

REGISTERED SPEED-POST



**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. 195/13/13-RA / 3003

Date of Issue: 15.09-2022

ORDER NO. 859 /2022-CX (WZ) /ASRA/MUMBAI DATED 13.9.2022 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 CENTRAL EXCISE ACT,1944.

Applicant : Commissioner, Central Excise, Raigad.

Respondent: M/s. Oracle Exports Home Textiles Pvt. Ltd., Mumbai

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/731/RGD/2012 dated 29.10.2012 passed by the Commissioner Central Excise, (Appeals-II), Mumbai.

ORDER

This Revision Application has been filed by the Deputy Commissioner (Rebate), Central Excise, Raigad, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, New Panvel-410206 (hereinafter referred to as "the department-applicant") against Order-in-Appeal No. US /731/RGD/2012 dated 29-10-2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai in respect of M/s Oracle Exports Home Textiles Pvt. Ltd. (hereinafter referred to as "the respondent") having office at 216, Creative Industrial Centre, 12, N. M. Joshi Marg, Mumbai-400011.

2. The issue in brief is that the respondent had filed eighteen rebate claims for rebate of duty amounting to Rs.11,44,570/- (Rupees Eleven Lakh Forty-four Thousand Five Hundred and seventy only) which were rejected by the Deputy Commissioner, Central Excise (Rebate), Raigad vide Order-in-original No.2159/11-12/DC (Rebate)/Raigad dated 15.02.2012 on the following grounds:

2.1. The exported goods were fully exempt under Notification No. 30/2004-CE dated 9.07.2004 and in view of Sub section (1) of Section 5A of the Act read with CBEC Circular No. 937/27/2010-CX dated 26-10-2011, the manufacturer could not have paid duty and did not have the option to pay the duty;

2.2. Chapter sub heading number and description of the C.Ex tariff declared in the excise invoice and the corresponding shipping bills was not tallying;

2.3. The Bank Realisation Certificate not submitted;

2.4. Customs Endorsed Export Invoices were not submitted;

2.5. the Duty Paying Certificate were not submitted;

2.6. the Bill of Lading in respect of the five claims were not submitted;

2.7. the mate receipt of the export consignment in respect of one claim was not submitted.

3. Being aggrieved by the said Order in Original, the applicant filed appeal against the same. The Commissioner (Appeals) vide impugned Order-in-Appeal No US /731/RGD/2012 dated 29-10-2012 set aside the Order in Original and allowed the appeal on the following grounds:

3.1. The objections at 2.1, 2.2, 2.3, 2.4 and 2.7 above are not justifiable for rejection of rebate or are technical in nature;

3.2. with reference to objection at 2.5 and 2.6, Commissioner Appeals relied on the additional documents submitted by the respondent at the time of the appeal/hearing.

4. Being aggrieved with the above Order-in-Appeal, the department-applicant filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds:

- a) The evidence supported by the Respondent before the Commissioner Appeal in respect of the Duty Paying Certificate and Bill of Lading were not produced before the original adjudicating authority and hence the department-applicant had no opportunity to verify the correctness and genuineness of the evidences.
- b) The reliance of Commissioner Appeals on the additional evidence is not correct. The Respondent had not submitted Duty Payment Certificate, Bill of Lading called for by department during the relevant time of the original adjudication.
- c) As per Rule 5 of Central Excise (Appeals) Rules, 2001, fresh evidence at appellate stage is not acceptable. The Respondent was having opportunity to place these additional evidences on records of the original adjudicating authority. The Respondent had not availed this opportunity and hence the correctness of the additional evidences could not be ascertained.

In view of the above, the applicant prayed that the Order in Appeal No.US /731/RGD/2012 dated 29-10-2012 may be set aside and to restore the Order in Original No No.2159/11-12/DC (Rebate)/Raigad dated 15.02.2012. The applicant prayed to remand back the matter to Commissioner Appeals or to the Original Adjudicating Authority with the directions to hear the matter afresh.

4. A personal hearing in the case was held on 19.01.2018, 9.10.2019, 5.11.2019, 9.2.2021 or 23.02.2021, 18.03.2021 or 25.02.2021. No one appeared for the hearing on behalf of the applicant or the respondents. The case is taken up for hearing on the basis of the available records.

5. 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.

6. Government observes that the department has filed the Revision Application for the two main reasons i.e. a) new evidences submitted by the Respondent to the appellate authority, in respect of duty payment particulars and the copy of Bill of lading were not submitted at the time of adjudicating proceedings and hence they were not able to verify the correctness of the documents and b) As per Rule 5 of the Central Excise Appeals Rules, 2001, fresh evidence at appellate stage is not acceptable.

6.1 Rule 5 of the Central Excise Appeals Rules, 2001 is reproduced below

Rule 5. Production of additional evidence before Commissioner (Appeals). -

(1) The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority except in the following circumstances, namely :-

- (a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or*
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by adjudicating authority; or*
- (c) where the appellant was prevented by sufficient cause from producing, before the adjudicating authority any evidence which is relevant to any ground*

of appeal; or

- (d) **where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.**

6.2 On going through the impugned Order in Original, Government observes that the rebate claims were filed by the respondent during the period from 01.07.2005 to 24.03.2006, the deficiency memo cum Show cause notice was issued on 2.02.2012 and vide the same letter, Personal hearing dates were given on 10.02.2012, 13.02.2012 and 15.02.2012 and Order in Original has been issued on 15.02.2012. These dates clearly show that the Respondent have not got the sufficient opportunity to produce the required documents. Hence in this case, Government does not find any violation of Rule 5 of the Central Excise Appeals Rules, 2001.

6.3 In respect to the department's other ground of appeal that new evidences submitted by the Respondent to the appellate authority, in respect of duty payment particulars and the copy of Bill of lading were not submitted at the time of adjudicating proceedings, Commissioner (Appeals) in the impugned orders has observed that:

"The adjudicating authority further observed that duty payment certificate was not submitted by the appellant. The letter/ Duty Payment Certificates from the Superintendent Central Excise, Range-1, Bhilad states that the appellants had taken Cervat Credit on Cotton Yarn and Packing materials and also gives the debit entries of the duty payments from PLA and RG23A/C. In view of this, the alleged non-submission of duty payment certificate cannot be the ground for the rejection of the claim.

The Forwarder's Certificate of Receipt in place of Bills of lading in respect of the five claims were submitted by the appellant and corresponding shipping bills and mate receipts confirm the export of the goods, hence it cannot be the ground for the rejection of the claim. The said certificate is a document of title issued in lieu of Bill of lading. Further, non submission of Mate receipts in respect of one claim cannot be a ground for rejection of the rebate claim. A Mate receipt is a document signed by an officer of a vessel evidencing receipt of a shipment onboard the vessel. It is not a document of title and is issued as an interim measure until a proper bill of lading can be issued. Further Paragraph 8.3 of Chapter 8 of CBEC Manual of

Supplementary Instructions and the Trade Notice No. 19/Rebate/ Raigad/ 2004 dated 01.06.2004 issued by the Commissioner of Central Excise Raigad nowhere state that Mate receipt is also required to be submitted along with claim of rebate."

Government finds that the Appellate Authority has examined the issue on the basis of facts and records, and has correctly held that the Respondents are eligible for the rebate claim. Government does not find any reason to interfere with the impugned Order-in-Appeal.

7. In view of above discussion, Government upholds the Order-in-Appeal No.US/73/RGD/2012 dated 29-10-2012 and rejects the department-applicant's application.

8. Revision application is disposed off in the above terms.


13/09/22

(SHRAWAN KUMAR)

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

ORDER No 859/2022-CX (WZ) /ASRA/Mumbai DATED 13.9.2022

To,
The Commissioner of CGST,
Belapur Commissionerate,
1st Floor, C.G.O Complex, Sector-10,
C.B.D. Belapur, Navi Mumbai-400614

Copy to: .

1. M/s Oracle Exports Home Textiles Pvt. Ltd. 216, Creative Industrial Centre, 12, N. M. Joshi Marg, Mumbai-400011.
2. M/s Oracle Exports Home Textiles Pvt. Ltd. Plot No. 1021-27, 122-28, GIDC, Sarigam-396155, Gujarat
3. The Commissioner, Central Excise, (Appeals) Raigad.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board
6. Spare Copy.