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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. 198/08/13-RA /4493 Date of Issue: 04.10.2022

ORDER NO. 925/2022-CEX (WZ)/ASRA/MUMBAI
DATED 30.09.2022 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 : Commissioner of CGST, Belapur Commissionerate.

Respondent : M/s Alok Industries Ltd.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. – US/715/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This Revision Applications has been filed by the Commissioner of CGST, Belapur Commissionerate (hereinafter referred to as "Applicant") against the Order-in-Appeal No. – US/715/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

2. The brief facts of the case are that M/s Alok Industries Ltd. situated at Peninsula Corporate Park, G.K. Marg, Lower Parel(W), Mumbai-400013 (hereinafter referred as "the Respondent") , who are manufacturer/Exporter had filed 31 claims for rebate of duty amounting to Rs.49,60,692/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 (as amended) in respect of goods exported. The Adjudicating Authority vide his Order-in-Original No. 2248/11 12/DC(Rebate)/Raigad dated 24.02.2012 rejected the rebate claims on the following grounds :

i) the exported goods were fully exempt under Notification No. 30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the ACT r/w CBEC circular No. 937/27/2010-CX dated 26.11.2011, the processors ought not to have clear the goods on payment of duty.

ii) Chapter sub heading number and description of the central excise tariff declared in the excise invoice and in the corresponding shipping bills was not tallying.

iii) the date and time of removal of goods was not mentioned in ARE1 No.139/17.2.2006 & Invoice No. 135/17.2.206.

iv) the original duplicate copy of invoice no. 46 dated 26.12.2005 was not submitted.

v) there is no signature of Customs Officer in the shipping bills and instead of six shipping bills, only one shipping bill is submitted along with the rebate claim and thus conditions for grant of rebate under Notification No. 19/2004-CE(NT) were not fulfilled.

vi) the manufacturer-exporter failed to submit the documentary evidence regarding the availment of input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty on the exports.

Aggrieved by the OIO, the respondent filed appeal with the Commissioner of Central Excise (Appeals-II), Mumbai, who vide Order-in-Appeal No.-US/715/RGD/2012 dated 29.10.2012 allowed their appeal and rejected the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds:

i. The Commissioner (A)'s observance that "there is no requirement of giving CET classification in the Shipping Bills and thereby the classification of the product in the Excise Invoices cannot be held as wrong merely on the basis of RITC Code number mentioned on the corresponding Shipping Bills", is appearing to be incorrect. The requirement of mentioning the RITC Code (Revised Indian Trade Classification) in the shipping bills is for the purpose of compiling the statistical export data for the entire country by the Directorate General of Commercial Intelligence and Statistics (DGCI&S), Ministry of Commerce. The CBEC vide its Circular No. 51/2003 Cus dated 18.6.2003 has issued instructions that the classification code indicated under the RITC Head, matches the description of the product in the Shipping Bill. Therefore, the findings of the Commissioner(A) that RITC code number is not necessarily the same as CET classification is not correct.

ii. With reference to ARE-1 No.17/19.8.2006, the six shipping bills are shown in original and duplicate copies of ARE-1 in the column 'export by post' and the claimant has submitted only one shipping bill no. 4531572 dated 21.8.2006 along with claim. The claimant has produced the said shipping bills before the Commissioner (A) and Commissioner (A) held that when the export of goods is not in question, the rebate claims cannot be rejected on this ground. These findings of

