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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.195/620/2013-RA /1254 Date of Issue: 23.02.2021

ORDER NO. 80/2021-CX (WZ)/ASRA/MUMBAI DATED 15.02.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicants : M/s Pepco Fabrics Pvt. Ltd.
521, Hazoori Chambers,
Zampa Bazar, Surat.

Respondents : Commissioner of CGST, Belapur Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/43/RGD/2013 dated 31.01.2013 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

ORDER

This Revision Application is filed by M/s Pepco Fabrics Pvt. Ltd. 521, Hazoori Chambers, Zmpa Bazar, Surat (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/43/RGD/2013 dated 31.01.2013 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

2. The issue in brief is that the applicant engaged in manufacture of 'Man Made Fabrics (MMF)' had filed 42 rebate claims for total amount of Rs. 78,86,817/- (Rupees Seventy Eight Lakh Eighty Six Thousand Seventeen Only) under Rule 18 of the Central Excise Rules, 2002 in respect of the duty paid on the goods exported by them.

3. The Rebate Sanctioning Authority vide Order in Original No. 1990/11-12/DC(Rebate)/Raigad dated 31.01.2012 rejected the impugned rebate claims on the grounds that it has been conclusively proved by the DGCEI that the duty paid on the processed fabrics to the extent of Rs. 63,32,552/- (Rupees Sixty Three Lakh Thirty Two Thousand Five Hundred Fifty Two Only) was out of the wrong Cenvat Credit passed on by the suppliers of grey fabrics and the applicant was a part of conspiracy hatched to commit large scale fraud in filing bogus rebate claims. The adjudicating authority also observed that there were procedural lapses procedure required for self-sealing and self certification given in paragraph 6.1 of the Chapter 8 of the CBEC Manual had not been followed in cases on various aspects. The Appellate Authority vide impugned order rejected the appeal and upheld that Order in Appeal. The Appellate Authority while passing the order observed that :-

3.1 The applicant had filed the claim of rebate in cases where the duty was paid on the exported goods out of the Cenvat Credit availed on bogus input document of grey fabric suppliers. The investigations done by DGCEI conclusively proved availment of the Cenvat Credit on the basis of the bogus invoices involving fake / fictitious identities. The outcome of the investigation clearly establishes the active role of the applicant. The applicant had not produced any contrary evidence supported by any legal document of evidential value in their support. The duty paid character of the goods is not proved.

3.2 The provision of self-sealing / self certification is mandatory provision and the adjudicating authority had rightly rejected the claims.

3.3 The ground of rejection of the claim that the rebate sanctioning authority is wrongly mentioned is not correct.

3.4 The rejection on the ground that there is difference in Chapter Heading Number of the Central Excise Tariff declared in the excise invoice of the exported goods and in the corresponding shipping bills is not correct.

3.5 The original authority has correctly rejected that rebate claims on the ground of non-submission of triplicate copies of ARE-1. It was held that the it is essential as the goods exported and the duty paid nature of those goods can only be verified on the basis of the certificate of the jurisdictional central excise officer.

3.6 The signature of the master of vessel not appearing on shipping bills, mater receipt etc. is procedural lapse.

3.7 The DGCEI has issued another show cause notice seeking recovery of wrongly taken credit of Rs. 63,52,552/- which is pending adjudication. The adjudicating authority had erred in his findings in para 59 that the show cause notice dated 04.02.2010 was issued for rebate to the tune of RS. 78,86,817/- whereas the same was issued for rejection of the rebate claims to the tune of R. 63,52,552/-.

3.8 The applicant had availed the credit by way of fraudulent means. Therefore, the adjudicating authority had rightly imposed the penalty under Rule 25 of the Central Excise Rules, 2002.

4. Being aggrieved by the impugned Order in Appeal, the applicant filed the instant Revision Application on following grounds:-

4.1 The lower authorities had erred in summarily rejecting the 41 rebate claims on the grounds which were commonly applied to all the rebate claims.

