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GOVERNMENT OF INDIA
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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.195/157/15-RA/7162 Date of Issue: 09.12.21

ORDER NO. 866 /2021-CX (WZ)/ASRA/MUMBAI DATED 08.12.2021 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 : M/s. Angoora International.

Respondent: Commissioner of CGST, Belapur.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CD/317/RGD/2015 dated 26.05.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

ORDER

This Revision Application is filed by the M/s. Angoora International having their office at 53, 147/149, Gaiwadi Sadan, Dr. Viegas Street, Kalbadevi, Mumbai-400 002 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CD/317/RGD/2015 dated 26.05.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II.

2. Brief facts of the case are that the Applicant, had filed a rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 40/2001-CE(NT) dated 26.06.2001. The details of this claim are as given below:

| RC No & date | ARE-1 No. & date | Invoice No. & date | Amount claimed (Rs.) |
|---|---|---|---|
| 10146/25.04.05 | 09/14.07.04 | 38/14.07.04 | 1,11,862/- |

2.1 The rebate sanctioning authority issued Deficiency Memo-cum-SCN No-V/15-Reb/Def Memo/Angoora/Rgd/13-14 dated 04.12.2013 for the following deficiencies:

a. Duty verification certification evidencing duty payment from jurisdictional authority certifying that "the processor/ manufacturer or grey supplier had paid duty against the referred export consignments out of the Cenvat credit accumulated only from genuine receipts of duty paid grey (along with duty paid receipt invoices) which were used in the said processed goods. And the raw material i.e. duty paid Grey Fabrics received and their invoices and the credits availed were correlated through identification marks, lot numbers" were not furnished.

b. Name and Designation of authorised signatory not mentioned on the ARE-1.

c. Self-sealing certificate is not forthcoming on the ARE-1.

d. As per Shipping Bill and Mate Receipt, goods are stuffed at CFS Mulund.

2.2 In response the applicant attended the personal hearing with the rebate sanctioning authority and submitted following reply:

a. The applicant had received duty paid grey fabrics from the manufacturers/suppliers under cover of invoices showing duty payment, which were used in final export products and then exported under ARE-1. For payment of duty on the exported finished goods, they utilized the Cenvat credit available with them against the purchase of input.

b. that they have fulfilled all the conditions and procedures referred in Rule 18 of the Central Excise Rules, 2001 and laid down in the Notification No. 40/2001 (NT) dated 26.06.2001 at the time of clearance and export of the said goods and later at the time of claiming rebate.

c. Regarding non-mention of name and designation signatory, the applicant submitted that it cannot be the ground for rejection of rebate claim when the other corresponding documents prove the export of goods.

d. As regards self-sealing certificate on the ARE-1, the applicant submitted that procedural infraction of Notification, circulars etc are to be condoned if export have really taken place and law is settled now that substantive benefits can't be denied for procedural lapses.

e. As regards stuffing of goods at CFS Mulund, the applicant submitted that the goods were stuffed at CFS Mulund and then were shipped from JNPT.

2.3 Subsequently, the applicant, vide his letter dated 11.01.2014, submitted invoice no. 31 dated 31.05.2004 and invoice no 33 dated 04.05.2004 issued by M/s. Subhash and Co. and also submitted few

copies of delivery challans issued by M/s. Subhash and Co. and M/s. Ronak Dyeing Ltd. with the rebate sanctioning authority.

2.4 The rebate sanctioning authority concluded as follows:-

*'As the claimant M/s. Angoora International, is in the Alert List, it was necessary that the duty paid nature of export goods (for which the claimant has claimed rebate) is ascertained. Therefore, to verify the authenticity of Cenvat credit availed by the processors, on the strength of invoices received by them from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of central excise duty on the above mentioned exports made by the claimant , an opportunity was given to claimants for submission of documents/records regarding the genuineness of availment of Cenvat credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-I. Accordingly, the claimant vide letter dated 11.01.14 submitted copies of grey purchase bills, supporting Challan, Central Excise invoice and M/s. Ronak Dyeing Ltd., processor's report. It is true that as contended the identification marks and lot no. does establish that claimant had procured Grey Fabrics from M/s. Subhash & Co. and sent the said Grey Fabrics to M/s. Ronak Dyeing for process. However, it does not establish that the goods exported under the ARE-I were the goods manufactured from the goods Grey fabrics procured under the submitted delivery challan and invoice.'*

2.5 Hence, the rebate sanctioning authority, Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 2992/13-14/ DC(Rebate)/Raigad dated 24.01.2014 rejected the rebate claim amounting to Rs.1,11,862/- under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. Aggrieved, the Applicant filed appeal with the Commissioner (Appeals), Central Excise, Mumbai Zone-II. The Commissioner (Appeals) vide Order-in-Appeal No.

CD/317/RGD/2015 dated 26.05.2015 rejected the Applicant's appeal and upheld the Order-in-Original.