Commissioner (A) appears to be incorrect as these evidences were not produced before original adjudicating authority and the said authority had no opportunity to verify the correctness and genuineness of the evidences. The evidences submitted by the claimant before Commissioner (Appeals), have not been got verified by Original Adjudicating Authority i.e. Maritime Commissioner

iii. The reliance of Commissioner (A) on the letter dated 9.10.2006 enclosing the balance sheet of M/s Alok Industries Ltd. appears to be incorrect as far as the objection of non-submission of the documentary evidence regarding the availment of input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty on the exports, is concerned. From the records of Original Adjudication it is confirmed that claimant's letter 9.10.2006 is not available on record. It was not submitted by M/s Alok Industries Ltd. at the time of personal hearing granted to them by Original Adjudicating Authority. Out of 31 claims only 5 claims are pertaining to M/s Alok Industries Ltd. who are manufacturer exporter. The remaining 26 claims are filed by them in capacity of merchant exporter and in those cases manufacturers are different. Thus, it appears that the objection of Original Adjudicating Authority has not been dealt with correctly.

iv. In the recent past, the same Commissioner (Appeal) had heard appeals filed by different claimants, where their rebate claims were rejected by Original Adjudicating Authority, on the similar grounds as stated above in the case of M/s Alok industries Ltd. In these cases, Commissioner (A) had upheld the rejection of rebates by mentioning that the rebate sanctioning authority was apparently not satisfied about the 'duty-paid character of the exported goods and had given opportunity to the claimants to produce evidence for verification of the genuineness of the Cenvat credit availed on inputs but the appellant has failed to produce any evidence either at original adjudication stage or at appellate stage. In the instant case he has taken different decision and decided the matter against the Revenue without having any evidence to change his

stand he had taken in similar cases of other claimants mentioned above.

v. The correspondence of the claimant purportedly made in 2006 cannot be held as evidence, that too without verification of the jurisdictional authorities, towards the documentary evidence of input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty on the above exports. As per Rule 5 of Central Excise (Appeals) Rules, 2001, fresh evidence at appellate stage is not acceptable.

vi. In view of above, Applicant has requested to set aside the impugned OIA and to remand the matter back to original Adjudicating Authority.

4. Respondent has filed cross objections vide their letter dated 31.03.2013. Cross objections in brief are as :

a. the main ground for rejecting the Respondents rebate claim by the Original Adjudicating Authority) that the exported goods were fully exempt under Notification No. 30/2004-CE dated 09.07.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC circular no. 937/27/2010-CX dated 26.11.2011, the processors ought not to have cleared the goods on payment of duty placing reliance on O-i-A No US/334/RGD/2011 dated 04.10.2011 in case of M/s Beekalon Synthetics Pvt. Ltd., has rightly not been accepted by the Commissioner (Appeals) and the department accepted the order of the Commissioner (Appeals) to this extent as can be seen that department as the same is not taken in grounds of appeal in the present appeal.

b. the other grounds for rejecting the rebate claims in the O-i-O by the Original Adjudicating authority are majorly of technical nature, the Commissioner (Appeals) has properly dealt with the same in the O-i-A and therefore the present appeal to Revisionary Authority is not tenable.

c. when there is substantial compliance of the provisions and procedures related to export under claim for rebate and evidential documents produced as proof of having the goods exported, the Commissioner (Appeals) has rightly and legally allowed the appeal of the Respondents in the O-i-A US/715//RGD/2012 dated 29.10.2012

d. requirement of giving CET classification in the Shipping Bills - The Commissioner (Appeals) has rightly held that the proforma of Shipping Bill does not have a column for CET classification; that the RITC number required to be mentioned in Shipping Bills is not necessarily the same as CET classification and therefore there is no requirement of giving CET classification in the Shipping Bills and therefore the classification of product in the Excise Invoices cannot be held as wrong merely on the basis of RITC Code number in the corresponding Shipping Bills. The Respondents further submit that CBEC Circular 51/2003-Cus dated 18.06.2003 warrants the field formation to ensure that the RITC codes are entered correctly and they should carry out random verification to ensure that the classification code indicated in RITC Head matches the description of the product in the Shipping Bill. The said circular does not stipulate that the rebate claim should be rejected on account of non-indication of RITC code in the shipping. bills. Further, it is submitted that the Commissioner (Appeals) has categorially noted his observation that there is no difference in broad description of the exported products in the O-i-A.

