

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.195/953/2013-RA/5009

Date of Issue: 29.10.2020

ORDER NO. 614 /2020-CX (WZ)/ASRA/MUMBAI DATED 04.09.2020 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.

Applicants : M/s Britacel Silicones Ltd.

Respondents : Commissioner of Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No US213/RGD/2013 dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

ORDER

This Revision Application is filed by M/s Britacel Silicones Ltd., F-18, F Block Road, MIDC Marol, Andheri(E), Mumbai 400 059 (hereinafter referred to as "the Applicant") against Order-in-Appeal No US/213/RGD/2013 dated 29.07.2013 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

2. The issue in brief is the Applicant, Merchant Exporter inter alia of various types of Silicone Resins and preparation based on exporters of the same. The Applicant had claimed rebate of duty amounting to Rs. 13,78,491/- (Rupees Thirteen Lakhs Seventy Eight Thousand Four Hundred and Ninety One Only). The rebate was sanctioned by the Deputy Commissioner(Rebate), Central Excise, Raigad vide Order-in-Original No. 1311/11-12 dated 29.11.2011 and the same was paid to the Applicant. The Order-in-Original was reviewed by the Commisisoner, Central Excise, Raigad and the department then filed appeal with the Commissioner(Appeals) on the grounds that

- (i) the Applicant had cleared the goods for export by availing benefit under Notification No. 21/2004-CE(NT) dated 06.09.2004 as per the certificate given at S.No. 3(b) of the ARE-1;
- (ii) If the Applicant is availing benefit under the said Notification, then it is mandatory on the part of them to clear the goods under form ARE-2 and to claim the rebate from the Asstt./Dy. Commissioner of Central Excise having jurisdiction over the manufacture's factory. Therefore, the sanction of rebate under subject ARE-1 is not correct.

The Commissioner(Appeals) vide Order-in-Appeal No. US/657/RGD/2012 dated 12.10.2012 set aside the Order-in-Original dated 29.11.2011 and allowed the departmental appeal holding that the Applicant had not produced any documentary evidences to prove that the goods were actually opened and examined by the Customs department, therefore, the identity of the goods exported was not established. Aggrieved, the Applicant then filed Revision Application F.No. 195/84/13-RA.

3. In the meantime, the Additional Commissioner, Central Excise, Raigad also issued a Show Cause Notice dated 23.04.2012 for recovery the amount of rebate claim sanctioned vide Order-in-Original dated 29.11.2011. The adjudicating authority vide Order-in-Original No. Raigad/ADC/136/SJ/12-13 dated 28.02.2013 confirmed the demand for Rs. 13,78,491/- . Aggrieved, the Applicant then filed appeal with the Commissioner(Appeals), Central Excise, Mumbai Zone-II. The Commissioner(Appeals) vide Order-in-Appeal No US/213/RGD/2013 dated 29.07.2013 rejected their appeal and upheld the Order-in-Original dated 28.02.2013.

4. Aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Order-in-Appeal is legally unsustainable and deserves to be set aside as the same is passed without appreciating the correct legal and factual position and the same is non-speaking order.
- (ii) The fact of export of the goods cleared under the respective ARE-1 is duly established from the various documentary evidences submitted by the Applicant as proof of exports. The documents submitted by them inter alia included Customs Certified ARE-1 under which the goods were cleared, certifying export of goods covered by the ARE-1. This is a sufficient evidence of export of the goods.
- (iii) It is now a well settled legal position that substantial benefit of rebate admissible under the law, cannot be denied only on the ground of certain technical and clerical error by the manufacturer while filling up ARE-I form. It is a settled legal position that once it is established that the goods have been duly exported and the same have suffered duties of Central Excise then rebate of such duties should be granted to the exporter, notwithstanding any clerical or technical errors.
- (iv) Applicant prayed that the Order-in-Appeal be set-aside and the rebate claimed by Applicant was rightly sanctioned.

5. A personal hearing in the case was held on 19.11.2019. Shri Dilip Pandya, Sr.Manager (Accounts) appeared on behalf of the Applicant. The Applicant submitted that the case be withdrawn as per their letter dated 04.12.2019.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. On perusal of the records, it is observed that the Applicant vide their letter dated 04.12.2019 submitted that

"We have cleared all our dues as on date and we don't want to go further against our revision application filed vide No. O-I-A No. US/213/RGD/2013 dated 29th July, 2013, pending at your end (in the matter for an amount of Rs. 13,78,491/-)

Now, we request your Honour to WITHDRAW the case as referred above and close the file at your end. Also, we request you to inform your Belapur office of withdrawal of the case."

8. In view of the Applicants request, the Government dismisses the current Revision Application as withdrawn.

9. So ordered.

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

ORDER No. 614 /2020-CX (WZ)/ASRA/Mumbai DATED 09.09.2020.

To,
M/s Britacel Silicones Ltd.,
F-18, F Block Road,
MIDC Marol, Andheri(E),
Mumbai 400 059.

Copy to:

1. Commissioner of GST & Central Excise, Raigad Commissionerate
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare copy