreciate the submissions on records;
- 4.2 The Commissioner (Appeals) has failed to appreciate the evidence of payment of duty placed on record vide letter dated 30.04.2012 and also

failed to consider statement showing details of duty credited in RG23 Register for purchase of raw material.

- 4.3 The Commissioner (Appeals) has erred on facts as claimant of rebate claim under the present case was merchant exporter and not manufacturing entity who could have availed any Cenvat Credit. In such a situation, the question claimant being capable of fraudulent availment of Cenvat Credit does not arise.
- 4.4 The Commissioner (Appeals) has travelled beyond the scope of show cause notice as no allegation about non existence of bogus grey manufacturer was made in the show cause notice. In the absence of such a case of the revenue, the conclusions reached are beyond the scope of the show cause notice and contrary to principles of natural justice.
- 4.5 The material placed on record undisputedly goes to show that the entire process of manufacture, cutting and packing was undertaken at the premises of the manufacturer supplier. Further it is undisputed by the department that the subject goods were actually exported from JNPT port and that the payments for all the said 12 consignments have been received during the validity period. Certification by concerned jurisdictional Supdt. also goes to show that duty was paid on such exported 12 consignments.
- 4.6 The Commissioner (Appeals) failed to appreciate that they had filed copies of Bill of Lading in each of the rebate claim before him. While rejecting the claim of the applicant for failure to file Bill of Lading, the Commissioner (Appeals) failed to appreciate that at no point of time they were put to Notice that Bill of Lading filed by them was a multimodal transport document and not a regular Bill of Lading. Clearly, the Commissioner (Appeals) travelled beyond the scope of the show cause notice while confirming the Order of the adjudicating authority.
- 4.7 Commissioner (Appeals) failed to appreciate that the documents furnished admittedly provides full details of port of discharge. In any case such an issue of multimodal transport document had arisen in the context of only Afghanistan alone which was a land locked country wherein goods had to be transported through Karachi, Pakistan. It is undisputed that such issues would not arise in connection with consignments that were shipped to Malaysia, United Kingdom, Dubai etc. Without prejudice, it is submitted that full details as required were contained in the bill of lading that was for supplies to Afghanistan. Just because the goods travel through Pakistan, it does not cease to be a bill of lading. No evidence or rule has been quoted to reach a conclusion that such a bill of lading ceases to be a bill of lading. Such an approach goes against the commercial parlance test and contrary to specific definitions contained in various dictionaries. Assuming but not admitting, at worst,

the rebate claim in shipments made to Afghanistan could have been disputed. It is evident that without application of mind on the basis of argument of multimodal transport document the rebate claims for even Malaysia, UK, and Dubai etc. have been rejected.

- 4.8 Commissioner (Appeals) failed to appreciate that no allegation was made about absence of Self-sealing and Self-Certification. In the absence of such an allegation in the show cause notice, no opportunity has been provided to them to meet with such an allegation both by Commissioner Appeals. Clearly, such conclusions are contrary to settled jurisprudence on natural justice. The order confirming such charge therefore is clearly beyond the scope of show cause notice.
- 4.9 Commissioner (Appeals) failed to appreciate that no finding has been recorded by adjudicating authority about absence of Self-sealing and Self-Certification. In the absence of such a finding in the Order-in-Original, the Applicant fails to understand as to how the Ld. Commissioner (A) could hold that the adjudicating authority correctly held that the Applicant had failed to comply with the requirement of the notification.
- 4.10 Commissioner erred in holding that they have not followed the Self-sealing and Self-Certification required as per Paragraph 6.1 and 6.2 of Chapter 8 of CBEC's Excise Manual of Supplementary Instructions. No such allegation has been pointed out in the Show Cause Notice. Further in the absence of any specific allegation as to how the Applicant has bypassed the requirements of Self-sealing and Self-certification process, the adjudicating authority cannot make it as a ground for rejection for claim of rebate. Therefore, the impugned order is bad in law, in as much as it proceeds to decide on the issues, which were not even raised in the Show Cause Notice, Such an action is also against the principles of natural justice, as the Applicant was devoid of any opportunity to defend the allegations.
- 4.11 Commissioner (Appeals) has relied on Jhawar International [2012(281) E.L.T. 461(G.O.I.), Re; Sheetal Exports [2011(271) E.L.T. 461], Sheel adyeing and Printing mills P.LTD Vs CCEC Surat-I which are not applicable to the case of the applicant.

5. Personal hearing in this case was scheduled on 28.11.2017, 22.05.2018, 18.09.2018. Shri Manjesh Kumar Jha, Senior Manager appeared for the hearing held before my predecessor on 18.09.2018 and reiterated the submission filed through Revision Application and along with those made in the synopsis filed alongwith case laws during the said personal hearing. He pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside. Another

opportunity of hearing was offered to them on 19.08.2019 on account of change of revisionary authority. Neither they have attended the personal hearing nor had any communication been received from them till date. In view of the above position and since no complex questions of law or facts are involved, Government proceeds to decide the case on the basis of available records especially as the applicant have been heard by my predecessor.

6. 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.

7. Government observes that the Commissioner (Appeals) has upheld the Order in Original rejecting the rebate claims filed by the applicant on following issues :

- (i) The applicant failed to submit 'Self attested copy of Bill of Lading' alongwith the rebate claim and instead the applicant submitted multimodal transport documents instead of regular Bill of Lading in violation of the prescribed procedure and has not given any details of the passage of the goods; and
- (ii) Alert Notice was issued by Surat I Commissionerate vide V/9-HPIU-VII/43/2004-05 against the claimant for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/non existent grey manufacturers. The applicant did not submit any document/evidence to prove the genuineness of the Cenvat Credit despite the opportunity given to them. Since the genuineness of the duty payment could not be verified, the rebate claim has rejected.

8. As regards non submission of self-attested copy of Bill of Lading, Government is in agreement with the contention of the applicant that they were never put to notice that Bill of Lading filed by them was a multimodal transport document and not a regular Bill of Lading. Moreover, the applicant had filed copies of Bill of Lading in each of the rebate claim not only before Commissioner (Appeals) but also with the Revision Application.

9. It is observed that the second ground for rejecting the claims was that the applicant did not produce evidence of the genuineness of the Cenvat Credit availed

by the processors and the duty on exported goods was paid out of Cenvat credit taken on invoices raised by fake/fictitious firm/persons. This ground was upheld by Commissioner (Appeals) holding that since the genuineness of the duty payment could not be verified, the rebate claim has to be rejected.

10. Government finds that in the instant case the suppliers of grey fabrics did not exist. The transaction shown as supplier of grey fabrics on central excise invoices was found to be a fraudulent and bogus transaction created on paper to wrongly avail the Cenvat credit for the purpose of bogus payment of duty and irregular/fraudulent availment of rebate.

11. In the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud. In Sheela Dyeing & Printing Mills (P) Ltd. [2007 (219) E.L.T. 348 (Tri.-Mum.)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgement has been upheld by the Hon'ble High Court of Gujarat. In a judgement in the case of Chintan Processor [2008 (232) E.L.T. 663 (Tri.-Ahm.)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as follows:

"Once the supplier is proved nonexistent, it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."

12. In a similar case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 has upheld the rejection of rebate claim by lower authorities. Division Bench of Hon'ble High Court of Gujrat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No 101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], filed by party has upheld the above said GOI Revision order dated 01-06-2011. Government also observes that the contention of the respondent that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty. The same arguments came to be considered by the Division Bench of Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in Diwan Brothers Vs Union of India [2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench has observed as under :

"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."

13. In view of above, Government finds that since the duty paid character of exported goods was not proved, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002, the rebate claim is not admissible to the applicant.

14. Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same and rejects the Revision Application filed by the applicant being devoid of merit.

15. So, ordered.


(SEEMA ARORA)

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

ORDER No. 444 /2020-CX (WZ) /ASRA/Mumbai DATED 16.03.2020

To,

M/s Vikram Knittex (P) Ltd.,
C-1/121, G.I.D.C. Pandesara,
Surat 394 221.

Copy to:

1. The Commissioner of CGST, Belapur CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614.
2. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.

3. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex,
Sector 10, C.B.D. Belapur, Navi Mumbai -400 614

4. Sr. P.S. to AS (RA), Mumbai

5. Guard file,

6. Spare Copy.