4.2 There is no dispute or doubt about the manufacture and export of the goods on payment of duty.

4.3 They had submitted all the triplicate copies of ARE-1 to the rebate sanctioning authority. The duty payment has been certified by the range officers on the ARE-1

4.4 The DGCEI had also issued another show cause notice for disallowance of Cenvat Credit for the total amount of Rs. 63,52,552/-. This show cause notice, although stands confirmed by the Adjudicating authority, the appeal has been filed by the applicant before Tribunal. Hence the matter is sub judice. Hence the lower authorities had erred in reject claims merely relying on the investigation made by DGCEI.

4.5 The lower authorities should not held that "It is conclusively proved by the DGCEI" that the applicant have wrongly availed Cenvat Credit. The Show cause notice merely contains allegations and proposal and that the said show cause notice has to pass through the process of Adjudication by the competent authority.

4.6 The alleged discrepancies are procedural infractions. The rebate cannot be denied on procedural infractions when substantial compliance has been done. The applicant have relied upon various case laws in support of their argument.

4.7 The lower authorities have erred in imposing penalty under Rule 25 of the Central Excise Rules, 2002. In the instant case the rebate sanctioning authority has not issued valid show cause notice proposing to impose penalty. The penalty is imposed is illegal.

5. A Personal hearing in this case was held on 14.01.2021 through video conferencing and Shri K.V. Subrahmanyam, Consultant online for hearing on behalf of the applicant. He informed that he had made written submission today.

The applicant in their additional submissions received on 27.01.2021 have submitted additional ground which are as follows :-

5.1 He also submitted that they have requested for withdrawal of the rebate claims. The applicant has reiterated most of the grounds mentioned at length in para 4 above. In addition to that it was also informed that they had vide letter dated 01.04.2008 had withdrawn the rebate claims to the extent of RS. 63,66,891/-. Since the rebate claims had been withdrawn, the question of demand and penalty does not survive.

5.2 The lower authorities have committed error in imposing penalty under Rule 25 of the Central Excise Rules, 2002.

5.3 The penalty has been imposed without jurisdiction.

6. The Government observes that the applicant had filed 41 rebate claims involving an amount of rebate claim to the tune of Rs. 78,86,817/- for the goods exported by them.

6.1 The Government finds that the DGCEI had issued a Show Cause Notice vide F. No. INV/DGCEI/BRU/15/2008 dated 04.02.2010 seeking recovery of wrongly taken credit of Rs. 63,52,552/- on the basis of bogus invoices issued by the suppliers of grey fabrics. The applicant have filed appeal before the CESTAT against the adjudicating order confirming the said demand. It is also observed that the applicant vide their letter dated 01.04.2008 had withdrawn the rebate claims to the tune of Rs. 63,52,552/- which were declared by the DGCEI in para no. 15 of the impugned SCN as fake rebate claims liable for rejection.

6.2 The Government finds that the applicant vide their letter dated 01.04.2008 have withdrawn the rebate claims for Rs. 63,66,891/-. Thus the applicant have admitted the fact that they are ineligible to claim rebate for Rs.63,66,891/- and thereby they have concurred the rejection of the rebate claims to the tune of Rs.63,66,891/- by the adjudicating authority. The Government, therefore, infers that the applicant are not aggrieved with respect to rejection of the rebate claim by the adjudicating authority to the extent of Rs. 63,66,891/-. In view of the fact that the matter with regard to rejection / withdrawal of rebate claim to the tune of Rs. 63,66,891/- is inconsequential, the Government refrains from exercising its revisionary powers in respect of this part of the revision application.

7. Further, it is noticed that the rebate sanctioning authority had rejected the balance amount of rebate claims for Rs. 15,19,926/- i.e. (78,86,817 – 63,66,891) on various deficiencies noticed such as non-observance of the procedure required for self-sealing and self certification given in para 6.1 of Chapter 8 of CBEC Manual, wrong mention of the rebate sanctioning authority on ARE-1, mis match of Chapter sub heading of exported goods, non-submission of triplicate copy of ARE-1, signature of vessel master not appearing on the documents etc.

