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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.198/84(I to XI)/15-RA / 2639

Date of Issue: 05th 09.2022

ORDER NO. ⁸³²⁻842/2022-CX (WZ) /ASRA/MUMBAI DATED 30.08.2022 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 : The Commissioner of Central Excise, Thane-II

Respondent: M/s Dhana Singh Textiles Pvt Ltd
Plot No G-3/3, MIDC, Tarapur,
Boisar, Dist Thane

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Orders-in-Appeal Nos. CPA/113 to
123/TH-II/2004 dated 14.09.2004 passed by the Commissioner
of Central Excise, (Appeals), Mumbai-I

ORDER

The Revision Applications have been filed by the Commissioner of Central Excise, Thane-II (hereinafter referred to as the 'applicant') against the Orders-in-Appeal Nos. CPA/113 to 123/TH-II/2004 dated 14.09.2004 passed by the Commissioner of Central Excise, (Appeals), Mumbai-I

2. The facts of the case in brief are that the respondent i.e M/s. Dhana Singh Textiles Pvt. Ltd., Plot No. G-3/3, MIDC, Tarapur, Boisar, Dist. Thane, were engaged in the processing of Man Made Fabrics falling under Chapter Sub-Heading 5406.22 of the Schedule to the Central Excise Tariff Act, 1985.. The respondents had processed certain fabrics belonging to M/s G.M. International, a merchant exporter and cleared the same for export on payment of duty and claimed rebate of Central Excise duty paid thereon. The sanctioning authority, vide 11 separate Orders-in-Original had sanctioned the rebate.

3. The Commissioner of Central Excise, Thane-II Commissionerate in exercise of the powers conferred by Section 35E(2) of the Central Excise Act, 1944, on calling for the case records pertaining to the said 11 Orders-in-Original, and after scrutinizing the same, observed that the said Orders-in-Original were not legal, proper and correct and filed appeals before the Commissioner (Appeals), Central Excise, Mumbai-I.

3.1 The appeals were filed on the grounds that M/s. G.M. International, a merchant exporter, exported all the goods but the ARE-1 pertaining to the claim indicated that the respondent was the manufacturer. However, the shipping bill indicated that the manufacturer of the goods was M/s. Hartex Exports Pvt. Ltd., who has also claimed the benefit of EPCG license. It was evident from the shipping bills that the goods exported were manufactured by M/s. Hartex Exports Pvt. Ltd. and not by the respondent, who had claimed the rebate claim.

3.2 The Appellate Authority observed that there was no doubt about the duty payment as the goods were cleared under the supervision of the Central Excise Officer under ARE-1's authenticated by the officer. The Appellate Authority observed that the self attested copies of the Shipping Bill, Bill of Lading and export invoice copies submitted with the rebate claim were not legible and thus proof that the goods were exported was not substantiated. The Appellate Authority sent back the claims to the sanctioning authority for the same and for carrying out the necessary scrutiny which appeared to have not been done while passing the order.

4. Aggrieved by the impugned Orders-in-Appeal, the department filed eleven appeals before the CESTAT, Mumbai on the grounds as to whether after 11.05.2001 the Appellate Authority was empowered to dispose an Appeal by way of remand under Section 35A of the Central Excise Act, 1944 when the provisions of the said section were amended divesting powers of the learned Commissioner (Appeals) to remand the matter.

4.1 The Tribunal, in order dated 14.07.2014, after discussing the merits, held that as the underlying issue was of rebate of excise duty which was beyond the jurisdiction of the Tribunal, even the remand order in the context of rebate was beyond the jurisdiction of the Tribunal and dismissed the appeal as being non maintainable.

However, the Tribunal, in the order dated 14.07.2014, observed that

"4. At the outset it is submitted by the Respondent-Assessee that the department's appeal before the learned Commissioner (Appeals) was only on the ground that rebate claim should not have been sanctioned, as the rebate claim was sanctioned wrongly to M/s Respondent-Dhana Singh Textiles Private Limited, whereas, the shipping bill indicated the manufacturer as Hartex Exports Pvt Ltd. After being satisfied that it is M/s Dhana Singh Textiles Private Limited, which carried out the processing on the grey fabrics and paid excise duty on the goods exported, as duly certified by the Range Superintendent, the learned Commissioner (Appeals) ought to have rejected the Revenue's appeal only on this finding,

rather than going into a new tangent of adequacy of the scrutiny carried out by the lower authorities, which was not a ground of appeal before him.