3. Accordingly, the Applicant filed the impugned Revision Application mainly on the following grounds:

a) The Learned Commissioner (Appeals) has totally failed to appreciate the fact that the entire case revolves around the misplacement/loss of documents in the Department. He has also forgotten to consider the inordinate delay in the office of the Dy. Commissioner in deciding the matter.

b) that they have fulfilled all the conditions and procedures referred in Rule 18 of the Central Excise Rules, 2001 and laid down in the Notification No.40/2001 C.E(N.T.) dated 26.06.2001 at the time of clearance and export of the said goods and later on i.e. at the time of claiming rebate.

c) that there was no dispute of duty payments on the finished fabrics at the time of exports and the Triplicate copies of ARE-I were countersigned by the Central Excise Range officers certifying the payment of duty without raising any suspicion/objection about the CENVAT credit availed by them.

d) That the Order in Appeal reveals the Dy.Commissioner (Rebate) vide their letter dtd.02.02.2015 informed that the applicant is appearing in the alert list of Computer System in Raigad Section and the Jurisdictional Range Superintendent of the applicant vide letter 27.01.2014 had informed them that "no such manufacturer/exporter named M/s. Angoora International exists in the Range" . As per D.C's Letter, the Commissioner Appeals decided the applicant is in alert list. The Applicant states that the view of the Dy. Commissioner and Commissioner Appeals are wrong because that at the material time the Applicant continued to operate as a regular manufacturer assessee vide Central Excise Registration No. ACLPA0046PXM001, Range-II Division-A, Commissionerate-Mumbai-I, and fulfilled all the requirements,

including Cenvat Credit account (RG 23A part-I & part-II), filing of the monthly returns in Central Excise. The Applicant's company has not defaulted and engaged in any fraudulent activity in any Department. The department has not issued any objections on any of these regular returns. Thereafter the Applicant surrendered the Central Excise registration to the department. The Applicant says that the department did not took any objection against their Cenvat Credit A/c. It is clear that the purchase of input was proper and genuine.

e) that the only charge or allegation forming the genesis and basis for denial of rebate claim to the exporter is therefore not against him but the insufficientdocumentations to establish the correctness of Cenvat Credit availed in cases where the duty on export goods was paid through Cenvat Credit by manufacturer. In this regard, the Applicant observes sufficient legislative and machinery provisions exist in Central Excise Act/rules to recover such frauds detected if any from the manufacturer/supplier of goods along with interest and penalty. Rule 14 of Cenvat Credit Rules, 2004 provides that where any frauds detected on wrongly availed credit, it has to be recovered from manufacturer - supplier along with interest and provisions of Section 11A (recovery of duties not levied or not paid or short-paid or erroneously refunded) and 11AB (Interest on delayed payment of duty) of the Act shall apply mutates mutandis for effecting such recoveries. Rule 15 of Cenvat Credit Rules provides if any person takes Cenvat Credit wrongly or without taking reasonable steps to ensure that duty has been correctly paid on goods as indicated in accompanying documents as per Rule 9, he shall be liable to penalty not exceeding the duty involved on excisable goods in respect of which contravention is committed. Also where duty has been collected from the exporter but allegedly not paid to Government, they are also recoverable along with interest in terms of Section 11D and 11DD of Central Excise Act, 1944. The original rebate sanctioning authority and

Commissioner (Appeals) did not consider this fact while passing the said orders.

f) that for the fault of the manufacturer-supplier, if any, in respect Cenvat availed, the Applicant who is the genuine exporter and who properly paid the duty of finished product should not be punished for none of his fault.

g) that the Rebate / drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided in order not to defeat the very purpose of such scheme which serve as export incentive to boost export and earned foreign exchange and in case the substantive fact of export having been made is not in doubt, a liberal interpretation is to be given in case of any technical breaches. In fact, as regards rebate specifically, it is now a title law that the procedural infraction of Notifications, circulars etc are to be condoned if export have really taken place, and the law is settled now that substantive benefits can't be denied for procedural lapses. The Applicant seeks to place reliance on the following decisions of the Tribunal/Government of India in a catena of orders, including Birla VXL Ltd. 1998 (99) E.L.T. 387 (Trib), T.I. cycles -1993 (66) ELT 497 (Trib.), Binny Ltd.,Madras-1987(31) ELT 722 (Tri), Atma Tube Products, 1998 (103) E.L.T.270 (Trib.), and GTC Exports Ltd.-1994(74) ELT 468 (GOI) upheld that 'if the goods have actually been exported then all procedural conditions can be waived'. In the present case the said textile fabrics & Readymade Garments have actually been exported and this is undisputed fact moreover all substantial requirements have been fulfilled. The impugned orders are required to be set aside on this ground.

In the light of the above submissions, the applicant pleaded to set aside the impugned order-in-appeal and allow the application with consequential relief and pass any other order as may be deemed necessary in the circumstances of the case.

