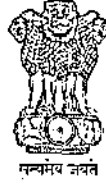


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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**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. 195/31-32 & 33-34/SZ/2020

/2614

Date of Issue:

24.06.2021

ORDER NO. ⁶⁴⁰⁻⁶⁴³ /2022-CX (SZ) /ASRA/MUMBAI DATED 27.6.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Harkness Screens India LLP
Respondent : Commissioner of Central Tax, North-West Commissionerate, Bengaluru
Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Orders-in-Appeal No. 38-39/2020-21-CT dated 21.10.2020 and 89-90/2020-21-CT dated 04.11.2020 passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

ORDER

These Revision Applications have been filed by the M/s. Harkness Screens India LLP, Sy. No. 87/1, 87/2, 88, 89, 89/1 & 122, Byrenahalli village, Kasaba-Hobli, Nelamangala Taluk, Bengaluru - 562123 (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. 38-39/2020-21-CT dated 21.10.2020 and 89-90/2020-21-CT dated 04.11.2020 passed by the Commissioner of Central Tax (Appeals-II), Bengaluru.

2. Brief facts of the case are that the Applicant is a manufacturer exporter of excisable goods falling under Ch.90 of Central Excise Tariff Act, 1985. They had filed a rebate claim for Rs.65,20,307/- on 02.06.2017 and another rebate claim for Rs.56,91,934/- on 24.01.2018 under Rule 18 of Central Excise Rules 2002, read with Notification No. 19/2004 CE(NT) dated 06.09.2004 for duty paid on the goods exported by them. After due process of law, the rebate sanctioning authority, Assistant Commissioner of Central Tax, GST, NWD-3 Division, Bengaluru North-West Commissionerate, passed following Orders:

Date of rebate claim	Amount claimed (in Rs.)	OIO No./date	Amount sanctioned against net-off (in Rs.)	Amount sanctioned against BRC (in Rs.)	Amount rejected (in Rs.)	Amount re-credited (in Rs.)
02.06.2017	65,20,307/-	58/2018-19/ 31.01.2019	11,63,758/-	51,41,419/-	42,111/-	1,73,019/-
24.01.2018	56,91,934/-	67/2018-19/ 18.03.2019	40,16,798/-	-	16,60,175/-	14,962/-

The adjudicating authority had rejected partial amount of claim on the grounds of short realization of export proceeds and partial amount was ordered to be re-credited in the Cenvat account of the applicant being excess duty paid.

3. Aggrieved, the Applicant filed an appeal against each of Order-in-Original for the amount rejected and re-credited and the Department also filed appeals on the grounds that the adjudicating authority had erred in sanctioning the rebate of Rs.11,63,758/- and Rs.40,31,760/- as the applicant had netted

off/setoff the export proceeds against the import payables with M/s. Harkness Screens International, Ireland. The Commissioner (Appeals) vide impugned Orders-in-Appeal rejected the appeals of the Applicant while allowing the appeals of the Department.

4.1 Aggrieved, the Applicant has filed the instant Revision Application mainly on the following grounds:-

- (i) The Applicant has satisfied the RBI regulations and consequently the conditions of rebate. Netting off of Import Payables with Export Receivables is permissible under FEMA law. Refund granted by the adjudicating authority is in order, the impugned order-in-appeal upholding the department appeal is not in accordance with law.
- (ii) With the introduction of GST and repeal of Central Excise Act, excise rebate should be given only by way of cash and not by way of credit to Cenvat account u/s 142(3) of CGST Act. The rejection of rebate would amount to deposit lying with the Government and in any case eligible for refund to the appellant. According to section 142(3) of the CGST Act 2017, any refund of duty/tax should be by way of cash only.
- (iii) The Ld. Appellate authority failed to consider the BRCs submitted to the extent of rebate claim of Rs. 15,64,843/- vide its email dt. 29.10.2020.
- (iv) Excise rebate of INR 1,73,019/- should be granted in terms of Rule 18 r/w Notification 19/2004-CE.
- (v) Without prejudice to the above, the applicant submits that the excise duty paid is a deposit and the rebate/refund should be given only by way of cash and not by way of credit to Cenvat account.

On the above grounds, the Applicant prayed that the impugned Order-in-Appeal be set aside and directions be given to grant all such relief arising from the above grounds as also all relief consequential thereto including the grant of rebate of the duty paid on export of goods.

4.2 The Applicant filed additional submissions on 25.03.2022, wherein they have interalia contended that:-

- (i) Similar issue was raised by the Dy. Commissioner of Customs on drawbacks which were claimed on such exports (though for a subsequent period). The drawback rules under Customs laws also provided for realisation of export proceeds for the purpose of comply with the drawback conditions. However, the Dy. Commissioner of Customs held that the principle of law of netting off of import payables with export receivables amounts to realisation of foreign exchange currency in India though there may not strictly be a bank transfer into India. The fact that export realisations have been set-off with the import payables/remittances, in substance it amounts to a realisation of export proceeds complying with the drawback conditions.
- (ii) On similar lines, the denial of Central Excise rebate on the ground that the foreign exchange proceeds have not been realised now stands countered by the revenue's own stand as above which is clearly in favour of the applicant. This leaves no room of doubt that the central excise rebate ought to be sanctioned with interest to the applicant.
- (iii) It is prayed that since the revenue itself has taken the stand in favour of the applicant, the merits of the matter may be considered and the issue be decided accordingly.

5. Personal hearing in the case was held on 15.12.2021. Shri Rishabh Singhvi, Advocate appeared online and submitted that his exports were not prohibited. RBI circular allows export proceeds set-off with import receivables. Bank has confirmed set-off, therefore, rebate was correctly sanctioned by the original authority. He further submitted that BRC's for Rs.16 Lakhs rejected in OIO were submitted to Appellate Authority and requested to allow the rebate.

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

7. Government observes that the issue involved is whether netting-off/set-off of export receivable against import payables can be accepted as realisation of export proceeds and whether excess duty paid at the time of export is required to be returned in cash in view of Section 142(3) of the CGST Act, 2017.

8.1 Government notes that in the instant matter, the exports were carried out between Aug-16 to Jun-17. Government observes that Rule 18 of the Central Excise Rules, 2002 and/or Notification No. 19/2004 CE(NT) dated 06.09.2004, do not specify anything regarding realisation of export proceeds. Hence, in this regard RBI norms are to be referred. The relevant extracts of RBI Master Direction No. 16/2015-16 dated 01.01.2016 applicable during the material time are reproduced hereunder:

A.2 Realization and repatriation of proceeds of export of goods / software / services

It is obligatory on the part of the exporter to realize and repatriate the full value of goods / software / services to India within a stipulated period from the date of export, as under:

(i) It has been decided in consultation with the Government of India that the period of realization and repatriation of export proceeds shall be nine months from the date of export for all exporters including Units in Special Economic Zones (SEZs), Status Holder Exporters, Export Oriented Units (EOUs), Units in Electronic Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) & Bio-Technology Parks (BTPs) until further notice.

C.26 Set-off of export receivables against import payables

C.26.1. AD category –I banks may deal with the following requests received from their Exporter/Importer constituents for allowing set-off of outstanding export receivables against outstanding import payables:

- i. Set-off of outstanding export receivables against outstanding import payables from/to the same overseas buyer/supplier.*
- ii. Set-off of outstanding export receivables against outstanding import payables with their overseas group/associate companies either on net basis or gross basis, through an in-house or outsourced centralized settlement arrangement.*

Thus, Government observes that the set-off of outstanding export receivables against outstanding import payables is within the applicable norms and the original authority had rightly accepted the same as proof of realisation of export proceeds for the purpose of sanctioning the rebate.

8.2 Government observes that the original authority had disallowed part of rebate claim due to short realization. The applicant has claimed that they had submitted relevant BRCs with the Appellate authority. It is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting to rejection on technical grounds/procedural lapses would not serve the purpose of justice. The adjudicating authority is required to verify the authenticity of the documents available with the Applicant in respect of the rebate claimed by them and that the export remittance has been received within the period specified by the RBI, viz. 9 months from the date of export.

9. In view of discussions and findings elaborated above, Government sets aside the impugned Orders-in-Appeal No. 38-39/2020-21-CT dated 21.10.2020 and 89-90/2020-21-CT dated 04.11.2020 passed by the Commissioner of Central Tax (Appeals-II), Bengaluru. The case is remanded back to the original

authority for denovo adjudication in respect of amount of claim rejected for non-submission of BRCs and to pass a well-reasoned order after following the principles of natural justice. The Applicant is also directed to submit all the concerned BRCs/other relevant documents for verification with the original authority. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of this Order.

10. The Revision application is disposed of on above terms.

Shrawan
21/06/22

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 640-643/2022-CX(SZ)/ASRA/Mumbai dated 21.6.2022

To,

M/s. Harkness Screens India LLP,
Sy. No. 87/1, 87/2, 88, 89, 89/1 & 122,
Byrenahalli village, Kasaba-Hobli,
Nelamangala Taluk, Bengaluru - 562 123.

Copy to:

1. Commissioner of Central Tax,
North-West Commissionerate,
2nd Floor, BMTC Bus stand Complex,
Shivaji Nagar, Bengaluru - 560 051.
2. Sr. P.S. to AS (RA), Mumbai
- ~~3. Guard file~~
4. Notice Board.