4.1 It is submitted that the direction of the learned Commissioner (Appeals) to the lower authorities to verify the documents, is within the powers of the learned Commissioner(Appeals) and the said direction does not amount to a remand. The instructions to the lower authorities is only to verify the documents and the main issue in the appeal-whether mentioning the name of Hartex Exports Pvt Ltd on the shipping bill & ARE 1 will not disentitle the Respondent-Assessee to claim rebate, has been decided in favour of the Assessee-Respondent."

5. The applicant filed the instant Revision Application alongwith an application for condonation of delay, on the following grounds

5.1 That whether after 11.05.2001, the Commissioner (Appeals) was empowered to dispose of an appeal by way of remanding the matter to the original adjudicating authority under Section 35A(3) of the Central Excise Act, 1944, when the provisions of the said Section 35A(3) were amended, divesting the powers of the Commissioner (Appeals) to remand the matter and that Para (ii), to notes of clause 122 of the Finance Bill 2001 has withdrawn the powers of Commissioner (Appeals) to remand matter back to the adjudicating authority for fresh consideration.

5.2. That on scrutiny of the case records pertaining to the Orders-in-Original it is noticed that although the goods were exported by M/s. G. M. International, a merchant exporter, the ARE-1's pertaining to the claim indicated that the manufacturer was M/s. Dhana Singh Textiles Pvt. Ltd. Tarapur, Boisar but the Shipping Bills indicated the manufacturer of the goods as M/s Hartex Exports Pvt. Ltd. who had also claimed the benefit of EPCG Licence and thus it was evident from the Shipping Bills that the goods exported are manufactured by M/s. Hartex Exports Pvt. Ltd. and not by M/s. Dhana Singh Textiles Pvt. Ltd. who has claimed the said rebate claim which rendered the rebate claim inadmissible.

6. The Respondent filed their written submissions to the Revision Application filed by the department stating as under

6.1 That the Revision Application filed by the department appeared to be without authorisation issued by the Principal Commissioner or Commissioner of Central Excise, as mandated under Section 35EE (1A) of the Central Excise Act,

6.2 That the Revision Application filed in the year 2015 against OIA dated 14.09.2004 i.e. almost after lapse of 11 years is beyond the time limit of three months from communication of the order, prescribed as per Section 35EE(2) of the Central Excise Act, 1944

6.3 That there was no direction from CESTAT, Mumbai that time taken for disposal of case before Hon'ble CESTAT could be excluded to compute time limit for filing Revision Application and as per Rule 6A of Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 and the department filed eleven appeals before the Hon'ble CESTAT and required to file Eleven Revision Applications whereas they have filed only one Revision Application

6.4 That the Hon'ble CESTAT held that the matter reverted back for verification of document does not amount to remand and the department had not filed any appeal against the said Order and therefore filing the instant Revision Application by repeating the allegations that the Commissioner (Appeals) was not empowered to remand the case was not legally tenable.

6.5 That the department has not disputed the sanctioning of the rebate claims on merit, rebate claim was correctly sanctioned as there was no dispute about exportation of goods / duty payments on goods exported / non-payment of rebate claim amount to other parties i.e, merchant exporter/manufacturer of grey fabrics under EPCG Licence.

6.6 That there was no dispute that respondents were the ultimate manufacturer of processed fabrics and had finally exported the fabrics through merchant exporter from their premises and the relevant export documents, viz., ARE-1/excise invoice/packing list prepared for final export clearances and were duly signed by Range Excise officers and as per Rule 18 and Notification No. 40/2001-CE (NT) dated 26.06.2001 read with Chapter 8 of Supplementary Manual, either manufacturer from whose premises the

goods are ultimately exported or the merchant exporter can file the rebate claim and thus the rebate claims have been correctly filed with disclaimer certificate of merchant exporter.

6.7 That the shipping bill correctly bore the name of M/s. Hartex Exports Pvt. Ltd., by virtue of being the holder of EPGC license and in no way, the said remark vitiated the respondents right to claim the rebate.

6.8 That the Hon'ble CESTAT observed that on merit, the rebate claim was correctly sanctioned as the respondents were the manufacturers of the processed fabrics and cleared the goods on payment of duty from their factory premises and name of M/s. Hartex Export Pvt. Ltd., appearing as manufacturer in shipping bill for the purpose of EPCG claim did not vitiate the sanction of rebate claim to the respondents as they were the actual manufacturer of the processed fabrics and paid the duty as per particulars duly certified by the Range Superintendent of Central Excise.

6.9 That the department has not raised any SCN under Section 11A for proposed recovery of rebate claims erroneously sanctioned. The department has merely filed appeals before the Commissioner (Appeals). It is already held in following pronouncements that if the SCN is not issued within the prescribed time limit, the recovery would become time barred notwithstanding the review order passed under Section 35E of the Central Excise Act, 1944

- i) 2004 (178) E.L.T. 434 (Tri. Bang.)-Panyam Cements & Mineral Ind. Ltd. V/s. CCE, Hyderabad
- ii) 2002 (149) E.L.T. 164 (Tri. Kolkata) - La Opala Rg Ltd. V/s. CCE, JSR
- iii) 2001 (137) E.L.T. 330 (Tri. Kolkata) - Gillooram Gouri Shankar V/s. CEE, Jamshedpur
- iv) 2001 (135) E.L.T. 482 (Tri. Kolkata) - Wooscraft Products Ltd.V/s. CCE, Shillong
- v) 2001 (135) E.L.T. 386 (Tri. Kolkata) - Doothat tea Estate Kanoi Plantation Pvt. Ltd. V/s. CCE, Shillong
- vi) 2000 (126) E.L.T. 965 (Tribunal) - Ballarpur Ind. Ltd. V/s. Commr. of Customs, Chennai
- vii) 2000 (124) E.L.T. 675 (Tribunal) - Collector of C. Excise, Bombay V/s. Inter Trade Electronics P. Ltd.
- viii) 2000 (123) E.L.T. 918 (Tribunal) - Richardson & Cruddas (1972) V/s. CCE, Mumbai -1
- ix) 2000 (121) E.L.T. 272 (Tri.L.B.) - Best & Crompton Engg. Ltd.V/s. CCE, Chennai
- x) 1999 (114) E.L.T. 684 (Tribunal) - Fag Precision Bearings Ltd. V/s. CCE & Customs
- xi) 1999 (110) E.L.T. 804 (Tribunal) - CCE, Culcatta-I V/s. Bells Control Ltd
- xii) 2005 (191) E.L.T. 635 (Tri. Chennai) - Roofit Ind. Ltd. V/s. CCE, Chennai

- xiii) 2003 (151) E.L.T. 23 (Bom.) - Bajaj Auto Limited V/S Union of India
- xiv) 2006 (202) E.L.T. 355 (Tri-Bang.)-Voltas Ltd V/S Commr of Cus & C.Ex, Hyderabad
- xv) 2007 (213) E.L.T. 41 (Tri.-Chennai) - Pricol Limited V/S Commr. of C.Excise Coimbatore
- xvi) 2007 (215) E.L.T. 513 (Tri. - Ahmd.) - Overseas Engineers V/S Commr. of C.Ex, Rajkot
- xvii) 2008 (222) E.L.T. 114 (Tri. Mumbai) - Morarjee Goculdas Spg & Wvg V/S Commissioner of C.Ex, Mumbai -I
- xviii) 2009 (234) E.L.T. 297 (Tri.- Ahmd.) - James Robinson India Pvt Ltd V/S Commr of C.Ex ,Vapi
- xix) 2009 (240) E.L.T. 426 (Tri. - Mumbai) - Nestle India Ltd V/S Commr. of C.Excise, Goa
- xx) 2009 (246) E.L.T. 358 (Tri-Bang.) - Axwel India Pvt Ltd V/S Commr of C.Ex, Bangalore
- xxi) 2010 (262) E.L.T. 791 (Tri. - Mumbai) - Ring Plus Aqua Ltd (SGD) V/S Commissioner of C.Ex & Customs, Nashik
- xxii) 2011 (264) E.L.T. 39 (Mad.) - Commissioner of C. EX., Chennai-I V/S Manali Petrochemicals Ltd

7. Personal hearing was scheduled in this case on 09.02.2022. Shri Kamal Agarwal, Assistant Commissioner, appeared for the hearing online on behalf of the applicant and reiterated his submissions. He requested to condone the delay and pass orders considering the submissions mentioned in the Revision Application.

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

9. Government notes that one of the contentions of the applicant-department in the Revision Application is whether after 11.05.2001, the Commissioner (Appeals) was empowered to dispose of the appeal by way of remand to the original adjudicating authority in view of the amendment to Section 35A of the Central Excise Act, 1944, with effect from 11.05.2001, divesting the powers of Commissioner (Appeals) to remand the matter and the decision of the Appellate Authority to remand the proceedings to the original authority is not legal and proper.

i) Section 35(A) of the Central Excise Act, 1944/ Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as

"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary."

ii) The Section pursuant to amendment with effect from 11.05.2001 reads as

"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".

