

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. 195/68/13-RA / 3421

Date of Issue: 28.07.2020

ORDER NO. 518 /2020/CX(WZ)/ASRA/MUMBAI DATED 16.06.2020, 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. Aakanksha Overseas., Surat.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/771/RGD/2012 dated 09.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



ORDER

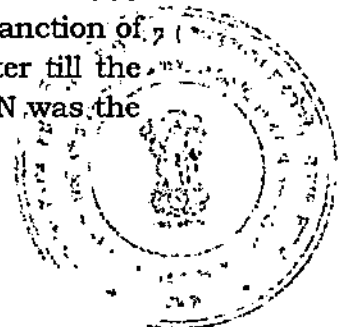
This revision application has been filed by Aakanksha Overseas., Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/771/RGD/2012 dated 09.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The case in brief is that the applicant had filed an appeal against Order-in-original No. 2498/11-12/DC (Rebate)/Raigad dated 22.03.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad rejecting 9 (Nine) rebate claims filed by the applicant collectively for Rs.9,56,350/- 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 Chapter sub heading of Central Excise Tariff declared in excise invoice and in the corresponding shipping bills was not tallying and in respect of one claim the date of issue of ARE-1 is different and subsequent to the date of Central Excise Invoice and thus the condition for grant of rebate under Notification No. 19/2004-CE(NT) were not fulfilled. The adjudicating authority further observed that since the name of M/s Pee Tee Silk Mills Pvt. Ltd was appearing in the alert list, the applicant was requested to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors M/s Pee Tee Silk Mills Pvt. Ltd. and M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. for payment of duty which they failed to submit.

3. Vide Order-in-Appeal No. US/771/RGD/2012 dated 09.11.2012, the Commissioner (Appeals), rejected the appeal filed by the applicant on grounds mentioned in impugned Order.

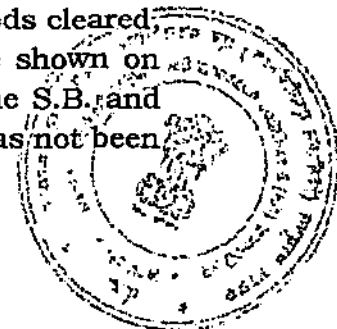
4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, mainly on the following grounds:

4.1 All these rebate claims were filed in January, February and March 2006 and no letter or any objection in spite of repeated request for sanction of rebate claim by them. The department did not issue any letter till the issuance of the show cause notice dated 08.02.2012. The SCN was the



first correspondence that they received in respect of these 9 rebate claims after six years. This itself shows injustice to them.

- 4.2 There is no allegation that the duty debited at the time of export was 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. Since the procedure of taking the duty payment certificate by the claimant from jurisdictional Range has been discontinued and the Maritime Commissioner is directly calling the duty payment certificate, in their case also it should have done so. They have submitted the duty payment certificate at the time of filing rebate claim.
- 4.3 For any fault of manufacturer, merchant exporter is not responsible. In this connection they rely on GOI order No.140/12-CX dated 17.02.2012 in RE Krishna Exports, Surat, CCE & Cus. Vs D.P. Singh -2011(270) ELT 321 (Guj.).
- 4.4 In this case they are merchant exporters and the processors M/s Pee Tee Silk Mills Pvt. Ltd. and M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. are the manufacturers. Therefore, any duty is required to be recovered from them. Further processor M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. is not in the list of offenders. Therefore, at least the rebate claims pertaining to M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. which is proper and correct should have been sanctioned and paid to the applicants.
- 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 They have exported the goods under ARE1 and submitted the Triplicate copy of ARE 1s within 24 hours as required. After export they submitted rebate claim along with all the required documents. Out of this Shipping Bill, ARE I in original and Duplicate, Custom Certified Export Invoice and Packing slip on all endorsement by Customs Authorities showing that whatever goods cleared under ARE1 has been duly exported. Along with the Rebate claim they also submitted the Triplicate copy of ARE1 received from the Range Supdt. 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. There is no allegation that whatever cleared has not been



availment of Cenvat Credit on the basis of invoices issued by bogus / non-existent grey manufacturers. However, rejection of rebate claims by the original authority on other issues (discussed at para 2 supra) have been set aside / condoned by the Commissioner (Appeals) in his impugned Order.

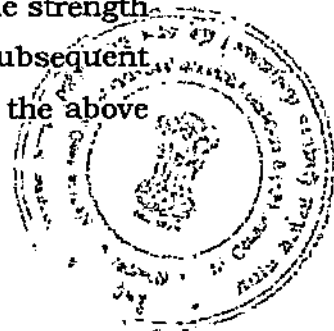
8. While upholding the Order in original on the ground of non-production of evidence of the genuineness of the Cenvat Credit availed by the processors, the Commissioner (Appeals) in his impugned order observed as under:

" The appellants are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors, M/s Pee Tee Silk Mills Pvt. Ltd. who processed the goods were figuring in the Alert Notices issued by the Central Excise department for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus / non-existent grey manufacturers. The credit had been availed by the processors, M/s Pee Tee Silk Mills Pvt. Ltd. who may have availed the said Cenvat credit fraudulently and the appellants may also be a party in the said fraudulent availment of Cenvat credit. The bona fide nature of transaction between the merchant-exporter and supplier-manufacturer M/s Pee Tee Silk Mills Pvt. Ltd. and M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. is imperative for admissibility of the rebate claim filed by the merchant exporter".

