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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.198/50 (I to III)/2009-RA / 3382 Date of Issue: 05.08.2022

749-751
ORDER NO. /2022-CX (WZ) /ASRA/Mumbai DATED 05.08.2022 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 : Commissioner of CGST, Ahmedabad South, (erstwhile
Commissioner, Central Excise, Ahmedabad - I)
GST Bhavan, Revenue Marg, Ambawadi,
Ahmedabad - 380015.
- Respondent : M/s Nandan Exim Limited,
198/1, Sajpur - Gopalpur,
Pirana Road, Piplaj,
Ahmedabad - 382 405.
- Subject : Revision Application filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal no.
203 to 205 / 2008 (Ahd-I) CE / ID/ Commr (A) dated
28.11.2008 passed by the Commissioner (Appeals-I),
Central Excise, Ahmedabad.

ORDER

The subject Revision Application has been filed by the Department against the Order-in-Appeal dated 28.11.2008 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad, which decided appeals filed by M/s Nandan Exim Limited, Ahmedabad (here-in-after referred to as 'the respondent') against three Orders-in-Original passed by the original Adjudicating Authority which decided rebate claims filed by the respondent.

2. Brief facts of the case are that the respondent had filed 22 rebate claims totally amounting to Rs.17,79,466/- against the duty paid on goods exported by them, viz. C.F. Printed, C.F Denim, M.M.F. Printed, Fabrics without embroidery manufactured out of yarn etc. The original authority vide Orders-in-Original Nos. 146/2008-Reb, 181/2008-Reb and 240/2008-Reb dated 28.07.2008, 08.08.2008 and 18.09.2008, respectively, sanctioned a rebate of Rs.1,26,338/- as payable by cash and Rs.729/- as re-credit to their Cenvat Credit. The rest of the claim amounting to Rs.16,52,799/- was rejected for the following reasons:-

- (a) The respondent availed the benefit of exemption under Notification No.30/2004-CE dated 09.07.2004 and did not avail the benefit of Cenvat Credit on inputs used in the manufacture of their final product falling under Chapter 52,54, and 55 of the Central Excise Tariff Act, 1985 (CETA) for goods cleared under exemption, for home consumption;
- (b) The respondent also availed of the benefit of Notification No.29/2004-CE dated 09.07.2004 for the goods cleared for export and paid Central Excise duty. The respondent availed Cenvat Credit on Capital Goods and utilized the same for payment of Central Excise duty on the goods cleared for export for which claimed rebate;
- (c) The jurisdictional Range Superintendent had reported that the respondent had purchased the fabrics from another unit without payment of duty who had availed the benefit of Notification No.30/2004-CE dated 09.07.2004 and that the respondent only undertook the process of

checking, slitting, cutting and packing of such fabrics which did not amount to manufacture as per the Chapter Note for the Chapters No. 52 to 62 of the C.EX. Tariff Act, 1985 read with Section 2 (f) of the Central Excise Act, 1944 and that they had paid duty from their accumulated Cenvat balance;

(d) Notification No.30/2004-CE dated 09.07.2008 exempted final products (CF/MMF) from payment of duty cleared for home consumption or for exports and hence in the present case the respondent had discharged Central Excise duty on their own volition and hence were not eligible to the rebate claimed by them.

3. Aggrieved, the respondent preferred appeals before Commissioner (Appeals) against the above Orders-in-Original. The Commissioner (A), based on the documentary evidence submitted by the respondent, found that the processes carried out by the respondent on the goods received by them from other units amounted to manufacture in terms of Section 2(f) of the Central Excise Act, 1944 and the Chapter Note to Chapters 52 to 55 of the CETA and held that the respondent had correctly paid Central Excise duty and were hence eligible to the rebate which was rejected by the original authority and accordingly ordered so.

4. Aggrieved, the Department has filed the present Revision Application against the impugned Order-in-Appeal on the following grounds:-

(a) The respondent had availed the benefit of exemption under Notification No.30/2004-CE dated 09.07.2004, without availing Cenvat credit on inputs used in the manufacture of their final products falling under Chapter 52, 54 and 55 of Central Excise Tariff Act 1985, and had cleared the goods at NIL rate of duty for home consumption; however, they had debited the amount equivalent to effective rate of duty as per Notification No. 29/2004-CE dated 09.07.2004 on clearances for export;

(b) The Range Officer had certified on the reverse of the ARE 1s that the respondent had not availed Cenvat Credit and hence they had wrongly

debited duty on export consignment; therefore such goods should not be considered as duty paid goods and as such payment could not be considered as "payment of duty" and hence the respondent was not entitled to claim rebate on non-duty paid goods;

(c) *Central Excise duty could not be paid on exempted goods voluntarily for the sake of claiming the rebate of duty and that such deposit of duty was without the authority of law and had to be treated as null and void and hence the respondent was not entitled to claim of rebate of duty on such exported goods, and hence the Commissioner (Appeals) had erred in allowing the rebate claims of the respondent;*

(d) The respondent had not followed the procedure laid down by the Board vide Circular No. 845/03/2006-CX dated 01.02.2007 for simultaneous availment of Notification Nos.29/2004-CE & 30/2004-CE both dated 09.07.2004 by the manufactures of the goods falling under Chapter 50 to 63 of the Central Excise Tariff Act 1985 inasmuch as they had not maintained separate Book of Accounts;

(e) Section 5A(1A) prohibits voluntary payment Central Excise duty on goods where duty chargeable is NIL and hence the respondent could not pay duty at his own will; and hence it appeared that the respondent had debited the duty from the Cenvat credit account of Capital Goods with a clear intention to encash the credit and hence the sanctioning authority has erred while sanctioning the rebate claims by allowing credit in their Cenvat credit account to the respondent;

(f) In terms of Rule 18 of the Central Excise Rules, 2002 the rebate is allowed in respect of "Duty" discharged on export goods, but such wrong payment of duty could not be considered as payment of duty and therefore the rebate claims filed by the said respondent ought to have been rejected on this ground alone.

(g) The claim of the respondent that their goods had gone through the process of singeing, chemical treatment etc., was an afterthought and was with the intent to claim that they had carried out the manufacturing process with the aid power to justify 'manufacture' under Section 2(f) of Central Excise Act, 1944 and finally claim rebate; that there was no record/evidence to show that the above processes were carried out on the exported goods.

In view of the above the applicant Department has sought for the impugned Order-in-Appeal to be set aside and orders be passed for recovering rebate along with applicable interest, if disbursed.

5. Personal hearing in the matter was granted to the applicant on 28.04.2022 and Shri D.V. Parmar, Assistant Commissioner appeared online on behalf of the Department. He reiterated their earlier submissions and stated that the process undertaken by the respondent did not amount to manufacture and hence the Revision Application of the Department may be allowed.

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

7. Government notes that the short issue involved in the instant case is whether the processes claimed to have been carried out by the respondent on the goods exported by them amounted to manufacture or otherwise. It is submitted by the Department that the respondent did not carry out any process which amounted to manufacture on the goods exported by them and hence no duty was payable on such goods; and that the respondent would be not eligible to claim rebate of any duty paid on such goods on their own volition. Government notes that the Commissioner (Appeals) has examined the issue at length and recorded that the respondent had submitted documentary evidences such as process flow chart, production records etc. in support of their contention. The Commissioner (Appeals) has further recorded that examination of the flow chart of the processes, lot register and production register indicated that the fabrics in question were

subjected to the processes of singeing and finishing on particular machines during the months of November, 2007 and December, 2007. Government notes that the Commissioner (Appeals) held that the above processes carried out by the respondent would amount to manufacture in terms of Chapter Note of Chapter 52/55 (of the CETA). The relevant para of the impugned Order-in-Appeal is reproduced below:-

*" On going through Chapter Note of Chapter 52/55 the process of dying, printing bleaching, mercerizing, twisting, texturizing, doubling, multiple folding, cabling or **any other process**, or any one or more of those process, or the conversion of any form the said products into another form of such products shall amount to 'manufacture' as because the processes of singeing, chemical treatment and finishing are coming in the preview of 'any other process' and are 'incidental' and 'ancillary' to the process of manufacture.*

In present case I find that the appellant had carried out process of singeing heat-treatment and finishing in such machines and purchased fabrics during the month of November, 2007 and December, 2007, which is processed further in their factory. These amount to manufacture as "any other process" in view of the above chapter Notes."

Government finds that the Commissioner (Appeals) has lucidly explained his findings based on the evidence furnished by the respondent. The conclusion arrived at by the Commissioner (Appeals) based on these findings cannot be disputed. Government finds the submission of the Department that there was no evidence to support the claim of the respondent that they carried out the processes mentioned above, to be incorrect in light of the contemporaneous evidence submitted by the respondent before the Commissioner (Appeals).

8. As regards the submission of the Department, that the respondent had not availed Cenvat credit on the inputs and hence they could not use the Cenvat availed on capital goods to pay Central Excise duty, defies logic and deserves to be set aside. Further, as regards the submission of the Department that as per the proviso to Section 5A(1A) of the Central Excise Act, 1944 the respondent could not have paid duty on their own volition and hence the original sanctioning authority had erred in sanctioning the rebate claim by allowing credit in their Cenvat credit account, Government finds

that the order of the original authority was not challenged by the Department and hence decisions taken therein cannot be disputed at this stage. Further, in any case, the issue raised will not hold good in light of the discussions in the above para. Similarly, Government finds that the allegation of the respondent not having maintained separate accounts while availing of the both the notifications mentioned above was never raised by the Department before the lower authorities and hence holds that the same cannot be debated at this stage.

9. In view of the above, Government finds the impugned Order-in-Appeal, which held the respondent eligible to the rebate claimed by them, to be legal and proper.

10. The subject Revision Application is dismissed.

Shrawan
5/8/22
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

749-751
ORDER No. /2022-CX (WZ) /ASRA/Mumbai dated 05.08.2022

To,

The Commissioner of CGST & Central Excise, Ahmedabad South,
GST Bhavan, Revenue Marg, Ambawadi,
Ahmedabad - 380015.

Copy to:

1. M/s Nandan Exim Limited, 198/1, Sajpur - Gopalpur, Pirana Road, Piplaj, Ahmedabad - 382 405.
2. The Commissioner (Appeals - I), Central Excise, Ahmedabad, C.Ex. Bhavan, 7th floor, Near Polytechnic, Ambavadi, Ahmedabad - 380015.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.