e. in the context of allegation that although six shipping bills are shown in ARE-1 No 17/19.8.2006, only one shipping bill is submitted along with the claim and all shipping bills produced before the Commissioner (Appeals) are not verified by the Original Adjudicating authority, the Commissioner (Appeals) has categorically mentioned that the said shipping bills were produced before him and properly held that when the export of goods is not in question, the rebate claims cannot be rejected on this ground. It is further submitted that Rule 5(4) of the Central Excise (Appeals) Rules, 2001empowers the Commissioner (Appeals) to direct production of any document to enable him to dispose of the appeal.

f. in the context of non-submission of the documentary evidence regarding the availment input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty, the Commissioner (Appeals) has rightly observed that the balance sheet

submitted evidences that the yarn is procured for grey manufacturing and that the processed duty paid fabrics are sent for cutting, stitching and packing to different parties for manufacture of goods and their clearance for export under claim of rebate and therefore held that no compliance is needed about duty verification certificate of raw materials and rebate cannot be denied on the basis of assumption.

g. the Respondents cannot comment about the inconsistency of the Commissioner (Appeals) as taken in grounds of appeals by the Appellants in deciding the cases as the Respondents are not aware about the facts in O-i-As indicated by the Appellants. The facts in those O-i-A may be different than the Respondents in the present appeal.

h. the Respondents submit that the payment of duty on export under claim for rebate as well as goods cleared for home consumption are shown in monthly returns ER-1 which also gives details of Cenvat credit availed by the Respondents and utilization thereof besides maintaining cenvat account and the same is verified by the department/ audit from time to time, and no dispute has been ever made on the same.

i. the Applicant's contention that fresh evidence at appellate stage is not acceptable as per Rule 5 of Central Excise (Appeals) Rules, 2001 is not correct. Submission of shipping bills is not at all a fresh ground. It was the contention of the Original Adjudicating authority that the Respondents have submitted only one shipping bill No 4531572 dated 21.8.2006 against six mentioned in the ARE-I and therefore the Respondents produced all the six shipping bills before the Commissioner (Appeals). Further, it is submitted that the Commissioner (Appeals) is empowered to direct production of any document to enable him to dispose of appeal in terms of Rule 5(4) of the Central Excise (Appeals) Rules, 2001

5. Consequent upon the change in the Revisionary Authority, personal hearing in this case was scheduled on 06.01.2020, 13.01.2020, 20.01.2020, 12.02.2021, 17.03.2021 and 24.03.2021. However, neither the applicant nor

respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

7. On perusal of the records, Government finds that the rebate claims filed under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 (as amended) were rejected on the following grounds :

a) The exported goods were fully exempt under Notification No. 30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the ACT r/w CBEC circular No. 937/27/2010-CX dated 26.11.2011, the processors ought not to have clear the goods on payment of duty.

b) Chapter sub heading number and description of the central excise tariff declared in the excise invoice and in the corresponding shipping bills was not tallying.

c) the date and time of removal of goods was not mentioned in ARE1 No.139/17.2.2006 & Invoice No. 135/17.2.206.

d) the original duplicate copy of invoice no. 46 dated 26.12.2005 was not submitted.

e) there is no signature of Customs Officer in the shipping bills and instead of six shipping bills, only one shipping bill is submitted along with the rebate claim and thus conditions for grant of rebate under Notification No. 19/2004-CE(NT) were not fulfilled.

f) The manufacturer-exporter failed to submit the documentary evidence regarding the availment of input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty on the exports.

Therefore, Government finds that the issue to be decided in the instant case is that whether Appellate Authority vide his OIA has rightly allowed the appeal of the respondent.

8. With regard to the objection at Para-7(a), Government observes that this issue stands decided in case of M/s. Super spinning Mills Ltd wherein Hon'ble Madras High Court vide their judgment order 2020 (373) E.L.T. 594 (Mad.) dated 07.02.2020 has observed that benefits of one of two notifications cannot be forced on petitioner merely because revenue would stand to gain by denying rebate of Central Excise duty paid. The relevant portion of the judgment is reproduced as under :

> *" **14.** Both the notifications namely Notification No. 29/2004-C.E., dated 9-7-2004 and Notification No. 30/2004-C.E., dated 9-7-2004 prescribes the rate of tax to be paid on the exported organic cotton yarn.*
>
> ***15.** Under Notification No. 29/2004-C.E., dated 9-7-2004 a manufacturer is required to pay tax at 4%. Whereas, under Notification No. 30/2004-C.E., dated 9-7-2004, a manufacturer could clear the goods without payment of duty provided condition there are more satisfied. As per the proviso to the said notification the notification does not apply to goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2002.*
>
> ***16.** The petitioner has opted to pay Excise duty in terms of the Notification No. 29/2004-C.E., dated 9-7-2004. Therefore, it cannot be said that the organic cotton yarn exported by the petitioner was not liable to Excise duty so as to deny the benefit of rebate claim under Rule 18 of the Central Excise Rules, 2002.*
>
> ***17.** Notification No. 30/2004 is a conditional notification which allows the manufacturer to clear the goods at nil duty provided no credit is availed on inputs of capital goods under the provisions of the Cenvat Credit Rules, 2002.*
>
> ***18.** As per sub-clause (1A) to Section 5A of the Central Excise Act, 1944 in case of excisable goods which is fully exempt from payment of excise duty the manufacturer cannot be [levied] Excise duty. However, in the facts of the case it is noticed that organic cotton yarn is exempt under Notification No. 30/2004-C.E., dated 9-7-2004 under a conditional notification which the petitioner has not fulfilled.*
>
> ***19.** It is the choice of the manufacturer whether to opt for the benefit of one of the notification. It cannot be forced on the petitioner merely because the revenue would*

stand to gain by denying rebate of central excise duty paid on the exported organic cotton yarn under Rule 18 of the Central Excise Rules, 2002."

9.1 As far as the objections at Para-7(b-e) is concerned, Government finds that the same has been elaborately discussed in the OIA passed by the appellate authority before concluding that the said objections were of technical nature and therefore requires no intervention in this regard. Department's contention seeking to reject the rebate claim on these grounds is incorrect and not legal.

9.2 With regard to the objection at Para-7(f), wherein Department argued that the manufacturer-exporter failed to submit the documentary evidence regarding the availment of input stage credit on the raw material i.e. grey fabrics and subsequent utilization for payment of duty on the export, Government notes that the burden of proof is always on the Department in such cases, which has not been followed in this case. No evidence has been adduced by the Department as indicated in the OIO. In spite of that Respondent in the capacity of manufacturer exporter had submitted a letter dated 9.10.2006, recorded in OIA, which validates the 'duty payment character' of export in respect of the five rebate claims. Government notes 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. The export in the instant case is not disputed whereas the duty paid character of goods is in question only on mere assumptions. Government finds that Department has rejected claims without any evidence of fraud etc. whereas the respondent has provided whatever he could to prove export of duty paid goods in his favor. Therefore, rebate claims to the respondent cannot be rejected on mere speculations arisen due to the fact that the frauds in their industry were prevalent during the material time.

10. In view of above discussions, Government upholds the Order-in-Appeal No.– US/715/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

11. The Revision application is disposed off on the above terms.

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

ORDER No. 925 /2022-CEX (WZ) /ASRA/Mumbai Dated 30.9.2022

To,

1. M/s Alok Industries Ltd. Peninsula Corporate Park, G.K. Marg, Lower Parel(W), Mumbai-400013.

2. Commissioner of CGST, Belapur Commissionerate, Ist Floor, CGO Complex, CBD Belapur, Navi Mumbai -400614.

Copy to:

1. The Commissioner of Central Excise (Appeals-II), 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, BKC, Bandra(E), Mumbai-400051.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.