9.1 Government further notes that the department in the instant Revision Application has contended that after amendment in Section 35A(3) of Central Excise Act, 1944 w.e.f. 11-5-2001 under Finance Act, 2001 the remand power of Commissioner (Appeals) stands withdrawn. In this regard, Government notes that issue is now well settled that remand powers of Commissioner (Appeals) were withdrawn w.e.f. 11-5-2001 as per above said amendment in Section 35A(3) *ibid.* So, this pleading of the department is acceptable. Commissioner (Appeals) should have decided the case finally at his level.

10. The other ground on which the applicant has filed the revision application is that the shipping bills mention the name of M/s Hartex Exports Pvt Ltd, who according to the respondent is the supplier of grey fabrics which were processed by the respondent and cleared for export by the merchant exporter. The applicant has also averred that the supplier of the grey fabrics, M/s Hartex Exports Pvt Ltd, by virtue of the holder of EPCG licence, was shown as the manufacturer in the shipping bill.

10.1 The applicant have submitted that the Shipping Bills indicate the manufacturer of the goods as M/s Hartex Exports Pvt. Ltd. who has also

claimed the benefit of EPCG Licence and the rebate claim filed by the respondent is inadmissible as it is evident from the Shipping Bills that the goods exported are manufactured by M/s. Hartex Exports Pvt. Ltd. and not by the respondent who has claimed the rebate.

10.2 Government also notes that the Appellate Authority in the impugned Orders-in-Appeal has forcefully arrived at the conclusion that the aspect of duty payment and the goods were cleared for export under the supervision of the jurisdictional officers and that the respondent had followed the requirements of Rule 18 of the Central Excise Rules and Notification No 40/2001(NT) dated 26.06.2001.

10.3 Government also observes that the Appellate Authority has stated that the respondent had produced copies of the Customs documents which were not legible and had thus remanded the matter for verification of the documents after directing the respondent to produce legible documents.

10.4 CESTAT, Mumbai, before whom the respondent had initially erroneously filed an appeal, while rejecting the appeal as being non-maintainable, had observed that actual processing of fabric was done by M/s. Dhanasingh Textiles Pvt. Ltd, and that they paid duty on goods exported and duty payment was duly certified by Range Superintendent of Central Excise and therefore Commissioner (Appeals) ought to have rejected the Department's appeal rather than sending back the matter to lower authority for verification of documents. The Tribunal also observed that sending back the matter for verification of documents does not amount to remand.

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

10.6 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.

10.7 Government observes that in the instant case there is no doubt about the goods being exported and about the duty being paid by the respondent, as has been held by the Appellate Authority and also observed by the Tribunal.

11. As regards the contention of the applicant that as the name of the EPCG licence holder, who is also the supplier of grey fabrics, on the shipping bill and renders the rebate claim inadmissible, Government observes that the Handbook of Procedures (Vol 1) and various policy circulars issued by DGFT expound that the export through third parties are allowed provided that the name of the EPCG Licence holder is also indicated in the shipping bill.

11.1 Para 5.7 of Handbook of Procedures (Vol. 1) upto-31.03.2003 issued by DGFT prescribe the conditions for fulfilment of export obligation in the case of exports by EPCG authorisation holder. Para 5.7.1 of the said Handbook of Procedures reads as under

“The exports shall be direct exports in the name of the EPCG licence holder. However, *the export through third party(s) is also allowed provided the name of the*

EPCG Licence holder is also indicated on the shipping bill. If a merchant exporter is the importer, the name of the supporting manufacturer shall also be indicated on the shipping bills. At the time of export, the EPCG licence No. and date shall be endorsed on the shipping bills which are proposed to be presented towards discharge of export obligation."

11.2 Government observes that Policy Circular No 07/2002-07 dated 11.07.2002 has also been issued by DGFT for condonation of procedural lapse of not mentioning EPCG Licence No and date on the shipping bills relating to exports for fulfilment of the export obligation and the same is reproduced as under

"Attention is invited to paragraph 5.7.1 of the Hand Book of Procedures (Volume 1), 2002-07, according to which at the time of export the EPCG licence No and date shall be endorsed on the shipping bills which are proposed to be presented towards discharge of Export Obligation.

Representations are being received from various exporters for condonation of procedural lapse of not mentioning EPCG licence No. and date on the shipping bills relating to the exports for fulfilment of EO under EPCG Scheme. In this regard a decision has been taken in relaxation under para 2.5 of the Exim Policy that such procedural lapse may be condoned in relaxation of the existing policy provisions subject to submission/verification of the following documents:-

IN CASE OF DIRECT EXPORTS

(I) An Affidavit/undertaking, duly certified by an independent CA, declaring that the exports accounted for fulfilment of EO against a particular EPCG licence have not been/shall not be taken into account for fulfilment of EO against any other EPCG licence.