4. Personal hearing in the case was fixed for 13.08.2021/20.08.2021. However, the applicant vide letter dated 11.08.2021 submitted that they do not need any personal hearing and the matter may be decided on the basis of their written submission. Subsequently, vide letter dated 30.08.2021, the applicant once again requested to avoid formalities like more personal hearings and decide the matter on merits.

4.1 Since the applicant does not wish to avail the opportunities for personal hearing the matter is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that that the main issue involved is whether due to an Alert notice issued in the name of the applicant, the impugned rebate claim can be rejected.

7. Government gathers from the impugned Order-in-original that in the backdrop of DGCEI's investigation in respect of non-existent/bogus firms supplying grey fabrics or processed grey fabrics, an alert notice was issued by Dy. Commissioner (Rebate), Raigad under F.No.V/GrIV/REB/ TEXTILE/ ALERT/10. As per this Alert list, the applicant is amongst the list of purchasers of bogus invoices of grey fabrics who availed rebate of central excise duty by showing receipt of grey fabrics from bogus units.

7.1 Government observes that no date of said alert notice is mentioned in the impugned Order-in-original to substantiate that it covers the period of concerned export, viz. July 2004. Presuming that last two digits of the said alert notice represents the year of issue, then the alert notice was issued in the year 2010 - F.No.V/GrIV/REB/ TEXTILE/ALERT/**10**. This would mean that it was issued much later than the date of export viz. 14.07.2004

making it irrelevant in the instant matter. Thus, this aspect needs proper re-examination before linking the said alert notice with the impugned rebate claim.

7.2 Further, the Government observes that in respect of impugned export, the applicant had submitted certain input documents such as invoices/delivery challans of supplier of grey fabric and of the processor -- M/s. Subash & Co. and M/s. Ronak Dyeing Ltd respectively. However, the rebate sanctioning authority, though found from contents of these documents that the transaction was authentic, did not find it sufficient to establish that processed fabric so obtained was same as that was exported. However, the rebate sanctioning authority has not provided any reason which made him to arrive at this conclusion. It goes without saying that unless proven otherwise, the documents submitted by the applicant have to be accepted as claimed by him. Therefore, a thorough verification of these documents is needed.

7.3 As regards procedural lapses such as non-furnishing of duty verification certificate, name & designation of authorized signatory not appearing on ARE-1, mismatch in chapter heading, the Government has already clarified in many of its orders that a liberal view is to be taken if the export is not challenged. One such order was in the case of M/s. Modern Process printers [2006 (204) E.L.T. 632 (G.O.I.)]. The relevant para from this order is reproduced hereunder:

> *In this regard, it cannot be gainsaid that rebate/drawback and other such export promotion schemes of the Govt., are incentive-oriented beneficial schemes intended to boost export in order to promote exports by exporters to earn more foreign exchange for the country and in case the substantive fact of export having been made is not in doubt, liberal interpretation is to be accorded in case of technical lapses if any, in order not to defeat the very purpose of such scheme. In Suksha International v. Union of India, 1989 (39) E.L.T. 503 (S.C.), the Hon'ble*

*Supreme Court has observed that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In Union of India v. A.V. Narasimhalu, 1983 (13) E.L.T. 1534 (SC), the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice. Similar observations was made by the Apex Court in the Formika India v. Collector of Central Excise, 1995 (77) E.LT. 511 (SC), in observing that once a view is taken that the party would have been entitled to the benefit of the Notification had they met with the requirement of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed. While drawing a distinction between a procedural condition of a technical nature and a substantive condition in interpreting statue similar view was also propounded by the Apex Court in Mangalore Chemicals and Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (SC). In fact, as regards rebate specifically, it is now a trite law that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL - 1998 (99) E.L.T. 387 (Tri.), Alfa Garments - 1996 (86) E.L.T. 600 (Tri), Alma Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.*

8. In view of the findings recorded above, Government sets aside the impugned Order-in-Appeal No. CD/317/RGD/2015 dated 26.05.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-II and

remands the case back to original adjudicating authority for deciding the case on merits and pass appropriate orders. The applicant in its EA-8 application has shown the rebate claim amount as Rs.1,39,827/- whereas in the impugned Order-in-original the same is shown as Rs.1,11,862/-. The applicant had brought this discrepancy to the notice of Appellate authority also. The original adjudicating authority is directed to cover this aspect also during denovo proceedings.

9. The Revision Application is disposed of on the above terms.

Shrawan 8/12/21

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

ORDER No. 866 /2021-CX (WZ)/ASRA/Mumbai DATED 08.12.2021

To,
M/s. Angoora International,
53, 147/149, Gaiwadi Sadan,
Dr. Viegas Street, Kalbadevi,
Mumbai-400 002.

Copy to:
1.The Commissioner of CGST,
Belapur Commissionerate,
1st Floor, CGO Complex,
C.B.D. Belapur,
Navi Mumbai - 400 614.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.