The Commissioner (Appeals) also relied on Hon'ble Bombay High Court Judgment in UOI Vs Rainbow Silks- [2011(274) E.L.T. 510 (Bom.)] and GOI Order No. 381/2010-CX, dated 23-3-2010 Re: Sheetal Exports [2011(271) E.L.T. 461(GOI)] while upholding the Order in Original on the above ground.

9. Government observes from Order in Original dated 22.03.2012 that M/s Pee Tee Silk Mills Pvt. Ltd. manufacturer of the applicant was appearing in the Alert List issued by the Thane - I Commissionerate alert notice no. V/PI/TH-I/12-5/PT-IV. Amongst the list of purchaser of bogus invoices of grey fabrics who availed Cenvat Credit of Central Excise duty by showing receipt of grey fabrics from bogus units, the name of the M/s Pee Tee Silk Mills Pvt. Ltd also appeared. Therefore, it was necessary that the duty paid nature of the export goods (for which the applicant had claimed rebate), was ascertained. Therefore, in order to verify the authenticity of the Cenvat credit availed by the processors M/s Pee Tee Silk Mills Pvt. Ltd & M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd on the strength

of invoices received by them from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of central excise duty, on the above



mentioned exports made by the applicant, an opportunity was given to the applicant for submission of document / records regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-I. In the instant case the claimant had not submitted any documents / records proving the genuineness of the availment of Cenvat credit on grey fabrics, Therefore, the Original authority in the said Order in Original observed that the duty payments and the existence of the grey manufacturer /supplier of M/s Pee Tee Silk Mills Pvt. Ltd & M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd were of utmost Important, however claimant has not produced the relevant documents, therefore, genuineness of the Cenvat Credit availed on input used in export fabrics could not be verified due to non-submission of relevant records by the claimant for cross examination.

10. Perusal of Order in Original also revealed that out of the 9 rebate claims filed by the applicant in case of 4 rebate claims the processor of the exported goods was M/s Pee Tee Silk Mills Pvt. Ltd. and in 5 rebate claims the processor of the exported goods was M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. However, in the instant case there is nothing on record to show that the name of M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd was appearing in the Alert Notice issued by DGCEI or Central Excise Authorities. Further there is no further investigation/issuance of show cause notices and Orders in original passed in respect of the M/s Pee Tee Silk Mills Pvt. Ltd or M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. in this regard. Even though suppliers have committed fraud, it is necessary to establish beyond doubt that the buyer is knowingly involved in the fraud committed by the supplier which in the present case has not been established on record. Thus, the outcome of the investigation / Show cause Notices issued to various suppliers as well as to the applicant, if any, is imperative for taking any further decision in the matter.

11. Moreover, the Advocates for the applicant who appeared for the personal hearing submitted Affidavits dated 20.01.2020 of the proprietors of grey manufacturer and supplier namely, M/s Rajshree Fabrics Surat and M/s Sanjay Textiles, Surat who had delivered Grey fabrics to M/s Pee Tee Silk Mills Pvt. Ltd or M/s Kohinoor Dyeing & Printing Mills Pvt. Ltd. in the instant case. Both these grey manufacturers in their Affidavits have deposed that no show Cause Notice or



any inquiry had been initiated against them by the Central Excise Department or from any other department and that the goods cleared to M/s Aakanksha Overseas on proper Central Excise duty and Education Cess had been paid by them.

12. Government therefore is of considered opinion that the Order in Original No. 2498/11-12/DC (Rebate)/Raigad dated 22.03.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad lacks appreciation of evidence and hence is not a speaking order. Therefore, Government holds that a detailed verification by original authority into the allegations of alert Notice is required to be carried out.

13. In view of above circumstances, Government sets aside Order-in-Appeal No. Order-in-Appeal No. US/771/RGD/2012 dated 09.11.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai to the extent it upheld the Order in Original No. 2498/11-12/DC (Rebate)/Raigad dated 22.03.2012 on the issue discussed at para 7 supra.

14. The case is therefore, remanded back to the original authority for denovo adjudication for a limited purpose of verification of duty payment in all these rebate claims on the basis of documentary evidence available as well as outcome of the investigations/show cause notices as discussed supra and to pass a well-reasoned order after following the principles of natural justice. The applicant is also directed to submit all the documents relating to concerned ARE-1s along with copies of Bill of Ladings, BRCs for verification and any other documents evidencing payment of duty. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of this Order.

15. The Revision application is disposed off in above terms.

16. So, ordered

ATTESTED

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

(SEEMA ABORA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 518 /2020-CX (WZ) /ASRA/Mumbai DATED 16.06.2020.



To,

M/s Aakanksha Overseas,
177/1, 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.