(II) List of EPCG licences obtained by the licence holder.

(III) The product exported under the shipping bill was manufactured by using the imported machinery under EPCG

IN CASE OF THIRD PARTY EXPORTS

(I) *No objection certificate from the 3rd party(s) for accepting the subject exports for fulfillment of EO against the EPCG licence obtained by the licence holder.*

(II) *An Affidavit/undertaking in a stamp paper, duly certified by an independent CA, declaring that neither the licence holder nor the 3rd party(s) has counted/shall count in future, the exports shown against a particular EPCG licence towards fulfillment of EO against any other EPCG licence.*

(III) *List of EPCG licences obtained by the licence holder as well as by the 3rd party(s).*

(IV) *A declaration from the 3rd party(s) in a stamp paper, duly certified by an independent CA, declaring that the products exported for fulfillment of EO by them on behalf of the licence holder as per details given in the statement of exports, were manufactured by the licence holder.*

(V) *This would be subject the condition that the relevant shipping bills contain both the names of the 3rd party(s) and the licence holder."*

11.3 Further Policy Circular No 12/2002-2007 dated 01.11.2002 issued by DGFT to rectify the various difficulties faced during exports by EPCG licence holders. Para (a) of the said circular is reproduced as under

(a) The issue of difficulties in carrying out third party exports under the various export promotion schemes under the EDI shipping bill has been brought to the notice of this office. Primarily the difficulties stem from the fact that there is no option in the EDI shipping bill to add the name of the supporting manufacturer. On account of the problems emanating from the current format of the EDI shipping bill and until this format is appropriately modified, it has been decided to accept third party exports provided the firm furnishes corroborative evidence of having made exports through a third party. For example evidence could be in the form of ARE-1 Certificate issued by the Central Excise with due authentication by the Customs verifying the exports along with the shipping bill number and date. Any other evidence of third party exports are also acceptable provided there is due authentication by the Customs authorities."

11.4 From the above, Government observes the applicant's plea in the Revision application regarding the inadmissibility of the rebate claim on the

grounds that the manufacturer of the goods has been indicated as M/s. Hartex Exports Pvt. Ltd., who has also claimed the benefit of EPCG license is to be viewed from the prism of the procedures and conditions set out in the Handbook of Procedures and the policy circulars issued by DGFT, to establish the nexus between the goods cleared for export by the respondent and the export of the said goods. Government notes that it is essential to ascertain whether the shipping bills on which the name of the EPCG licence holder has been mentioned also mentions the name of the merchant exporter or the respondent as the supporting manufacturer and also whether the EPCG licence also shows the respondent to be the supporting exporter.

11.5 Government notes that the Appellate Authority has not made any observations as to whether the shipping bills bearing the name of the EPCG licence holder also bears the name of the respondent or the merchant exporter as the supporting manufacturer and the bearing it would have on the admissibility of the rebate claim in the light of the procedures of Rule 18 of the Central Excise Rules 2002.

12. In view of the above, Government holds that ends of justice will be met if the case is remanded back to the Original sanctioning authority for the limited purpose of verification on the lines of above discussed issues with directions that he shall reconsider the claim for rebate on the basis of the collateral documents submitted by the respondent after satisfying itself with regard to the authenticity of those documents.

13. Accordingly, Government modifies the Orders-in-Appeal Nos. CPA/113 to 123/TH-II/2004 dated 14.09.2004 passed by the Commissioner of Central Excise, (Appeals), Mumbai-I and directs the Original Authority to conduct verification of impugned rebate claims filed by the respondent, in the light of above discussion, after giving reasonable opportunity of hearing to the respondent. The rebate sanctioning authority shall pass the order within eight weeks from the receipt of this order.

13. The Revision applications are decided on the above terms.

Shrawan
30/8/22

(SHRAWAN KUMAR)

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

ORDER NO. ⁸³²⁻842/2022-CX (WZ) /ASRA/MUMBAI DATED 30.08.2022

To,

The Commissioner of CGST, Palghar Commissionerate
Sector E, C-24, Utpad Shulk Bhavan,
Bandra Kurla Complex,
Bandra (East)
Mumbai 400 051

Copy to :

- 1) M/s Dhana Singh Textiles Pvt Ltd, Plot No G-3/3, MIDC, Tarapur, Boisar, Dist Thane
- 2) The Commissioner of CGST, Mumbai Appeals III, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbag, Parel, Mumbai 400 012
- 3) Sr PS to AS (RA), Mumbai
- 4) Notice Board
- 5) Spare copy.