7.1 The Government notes that the Manual of Instructions that have been issued by the CBEC specifies the documents which are required for filing a claim for rebate. Among them is the original / duplicate copy of the ARE-1, the invoice and self-attested copy of shipping bill and bill of lading. Further paragraph 8.4 of the said Manual specifies that the rebate sanctioning authority has to satisfy himself if

respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported as evident from the original and duplicate copies of the ARE-1 form duly certified by customs. The second is that the goods are of a duty paid character as certified on the triplicate copy of the ARE-1 form received from the jurisdictional Superintendent of Central Excise. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

7.2 The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods.

7.3 Hence, the deficiencies pointed out by the adjudicating authority while rejecting the rebate claims for the amount of Rs. 15,19,926/- are merely procedural infractions and the same should not result in the deprival of the statutory right to claim a rebate particularly when the substantial compliance has been done by the applicant with respect to conditions and procedure laid down under relevant notifications / instructions issued under Rule 18 of the Central Excise Rules, 2002. However, the rebate for Rs. 15,19,926/- would be subject to the satisfaction of the authority on the production of sufficient documentary material that would establish the identity of the goods exported and the duty paid character of the goods.

7.4 In several decisions of the Union Government in the revisional jurisdiction as well as in the decisions of the CESTAT, the production of the relevant forms has been held to be a procedural requirement and hence directory as a result of which, the mere non- production of such a forms would not result in an invalidation of a claim for rebate where the exporter is able to satisfy through the production of cogent documentary evidence that the relevant requirements for the grant of rebate have been fulfilled. In the present case, no doubt has been expressed whatsoever that the goods were not exported goods.

7.5 Thus, the Government further observes that a distinction between those regulatory provisions which are of a substantive character and those which are

merely procedural or technical has been made in a judgment of the Supreme Court in "Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner-1991 (55) E.L.T. 437 (S.C.)". The Supreme Court held that the mere fact that a provision is contained in a statutory instruction "does not matter one way or the other". The Supreme Court held that non-compliance of a condition which is substantive and fundamental to the policy underlying the grant of an exemption would result in an invalidation of the claim. On the other hand, other requirements may merely belong to the area of procedure and it would be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes which they were intended to serve. The Supreme Court held as follows:

"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

7.6 In this regard Government observes that while deciding the identical issue, Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as TIOL 386 HC MUM CX. = 2013 (293) E.L.T. 641 (Bom.), at para 16 and 17 of its Order observed as under :-

16. However, it is evident from the record that the second claim dated 20 March, 2009 in the amount of Rs. 2.45 lacs which forms the subject matter of the first writ petition and the three claims dated 20 March, 2009 in the total amount of Rs. 42.97 lacs which form the subject matter of the second writ petition were rejected only on the ground that the Petitioner had not produced the original and the duplicate copy of the ARE-1 form. For the reasons that we have indicated earlier, we hold that the mere non-production of the ARE-1 form would not ipso facto result in the invalidation of the rebate claim. In such a case, it is open to the exporter to demonstrate by the production of cogent evidence to the satisfaction of the rebate sanctioning authority that the requirements of Rule 18 of the Central Excise Rules, 2002 read together with the notification dated 6 September, 2004 have been fulfilled. As we have noted, the primary requirements which have to be established by the exporter are that the

claim for rebate relates to goods which were exported and that the goods which were exported were of a duty paid character. We may also note at this stage that the attention of the Court has been drawn to an order dated 23 December, 2010 passed by the revisional authority in the case of the Petitioner itself by which the non-production of the ARE-1 form was not regarded as invalidating the rebate claim and the proceedings were remitted back to the adjudicating authority to decide the case afresh after allowing to the Petitioner an opportunity to produce documents to prove the export of duty paid goods in accordance with the provisions of Rule 18 read with notification dated 6 September, 2004 [Order No. 1754/2010-CX, dated 20 December, 2010 of D.P. Singh, Joint Secretary, Government of India under Section 35EE of the Central Excise Act, 1944]. Counsel appearing on behalf of the Petitioner has also placed on the record other orders passed by the revisional authority of the Government of India taking a similar view [Garg Tex-O-Fab Pvt. Ltd. - 2011 (271) E.L.T. 449] and Hebenkraft - 2001 (136) E.L.T. 979. The CESTAT has also taken the same view in its decisions in Shreeji Colour Chem Industries v. Commissioner of Central Excise - 2009 (233) E.L.T. 367, Model Buckets & Attachments (P) Ltd. v. Commissioner of Central Excise - 2007 (217) E.L.T. 264 and Commissioner of Central Excise v. TISCO - 2003 (156) E.L.T. 777.

17. *We may only note that in the present case the Petitioner has inter alia relied upon the bills of lading, banker's certificate in regard to the inward remittance of export proceeds and the certification by the customs authorities on the triplicate copy of the ARE-1 form. We direct that the rebate sanctioning authority shall reconsider the claim for rebate on the basis of the documents which have been submitted by the Petitioner. We clarify that we have not dealt with the authenticity or the sufficiency of the documents on the basis of which the claim for rebate has been filed and the adjudicating authority shall reconsider the claim on the basis of those documents after satisfying itself in regard to the authenticity of those documents. However, the rebate sanctioning authority shall not upon remand reject the claim on the ground of the non-production of the original and the duplicate copies of the ARE-1 forms, if it is otherwise*

satisfied that the conditions for the grant of rebate have been fulfilled. For the aforesaid reasons, we allow the Petitions by quashing and setting aside the impugned order of the revisional authority dated 22 May, 2012 and remand the proceedings back to the adjudicating authority for a fresh consideration. The rejection of the rebate claim dated 8 April, 2009 in the first writ petition is, however, for the reasons indicated earlier confirmed. Rule is made absolute in the aforesaid terms.

7.8 Government also observes that Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496(Guj)] also while deciding the identical issue, relying on aforestated order of Hon'ble High Court of Bombay, vide its order dated 12.06.2013 observed as under:

7. "Considering the aforesaid facts and circumstances, more particularly, the finding given by the Commissioner (Appeals), it is not in dispute that all other conditions and limitations mentioned in Clause (2) of the notifications are satisfied and the rebate claim have been rejected solely on the ground of non-submission of the original and duplicate ARE1s, the impugned order passed by the Revisional Authority rejecting the rebate claim of the respective petitioners are hereby quashed and set aside and it is held that the respective petitioners shall be entitled to the rebate of duty claimed for the excisable goods which are in fact exported on payment of excise duty from their respective factories. Rule is made absolute accordingly in both the petitions".

7.9 Government finds that rational of aforesaid Hon'ble High Court orders are squarely applicable to the instant case in so far as the matte of sanction of rebate claim of Rs. 15,19,926/-.

7.10 In view of discussions and findings elaborated above, Government holds that impugned rebate claims for Rs. 15,19,926/- are admissible in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE (N.T.) dated 06.09.04 subject to verification by original adjudicating authority of the relevant documents pertaining to impugned exports and verification of duty payment particulars certified by the jurisdictional Central Excise Range officer.

7.11 The Government holds that there being no demand of recovery of erroneous rebate having been granted to the applicant, the imposition of penalty under Rule 25 of the Central Excise Rules, 2002 is not attracted in the instant case. Therefore, imposition of penalty does not survive.

8. In view of the above discussion and findings, the Government sets aside the impugned Order-in-Appeal No. US/43/RGD/2013 dated 31.01.2013 passed by the Commissioner (Appeals-II), Central Excise, Mumbai and;

a) takes on record the withdrawal of the rebate claims to the tune of Rs. 63,66,891/- (Rupees Sixty Three Lakh Fifty Two Thousand Five Hundred Fifty Two only);

b) directs the Original authority for verification of balance rebate claims for Rs. 15,19,926/- filed by the applicant with directions that he shall reconsider the claim for rebate on the basis of the above directions. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

9. The Revision applications are allowed on above terms.

Shrawan 15/02/21

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

ORDER No. 80/2021-CX (WZ)/ASRA/Mumbai DATED 15.02.2021.

To,
M/s Pepco Fabrics Pvt. Ltd.
521, Hazoori Chambers,
Zampa Bazar, Surat.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
2. The Commissioner of GST & CX, Appeals Raigad, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai – 400 614.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai