

REGISTERED
SPEED POST



F.No.195/1089/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 18-3-14

ORDER NO. 79/14-Cx DATED 13.03.2014 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the
Central Excise Act, 1944 against the orders-in-appeal
No.IND/CEX/000/APP/294/11 dated 19.07.2011
passed by Commissioner of Central Excise (Appeals),
Indore

APPLICANT : M/s CIL Textiles Pvt. Ltd., Indore

RESPONDENT : Commissioner of Central Excise & Service Tax,
Indore

ORDER

This revision application is filed by M/s CIL Textiles Pvt. Ltd., Indore against the order-in-appeal No.IND/CEX/000/APP/294/11 dated 19.07.2011 passed by Commissioner of Central Excise (Appeals), Indore with respect to order-in-original No. 477/10-11/AC/R dated 03.12.2010 passed by Assistant Commissioner of Central Excise Division Indore.

2. Brief facts of the case are that M/s CIL Textiles Ltd., 302 Oasis Trade Centre, 22/20, Y.N. Road, Indore area engaged in the manufacture and export of poly/cotton grey fabric. They have filed a rebate duty paid on exported goods amounting to Rs.2,94,489/- on 22.04.2008 in terms of Rule 18 of the Central Excise Rules, 2002.

2.1 On examination of the claim following discrepancies were noticed.

- (i) Notification issued under Rule 18 of the Central Excise Rules, 2002 under which claim has been filed is not mentioned.
- (ii) Relevant copies of ARE-1/ARE-2 as the case may be, were neither mentioned in the claim, nor filed.
- (iii) Shipping bills, export promotion copies were not enclosed with claim.
- (iv) Copy of input-output formula filed before the Rebate sanctioning authority was neither mentioned, nor enclosed.
- (v) How the rebate amount has been arrived was not clear, and
- (vi) If it is the input stage rebate claim the duty paying documents (invoices) of inputs were not filed in original.

2.2 In case, the claim is filed for input stage rebate, which is governed by Notification No.21/2004-CE(NT) dated 06.09.2004 then also it was observed as under :-

- (i) The claimant has not filed declaration with the proper officer in compliance to condition No. (1) of the Notification No.21/04-CE(NT) dated 06.09.2004.
- (ii) The claimant have also not adduced original copies of invoices issued under Rule 11 in respect of inputs used in the manufacture of exported goods, as stipulated in condition No. (3) of the above Notification.
- (iii) The claimant have neither removed the finished goods under ARE-2 nor have followed the procedure set out in Notification No. 19/04-CE(NT) dated 06.09.2004 or in 19/04-CE(NT) dated 06.09.2004, for the said purpose.

2.3 For the reasons above, claim appeared to be inadmissible, therefore a notice of even No. 8080 dated 25.07.2008 was issued to the claimant, asking them to explain as to why the instant claim should not be rejected.

2.4 After following due process of law, the original authority allowed the input rebate claim of Rs.2,94,489/- to the applicants.

3. Being aggrieved by the said order-in-original, department filed appeal before Commissioner (Appeals) who allowed the appeal and set aside the impugned order-in-original.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The respondent humbly submit that they have their place of business located at 302, Oasis Trade Center, 22/20, Y.N. Road, Indore (M.P.), hence the rebate claim was filed with jurisdiction Assistant Commissioner, Central Excise, Division Indore. Further invoices of raw materials are undisputedly in the name of the respondent having their business within jurisdiction of Indore Division. There is no doubt that the goods were got manufactured by job worker and exported by the respondent. Once this position is clear there can be no restriction to allow the rebate of the duty paid on the inputs used

in the manufacturing of the said export goods. The respondent in this context rely on the following judgments –

- (i) 2003 (157) ELT 359 (GOI)
Government of India, Ministry of Finance
[Department of Revenue – Revisionary Authority]
Shri Dinesh Kacker, Joint Secretary
In RE: IKEA Trading (India) Ltd.
Order No. 160/2003, dated 24.07.2003
- (ii) 2006 (204) ELT 632 (GOI)
Government of India, Ministry of Finance
[Department of Revenue – Revisionary Authority]
Shri Dinesh Kacker, Joint Secretary
In RE: Modern Process Printers.
Order Nos. 527-528/2005, dated 18.11.2005

4.2 It is humbly submitted that the adjudicating authority in the concluding para of the impugned order has categorically admitted that the respondent have filed declaration with the department about input-output ratio and that they have produced evidence to support that the goods have actually been exported.

4.3 In the present case there is no doubt that the goods were manufactured with duty paid inputs and their ultimate export therefrom, in the light of the above judgment the adjudicating authority has rightly condoned the procedural requirement if any.

5. Personal hearing scheduled in this case on 21.02.2013 and 10.03.2014. Hearing held on 10.03.2014 was attended by Shri Manish Saharan, Advocate on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that initially input rebate claim was sanctioned by original authority. However, the said order-in-original was set aside by

Commissioner (Appeals) while allowing appeal of the department. Now applicant has filed this revision application, on the grounds stated above.

8. Government notes that applicant has not disclosed the name and address of the manufacturer in this case and only claimed that goods were got manufactured on job work basis. As per clause 6 of Not. No. 21/04-CE(NT) dated 6.9.2004, the claim for rebate of duty paid on materials used in the manufacture or processing of goods shall be lodged only with AC or DC Central Excise having jurisdiction of the place approved for manufacture or processing such export goods. It is noted that even in this revision application, applicant has not disclosed the approved place of manufacture or processing of export goods and therefore the rebate sanctioning authority cannot be determined for want of said information. Further the procedure prescribed under Not. No. 21/04-CE(NT) has not been followed which is also admitted by applicant. The original duty paying invoice of the materials used in manufacture of export goods were also not produced alongwith the rebate claim. However, in para 12.3 (iii) of order-in-original dated 3.12.2010, adjudicating authority has recorded as under :-

" (iii) Yet another condition is about procurement of material to be utilized, directly in the factory in which such goods are produced, accompanied by an invoices under Rule 11 of the Central Excise Rules 2002. It is alleged that original/duplicate copy for transporter in respect of inputs invoices has not been provided alongwith the claim they have submitted photocopies of invoices, and the original copies are available with them which would be produced for verification on demand. I find that the claimant have submitted all these invoices at the time of hearing."

8.1 In said findings, ACCE has simply stated that said invoices were produced at the time of hearing. But he has not given any finding on the correctness of the payment of duty. In this case, the manufacture is not known, who might have taken cenvat credit of duty paid on inputs. There is no declaration or verification that no cenvat credit was availed of the duty paid on inputs. In such a situation, it cannot be established that

duty paid inputs were used in the manufacture of export goods. It is a settled legal position that the input rebate claim is not admissible when cenvat credit if duty paid on inputs is availed.

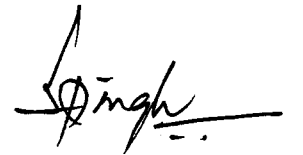
8.2 Government notes that applicant has relied upon several judgments for the proposition that substantial benefit of rebate claim cannot be rejected for minor procedural lapses. But this is not a case of minor procedural lapses as discussed by Commissioner (Appeals) in his order. As such said judgments are not applicable to this case.

8.3 It is a settled law that natural meaning of words has to be construed and adhered to while interpreting statutes as held by Hon'ble Supreme Court in the case of M/s ITC Ltd. vs. CCE 2004 (171) ELT 433 (SC). So the non-compliance of the above said provision of Notification has rendered the applicant ineligible for the said claim.

9. In view of above position, Government finds no infirmity in the impugned order-in-appeal and therefore upholds the same.

10. The revision application is thus rejected being devoid of merits.

11. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s CIL Textiles,
302, Oasis Trade Center,
22/20, Y.N. Road,
Indore

BPS

Order No. 79/14-Cx dated 13.03.2014

Copy to:

1. Commissioner of Central Excise & Service Tax Indore, Manik Bagh Palace, Post Bag No.10, Indore – 452001 (M.P.)
2. Commissioner of Central Excise & Service Tax (Appeals), Indore, 4, Indralok Colony, Keshar Bagh Road, Indore – 452 009.
3. The Assisant Commissioner of Central Excise, Division Indore, CGO Complex, A.B. Road, Indore.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



(B.P. Sharma)
OSD(Revision Application)