

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, Cuffe Parade,
Mumbai- 400 005

F.No.195/583/2012-RA / 3624

Date of Issue: 31.07.2020

ORDER NO. 470 /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 Ayush Exports, Surat.

Respondent : - Commissioner (Appeals), Central Excise, Mumbai-III

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/385/RGD/2011-12 dated 28.03.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-III.



ORDER

This Revision Application is filed by M/s Ayush Exports, C-4306, Raghukul Textiles Market, Ring Road, Surat – 395 002(hereinafter referred to as “Applicant”) against the Order-in-Appeal No. BC/385/RGD/2011-12 dated 28.03.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-III.

2. The issue in brief is that the Applicant, Merchant exporter of processed Man Made Fabrics(MMF) had procured fabrics from M/s Radha Dying & Printing, Mills, M/s Radhika Syntax, M/s Ventatesh Mercantile and M/s Manokamna Silk Mills who are manufacturers of the goods and all are registered with the Central Excise Department. The Applicant then exported the goods and filed 35 rebate claims totaling to Rs. 65,96,212/-(Rupees Sixty Five Lakhs Ninety Six Thousand Two Hundred and Twelve Only).

3. The rebate claims were rejected by the Assistant Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 112/05-06/AC(R)/Raigad dated 24.04.2006 on the ground that duty payment certificates from the jurisdictional Superintendent was not submitted. Aggrieved by this order, the Applicant filed appeal with the Commisioner(Appeals), Central Excise, Mumbai-II. Commissioner(Appeals), who remanded the case back to the lower authority for fresh adjudication after supplying copies of letters/reports of the Superintendent sought to be relied up on after hearing.

4. The Applicant then preferred appeal with the Revisionary Authority, who vide a common order vide GOI No. 389-391/10-CX dated 26.03.2010 remanded the case to the Commissioner(Appeals) on the grounds that :

- (i) The Finance Act, 2001(Act NO. 14 of 2001) dated 11.05.2001, Section 35(3) of the Central Excise Act, 1944 was amended and hence the Commissioner(Appeals) has no power to remand back the case to the adjudicating authority for fresh consideration.



- (ii) Moreover, department has completed the investigation against the Applicants and issued show cause notice vide F.No. DRA/SRU/INV-3/2007 dated 05.11.2008. The fact contained in the show cause notice were not placed before the Commissioner(Appeals). So there was no opportunity before Commissioner(Appeals) to examine the said new facts.

5. In denovo proceedings before Commissioner(Appeals), Mumbai-II, 05 dates for personal hearing were fixed, however no one from the Applicant's side appeared for the personal hearing. Later, the file was transferred to Commissioner(Appeals), Mumbai-III, and then 03 dates for personal hearing were given. However again no one attended the personal hearings. The Commissioner(Appeals), Mumbai-III vide BC/385/RGD/2011-12 dated 28.03.2012 upheld the Order-in-Original 112/05-06/AC(R)/Raigad dated 24.04.2006 and the Applicant's appeal was rejected on the grounds that the benefit of rebate was obtained fraudulently, hence the Applicants were not entitled for rebate of the same.

6. Aggrieved, the Applicant filed the current Revision Application on the grounds that

- (i) The Applicant a merchant export had purchased the processed fabrics outright and exported the same, therefore the rebate claim was admissible considering the judgment in the case of Shree Shyam International.
- (ii) The bonafide export of the goods cannot be considered as non-duty paid goods when the invoices issued by the processors and payment made by the processor are not under challenge in terms of Rule 8 of Central Excise Rules, 2002 and their monthly returns have been accepted for the payment of the goods cleared under respective invoices which includes the goods exported by the Applicant.
- (iii) The Commissioner (Appeals) in Para 5 of the order have mentioned that grey fabrics used for manufacture of the exported goods were said



to have been supplied by bogus/fake units and the manufacturers have availed wrong Cenvat Credit on the basis of documents of bogus units. This finding is against the processor and not against the merchant exporter who had purchased the fabrics outright on payment of duty and therefore based on the said findings any action is to be taken is against the manufacturer and not against the merchant exporter.

- (iv) The Applicant were asked to submit the proof of duty payment certificates from the concerned Range Office.
- (v) The Applicant submitted that the Commissioner (Appeals) have erred in giving finding in para 6 to the effect that the Applicant had neither bothered to produce the relevant records before the adjudicating authority nor before me. This fact is totally incorrect as the Applicant's claims have been registered with the rebate sanctioning authority in terms of requirement made in Chapter 8. Para 8.3 of CBEC's Manual whereby the Applicant is required to file the rebate claims along with request letter on Applicant's letter pad for rebate, original copy of ARE-I, Invoice issued under Rule 11. self attested copy of Shipping Bills and self attested copy of Bill of Lading. Disclaimer Certificate (in case where the claimant is other than exporter). Since all the required documents were on the records of the proceeding of the adjudicating authority , the findings of Commissioner(Appeals) is perverse.
- (vi) The Order of the Commissioner(Appeals) is in violation of principles of natural justice as the Revision Authority in GOI Order No. 389 to 391/2010-CX dated 26.03.2010 direction was given to supply the copies of the letters/reports of the Superintendent relied upon in the adjudication order to the Applicant. However, the Commissioner(Appeals) rejected the appeal without providing the said documents.



- (vii) The Commissioner(Appeals) findings in Para 7 of the Order-in-Appeal is not applicable to their case as in the case of rebate claim made by the merchant exporter M/s Sheetal Exports, the manufacturer M/s Sofna Fashions were not having any manufacturing facility and therefore the supply of the goods were under doubt, whereas in their present case, the goods purchased from their manufacturers were very well in existence along with the names, address, machineries, etc. and therefore the ratio of M/s Sheetal Exports [2011(271)ELT 461 (GOI)] is not applicable to the facts of the present case.
- (viii) Its on record that they have received Bank Realization Certificates which shows that the foreign remittance have been received to the Government of India which is the basic intention of the Government to grant incentive for the goods exported and duty to be rebated. Reliance was placed on the judgment of the Supreme Court in the case of Baby Marine Exports [2007(211) ELT 12(SC)]
- (ix) The Applicant prayed that the orders passed by the lower authorities be set aside with consequential relief.

4. A personal hearing in the case was held on 29.11.2019, 10.10.2019, 20.11.2019 and 28.11.2019. However no one appeared for the personal hearing, hence the case is being decided exparte on merits.

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. On perusal of the records it is observed that the Revision Authority vide Order dated 26.03.2010 had remanded the case to Commissioner(Appeals) and inspite of 08 personal hearings fixed before the Commissioner(Appeals), the Applicant had not attended the hearings nor submitted any written submission. Even before this forum, the Applicant have not attended any of the personal hearings nor submitted any written submission. The Government finds that the Commissioner(Appeals) has sufficiently and conclusively addressed the issues



raised by the Applicant such as principles of natural justice, non-existence of purported manufacture, whether rebate claimed fraudulently or otherwise, etc. Hence the Government observes that these findings are sound and legal and do not find any reason to divulge further on these issues.

7. In the wake of Alert notice dated 19.05.2006 issued by the Surat-1 Commissionerate, as per the Superintendent, Central Excise Headquarters(Prev) letter F.No. V/PI/Raigad/Gr.1/JST/06 dated 19.04.2006, the grey fabrics used for manufacture of export goods had been obtained from fake, non-existing bogus units. The Superintendent, Central Excise, Range-IV, Division-III, Surat-I Division vide letter F.No. AR-IV/BPC/REB/Ayush/2005 dated 21.11.2005 informed that grey fabrics used for manufacture of goods said to be exported were, on verification found to have been supplied by bogus/fake units and the manufacturers had availed wrong Cenvat credit on the basis of documents of bogus units. Government finds that the Applicant have not made any efforts nor adduced any documentary evidence as to prove that the suppliers/manufacturers, who are the authors of ARE-1s and Export invoices were in existence and not fictitious and bogus. The Applicant failure to prove the existence of the manufacturers confirms beyond doubt that transaction are not transparent and devoid of fraud.

8. 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 judgment has been upheld by the Hon'ble High Court of Gujarat. In a judgment 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."

9. 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 Gujarat, 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 either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."

10. Government also relies on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks & Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances i.e., when a processor is a party to a fraud, wherein Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, it was held that "since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid there from" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments. Further, 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.




11. The Applicants submission before this forum are mere reiteration of submission made before the Commissioner(Appeals) and are found to be bereft of any material evidences.

12. Hence, Government finds no infirmity in the impugned Order-in-Appeal No. BC/385/RGD/2011-12 dated 28.03.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-III and upholds the same.

13. The Revision Application filed by the Applicant is dismissed being devoid of merit.

14. So, ordered.



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

ORDER No. 470 /2020-CX (WZ)/ASRA/Mumbai DATED 20.04.2020.

To,
M/s Ayush Exports,
C-4306, Raghukul Textiles Market,
Ring Road,
Surat - 395 002

Copy to:

1. Commissioner(Appeals), Central Excise, Mumbai-III.
2. The Commissioner of CGST, Belapur Commissionerate, 1st floor, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED

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

