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सत्यमेव जयते

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. 195/231/12-RA/3818
F. No. 195/537/12-RA

Date of Issue: 10.8.2020

ORDER NO. 465-466 /2020-CX (WZ) /ASRA/MUMBAI DATED 20.04.2020 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Rubberking Tyres India Pvt. Ltd.
9 & 10, GIDC, Hansalpur – 382 150,
Viramgam, Dist. Ahmedabad

Respondent : Commissioner, Central Excise, Ahmedabad-II

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. 22/2012(Ahd-II)CE/MM/Commr(A)/Ahd dated 25.01.2012 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt. of India Mumbai मुंबई

ORDER

The revision application has been filed by M/s Rubberking Tyres Indai Pvt. Ltd., 9 & 10, GIDC, Hansalpur – 382 150, Viramgam, Dist. Ahmedabad(hereinafter referred to as "the applicant") against OIA No. 22/2012(Ahd-II)CE/MM/Commr(A)/Ahd dated 25.01.2012 passed by the Commissioner(Appeals-I), Central Excise, Ahmedabad.

2.1 The applicant is engaged in the manufacture of Inner Tubers of Butyl Rubber for Tyres falling under Chapter 40 of the Schedule to CETA, 1985 and holding Central Excise registration for the same. The applicant is also exporting the excisable goods and also availing the benefit of CENVAT Credit scheme as provided under CENVAT Credit Rules,2004. The applicant receives various inputs on payment of duty either imported or from the local market. Accordingly the applicant received Chloro Butyle rubber in the factory, imported vide B.E. No.702807, dt.22/1/2010 and No.693023, dt.1/2/2011 and availed CENVAT Credit of duty paid. The applicant cleared the goods so imported "as such" vide A.R.E.-1 No.79/2010-11 , dt.24/3/11 and No.81/2010-11, dt.25/3/11 by reversing the credit equal to credit taken as provided. On completion of export procedure and after export of goods the applicant filed two rebate claims for the duty paid on goods so removed and exported out of India, before the jurisdictional Assistant Commissioner, Central Excise Div.-IV, Ahmedabad - II for Rs.3,89,791.65 and Rs.4,92,482.00 alongwith required documents.

2.2 Thereupon, an SCN dated 08.08.2011 was issued by the Assistant Commissioner, Central Excise, Division - IV, Ahmedabad-II calling upon the applicant to show cause as to why the rebate claims amounting to Rs.8,82,273/- should not be rejected under the provisions of Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE(N.T.), dt.8/9/2004 read with Section 11 B of Central Excise Act, 1944. It was stated in the show cause notice that Notification No.19/2004-CE(NT), dated 06.09.2004 has been issued which prescribes the procedures, conditions and limitation regarding filing of the rebate claims in respect of goods exported. In terms of clause 3(b) (i) of the said Notification, claim of the rebate of duty paid on all excisable goods shall be lodged alongwith original copy of the application to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having

jurisdiction over the factory of manufacture or warehouse, or as the case may be, the Maritime Commissioner. Since these were imported goods and the applicant was not the manufacturer in this case, it appeared that the claims had not been filed with the proper office as per the Notification No. 19/2004-CE(NT) and hence was not maintainable. Moreover, in terms of Explanation I to of Notification No. 19/2004-CE(NT), it appeared that the CVD, Special Additional Duty and their Education Cess and Secondary and Higher Education Cess were not duties notified for the purpose of rebate thereunder.

2.3 It was also observed from the shipping bills filed for export of the imported goods that the exports had been made under claim of duty drawback under Section 74 of the Customs Act, 1962, i.e. Re-export of imported goods(Drawback of Customs duties) Rules, 1995. Since the applicant was claiming drawback on re-export of goods which is granted in relation to duty paid by them on importation, they would be granted drawback of all customs duties, therefore, the refund/rebate equivalent to CENVAT credit availed would amount to double benefit. Hence, the Deputy Commissioner, Central Excise, Division-IV, Ahmedabad vide OIO No. 3728 to 3729/Rebate/2011 dated 19/21.10.2011 rejected the rebate claims amounting to Rs. 8,82,273/-.

3. Being aggrieved by the OIO No. 3728 to 3729/Rebate/2011 dated 19/21.10.2011, the applicant filed appeal before the Commissioner(Appeals). However, the Commissioner(Appeals) did not find merit in the contentions of the applicant. The Commissioner(Appeals) therefore vide OIA No. 22/2012(Ahd-II)CE/MM/Commr(A)/Ahd dated 25.01.2012 rejected the appeal filed by the applicant.

4. Aggrieved, the applicant has now filed revision application on the following grounds.

(a) The applicant submitted that they have filed drawback claim before customs of duty paid on inputs of customs duty @ 5% paid at the time of importation and not total duty paid on inputs at the time of import. They submitted that it would be apparent from the drawback claims that they had claimed drawback only for 98% of basic customs duty paid and not all the duties paid by them at the time of importation. They further submitted that on going through the shipping bills,

it could be seen that the applicant had paid total duty of Rs. 6,66,798/- and Rs. 5,68,357/- at the time of importation whereas they have claimed only Rs. 1,56,026/- and Rs. 1,23,491/- as duty drawback whereas they have been paid as drawback Rs. 1,51,247/- and Rs. 94,507/- respectively for customs duty paid and not total duty paid on imported goods. They therefore submitted that there was no documentary substantiation for the contentions of the Commissioner(Appeals).

(b) The applicant further submitted that the finding of the Commissioner(Appeals) in her order that letter S.B. 3638 & 3639 dated 22.03.2011 and 23.09.2011 of ACC mentions the amount of 95% and 75% of "Import duties would be admissible to the appellant" also appeared to be incorrect as they had received only one letter dated 23.09.2011 alongwith cheque no. 670220 and 670219 for Rs. 94,507/- and Rs. 1,51,247/- which did not contain any such averment.

(c) The applicant submitted that it was evidenced by the documents submitted by them with the revision application that inputs were received in the factory on payment of duty and that rebate claims were filed for duty reversed on inputs equal to the credit taken was admissible to the applicant and could not be rejected.

5. The applicant was granted a personal hearing on 22.06.2015. Shri Mangesh Jha, Executive(Legal) appeared on their behalf and reiterated the written submissions. Subsequently, on change in the Revisionary Authority, the applicant was granted personal hearings on 29.11.2017, 09.10.2019, 21.11.2019 & 27.11.2019. However, none appeared on their behalf. None appeared on behalf of the Department.

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. The revision application filed in F. No. 195/231/12-RA & F. No. 195/537/12-RA are both in respect of OIA No. 22/2012(Ahd-II)/CE/MM/Commr(A)/Ahd dated 25.01.2012, they have both been taken on record while passing this order.

7. On perusal of records, Government observes that the issue involved is that the applicant filed rebate claims in respect of duty paid on imported goods, which were subsequently re-exported. These rebate claims were rejected on the ground that the applicant had availed duty drawback under Section 74 of the Customs Act, 1962 and therefore allowing rebate would amount to double benefit. It has also been held that special additional duty paid @ 4% would not be admissible as rebate.

8. At the very outset, Government takes note of the fact that the reversal of CENVAT credit while removing the goods as such would be deemed to be payment of duty by virtue of sub-rule (6) of Rule 3 of the CCR, 2004 which specifies that amounts paid in terms of sub-rule (5) of Rule 3 of the CCR, 2004 would be eligible as CENVAT credit as if it was duty paid by the person who removed such goods. It is therefore clear beyond any reasonable doubt that reversal of amount equal to CENVAT credit is deemed duty payment. However, the finding of the lower authorities that SAD would not be available as rebate is acceptable as Additional Duty paid in terms of Section 3(5) of the Customs Tariff Act, 1975 does not find mention among the duties rebatable under Notification No. 19/2004-CE(NT) dated 06.09.2004. Hence, the rebate in respect of Additional Duty paid in terms of Section 3(5) of the Customs Tariff Act, 1975 would not be admissible.

9. Government now adverts to the contention of the Department that the applicant has claimed double benefit of both drawback and rebate. It is observed from the documents submitted by the applicant that their claim for drawback was restricted to 98% of the basic customs duty paid at the time of importation of the goods. The amounts claimed by the applicants was Rs. 156024/- and Rs. 1,23,491/- respectively out of which they were sanctioned drawback of Rs. 1,51,247/- and Rs. 94,507/-. In the circumstances, the finding recorded by the Commissioner(Appeals) that there was a letter of "SB 3638 &3639 DTD 22.3.2011 dated 23.9.2011, ACC mentions that amounts of 95% and 75% of import duties would be admissible to the appellant." is contrary to the submissions made and the documents produced by the applicant in these proceedings. Needless to say, if the applicant had applied for duty drawback of only the basic customs duty paid on the imported goods, the rebate claim filed by the applicant

in respect of the central excise duty paid at the time of export of the goods would be admissible if otherwise in order.

10. In the circumstances, Government finds it necessary to remand the case back to the rebate sanctioning authority to verify the factual position vis-à-vis the documents submitted by the applicant while filing the revision application and pass order on the rebate claims filed by the applicant within eight weeks from the date of receipt of this order. The applicant is to co-operate and submit all relevant documents to the rebate sanctioning authority. The applicant shall be afforded sufficient opportunity to be heard.

11. So ordered.

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

ORDER No. 465-466 /2020-CX (WZ) /ASRA/Mumbai DATED 20.04.2020.

ATTESTED

To,
M/s. Rubberking Tyres India Pvt. Ltd.
9 & 10, GIDC, Hansalpur – 382 150,
Viramgam, Dist. Ahmedabad

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST & CX, Ahmedabad North Commissionerate
2. The Commissioner of CGST & CX, (Appeals), Ahmedabad
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy