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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.195/1000/13-RA/55

Date of Issue:

~~12.2020~~

05.01.2021

ORDER NO.667/2020-CX (SZ) /ASRA/MUMBAI DATED 16.12.2020 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 THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Modern Process Printers.
#73, SSI Area, 5th block, Rajaji Nagar,
Bangalore.

Respondent : The Commissioner of CGST, Bangalore West.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.578/2013-CE dated 24.10.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

ORDER

This revision application is filed by M/s Modern Process Printers, Bangalore (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 578/2013-CE dated 24.10.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

2. The issue in brief is that the applicant had filed rebate claims for Rs. 4,69,737/- in respect of duty paid on inputs used in the manufacture of final products exported under ARE-2 Nos. 13 to 20. The Applicant had furnished the required documents along with the rebate claim. During the scrutiny of the rebate claims, it was noticed that the quality of the input papers was 80GSM as per input invoices whereas the quality of paper actually contained in the export product was of 54 GSM and 75 GSM as per the declaration in the bill of lading. The department had sent the samples of the export product to the Chemical Examiner, Custom House, Chennai and also took up the issue with the applicant. The result of the chemical examination showed that quality of the paper contained in the export product varied from 52.6 GSM to 67 GSM. Therefore, the adjudicating authority rejected the rebate claims vide Order in Original No. 14/2006 dated 31.03.2006 on the grounds that the input for which the rebate is claimed was actually not used in the manufacture of export products. On being aggrieved by the said Order in Original, the applicant preferred an appeal before the Commissioner of Central Excise (Appeals II), Bangalore which was also rejected by the appellate authority vide OIA No. 40/2006 dated 31.05.2006. The applicant filed the Revision Application against the said Order in Appeal. The Revision Authority opined that the Principles of natural justice had not been followed in the case and no reasons were given for rejecting rebate claims wherein no test was conducted. The Revision Authority vide Revision Order No. 122/09 dated 12.05.2009 set aside both the orders and remanded the case back to Original Authority with directions

to pass a reasoned order after supplying the copies of test reports and affording reasonable opportunity of hearing to the applicant.

3. The Original Authority re-examined issue in the light of directions given by Revision Authority and after following the lawful process rejected the impugned rebate claims vide Order in Original No. 02/2010(R) dated 30.04.2010 and also imposed penalty under Rule 25 of Central Excise Rules, 2002.

4. The appellate authority upheld the Order in Original vide its Order in Appeal No. 578/2013 dated 24.10.2013 while deciding the appeal filed by the applicant against the said Order in Original and observed that :-

4.1 From the test report it is established that the quality of the inputs i.e. paper (GSM) used in the manufacture of the resultant export products are ~~entirely different and not one and the same.~~

4.2 It is evident that the base paper is entirely different, contained in the export product and that of the base paper in the input product are not one and the same.

4.3 As regards the ARE No. 13, 14 & 17/2005-06, no test report was available but the reliance is placed on the opinion of M/s Tamil Nadu Prints and Papers Limited who are the supplier of the base paper to the appellants. The opinion suggests that the appellant being manufacturers of stationery products who manufacture by using base paper produced from paper mills by simple cutting into required sizes and does not involve any further process.

4.4 When the rebate itself is not eligible, the question of realization of foreign exchange remittance does not arise.

5. Being aggrieved by the said Order in Appeal, the applicant have filed the instant Revision Application on the following grounds :-

5.1 There was a mention of 80GSM in the claim document. The products exported are stationery products, note pads, writing pads, refill note books etc. this has not been disputed at all.

5.2 The findings of the Appellate Authority are opposed to the remand directions of the Revision Authority where in it was stated that the entire rebate (8 ARE2s) cannot be rejected when test was conducted on 4 ARE2s.

5.3 The test reports conducted without providing an opportunity to challenge the test report which was conducted during 06.03.2006 and copy of the report submitted after the directions issued by the RA and there was no possibility of retest as the complete samples were destroyed.

5.4 The findings at para 13 that the receipt of foreign exchange remittance is no longer verifiable is absurd.

5.5 The Appellate Authority not recorded any findings on the arguments that the imposition of the penalty of Rs. 4,50,000/- under Rule 25 of the Central Excise Rules.

5.6 The impugned order is beset with presumed hypothesis. There is nothing under the provisions of Rule 18 r/w Section 11B of the Central Excise Act which presupposes a condition that the 'input product' used should remain to be identified in the 'the output product'.

5.7 There was no averment during personal hearing that there had been a mistake or a mis-declaration on the part of the exporter. There is no submission recorded to state that the GSM has been mentioned wrongly.

5.8 The Chemical examiner's report was collected at the back of the exporter. The evidence was not placed before the applicant and was taken from one of the manufacturers of paper and therefore cannot be relied on by the department. The applicant have relied upon various case laws in support of their submission in this regard.

5.9 The Calcutta High Court in Bata Shoe Company Pvt. Ltd. V. UOI 1978 (2) ELT (J501)(Cal) held that relying on chemical examiner's report without giving its copy to the party concerned, amounts to denial of justice.

5.10 No reason was provided for rejecting the refund claim wherein no test was conducted.

- 5.11 The test reports for the four shipping bills cannot be extended to the other shipment that was permitted to be exported and their samples were never tested.
- 5.12 The letter written by the Assistant Commissioner of Central Excise in OC No. 36/2006 dated 25.01.2006 has not been provided to the exporter to arrive at the terms of reference of the basis on which the test was sought.
- 5.13 The opinion of M/s Tamil Nadu News Prints and Papers Ltd. has not been submitted to the applicant.
- 5.14 The laboratory in the test report has not provided the basis of arriving at the GSM and the process adopted to arrive at the GSM.
- ~~5.15 The test report having been provided after a gap of three years and five months cannot be countered and the samples getting destroyed.~~
- 5.16 The Tribunal in the case of L.D. Textiles Industries Ltd. V. CCE 2009(233) ELT 210 (T) held that test reports should be made applicable only to the lot out of which samples were drawn.
- 5.17 80 GSM paper can be used in combination with other GSMs to arrive at the required thickness and therefore the test report of the GSM that varies between 50 and 150 cannot be taken as the basis to deny the refund on inputs used in the manufacture of the final product.
- 5.18 The department had accepted their declaration under Notification No. 21/2004-CE stating the input output ratio and the inputs that are used in the manufacture of the export product.
- 5.19 It is not permissible to the Asstt. Commissioner to reject the claims when the application for rebate is made after the exports are allowed.
- 5.20 The Chemical examiner's report was never relied on at the time of issuing the show cause notice but only referred to in the notice and no copy of the relied upon documents were produced at the time of issuing the show cause notice. The applicant had relied upon the decision of Tribunal in

Collector of C.Ex., v. Polymer Papers Ltd, reported in 1999(106)ELT 184(T) and U.P. State Sugar Corporation Ltd. v. CCE 1998 (100) ELT 66(T).

5.21 The GSM cannot be constant in the output product due to variety of process undertaken by the manufacturer.

5.22 As per the provisions of Rule 25 of the Central Excise Rules, 2002, the penalty of Rs. 4,50,000/- cannot be imposed since they have sought the rebate on the duty paid on the inputs used in the manufacture of export goods.

5. A Personal hearing in the matter was fixed on 11.12.2019. Shri Chidananda URS B.G. Advocate attended the same on behalf of the applicant. The Personal hearing was refixed on 09.01.2020 due to change of Revision Authority. Shri Chidananda URS B.G. attended the same and reiterated the submissions made on 11.12.2019. He submitted that department has denied rebate on hypertechnical grounds and requested to allow the same and set aside the penalty.

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.

7. Government observes that the applicant had filed eight (8) rebate claims under Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. The applicant had furnished the input-output statement / norms as required under the Notification No. 21/2004-CE (NT) and the same were approved by ACCE. The applicant has claimed that they have used the inputs in the manufacture of export goods as per the approved norms. Government notes that once the input-output norms are approved by the department, the substantial requirement of complying with condition of Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004 on this count stands complied with.

8. The Government opines that submission of Input Output norms is one of the procedural requirements laid down under Notification No. 21/2004-CE (NT) to preclude bogus rebate claims being sanctioned to the exporters. However, in order to verify compliance of the said norms by the exporters, the Jurisdictional Central Excise Officer may draw samples and obtain opinion of the Chemical examiner authorized by the Government of India. If required, he can also corroborate these facts from the export documents furnished by the exporter. In view of above, submission of input output norms is necessary but not the sufficient requirement to sanction the rebate of the duty paid on inputs. Rebate, being export incentive scheme, the rebate sanctioning officer is bound to take all precautions to prevent misuse of the said scheme. As such, it is held that filing of Input Output Norms ~~does not endow immunity to the exporters from any other queries raised by~~ the Rebate Sanctioning Officer while scrutinizing the rebate claims.

9. In the instant case, it is found that the applicant had filed eight rebate claims with Jurisdictional Rebate Sanctioning Officer. On scrutiny of the impugned rebate claims, the RO noticed the discrepancy in the GSM (quality) of the inputs declared in the approved input output norms and that mentioned in the Bill of Lading submitted alongwith claim. Hence, the Jurisdictional Officer had drawn samples in respect of 4 out of 8 export consignments and sent them to Chemical Examiner for his opinion. The test report of the Chemical Examiner stated that the GSM (quality) of export goods was varying from the declared GSM (quality) of the inputs. The applicant have contested that the samples were not drawn in all the eight consignments and hence they are eligible for the rebate in respect of the exports where no samples had been drawn by the department. It is normal practice to draw representative samples from the consignments being exported. 4 samples out of 8 consignments represent the quality of paper being exported. The Government opines that even if the objections with regard to non following of proper procedure while drawing samples is

accepted, the facts emerging from the collateral documents i.e. bill of lading etc. clearly disclose that there is variation in the GSM (quality) of input products and the export goods.

10. The applicant have also contended that there is nothing under the provisions of Rule 18 r/w Section 11B of the Central Excise Act which presupposes a condition that the 'input product' used should remain to be identified in the 'the output product'. The Government holds that the provisions of Notification No. 21/2004-CE (NT) dated 06.09.2004, though do not stipulate one to one correlation of input - output goods, certainly demand that the input goods declared as per the norms must be used in the manufacture of goods. The Appellate Authority while discussing this aspect has quoted the opinion of M/s Tamil Nadu News Prints and Papers Limited which reads as

"In this connection we would like to submit that the stationery products such as memo, writing pad and note books are manufactured from base paper produced from paper mills by cutting it into required sizes. It is only a conversion product will have the same GSM of base paper and it cannot be altered by the stationery manufacturers."

The applicant declined to accept above opinion of the supplier of the base paper and contended that the GSM (quality) of paper cannot be constant in the output product due to variety of process undertaken by the manufacturer. The Government finds that the applicant has not provided any technical clarification/write up in support of their plea but preferred to turn down the said opinion on different grounds. It is opined that the applicant, being beneficiary of the scheme, is obligated to satisfy any query raised by the rebate sanctioning authority to from his opinion about actual use of input in the manufacture of the export goods. As such, the onus to prove that the input products have been used in manufacture of final goods exported clearly lies on the applicant and he cannot just escape the

responsibility to do so by simply denying the facts on vague grounds. In the instant case, the applicant rather than producing the supportive documents / technical write up, have questioned the applicability of said instructions.

11. The Government holds that the fundamental requirement for claiming rebate of duty paid on inputs is that the use of duty paid inputs in the manufacture of export goods is proved beyond doubt. Hence, the applicant is required to provide every explanation in this regard to the rebate sanctioning officer to arrive at such conclusion. In the instant case, it is observed that the applicant have failed to submit evidence to prove that the duty paid inputs, declared as per input output statement, have been used in the manufacture of export goods nor they could substantiate the variation in quality (GSM) of input products to that of export products. So the case laws cited by applicant are not applicable in this case as the same relate to cases of procedural lapses.

12. The Government finds that the applicant have contested the imposition of penalty under Rule 25 of the Central Excise Rules, 2002 under impugned order. The Government notes that Rule 25 provides for confiscation and penalty when a producer, manufacturer, registered person of a warehouse or registered dealer (a) removes any excisable goods in contravention of the provisions, or (b) does not account for any excisable goods produced or manufactured or stored, or (c) engages in the manufacture, production or storage of any excisable goods without registration, or (d) contravenes any of the provisions of the rules with an intention to evade payment of duty. In the instant case, none of the above offences was alleged and proved against the applicant. In such case, the department cannot allege any malafide and the contention of the applicant that the export of goods is not under dispute, since they have received the remittance from outside India, and therefore they should not be subjected to penalty merits consideration. Under the facts and circumstances, it is found that there is no contumacious conduct and/or suppression on the part of the applicant. In these circumstances, penalty under Rule 25 is not warranted.

13. In view of above discussion, Government finds that lower authorities have rightly rejected the said rebate claims as the same were not admissible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-C.E. (N.T.), dated 6-9-2004. Therefore Government finds no infirmity in the impugned order except imposition of penalty under Rule 25 of the Central Excise Rules, 2002.

14. Penalty under Rule 25 of Central Excise Rules, 2002 is not imposable in the instant case.

15. The revision application is disposed off on above terms.


16/12/2020
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India.

ORDER No. 667/2020-CX (SZ) /ASRA/Mumbai DATED 16 December, 2020

To,

M/s Modern Process Printers.
#73, SSI Area, 5th block,
Rajaji Nagar,
Bangalore - 560 010.

Copy to:

1. The Commissioner of CGST, Bengaluru West, 1st floor, BMTC Bus Stand Building, Banashankari, Bengaluru- 560 007.
2. The Commissioner of GST & CX, (Appeals), Mysuru, No. S-1 & S-2, Vinaya Marga, Sidhartha Nagar, Mysuru- 570 011.
3. Sp. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.