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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, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/301/13-RA / 1492

Date of Issue: 01.02.2021

ORDER NO. 93/2021-CX (WZ) /ASRA/MUMBAI DATED 24.02.2021 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. Micro Inks Ltd., Mumbai.

Respondent : Commissioner of Central Excise (Appeals-II), Mumbai-400051.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/ 829-830/RGD/2012 dated 20.11.2012 passed by the Commissioner of Central Excise (Appeals-II).

ORDER

This revision application is filed by M/s. Micro Inks Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/829-830/RGD/2012 dated 20.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II with respect to the Orders-in-Original No. Raigad/ADC/15-12-13 date 23.05.2012 and 996/11-12-DC (Rebate) / Raigad dated 26.06.2012 passed by the Additional / Deputy Commissioner of Central Excise, Rebate, Raigad.

2. The brief facts of the case are that the applicant had filed rebate claim for the duty paid on goods exported amounting to Rs. 3,18,899/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 06-09-2004 and said rebate claim was sanctioned vide Order in Original No. 1827/10-11 dated 28.01.2011 passed by the Deputy Commissioner, Central Excise(Rebate) Raigad.

2.1 Being aggrieved by Order-in-Original, the Department filed appeal before Commissioner of Central Excise (Appeals)-II, Mumbai, who vide Order in Appeal No. US/154/RGD/2012 dated 29.02.2012 allowed the department appeal by setting aside the aforesaid Order in Original.

2.2 Being aggrieved by said order-in-appeal, the applicant filed Revision application bearing No. 195/808/12 under Section 35EE of Central Excise Act, 1944 before Central Government pleading for allowing rebate claim of Rs. Rs. 3,18,899/- which had been rejected by the Commissioner (Appeals) vide aforementioned Order.

3. Subsequent to issuance of Order in Appeal No US/154/RGD/2012 dated 29.02.2012, a protective demand cum Show Cause Notice was issued to the applicant demanding an amount of Rs. 3,18,899/- of erroneously sanctioned rebate claim, along with applicable interest.

3.1 The Additional Commissioner, Central Excise, Raigad then decided the protective demand issued to the applicant wherein he confirmed a demand of erroneously sanctioned rebate of Rs. 3,18,899/-

along with interest under section 11AB of the Central Excise Act, 1944 vide Order in Original No. Raigad/ADC/15/12-13 dated 24.05.2012.

3.2 Being aggrieved with the said Order in original No. Raigad/ADC/15/12-13 dated 24.05.2012 confirming demand of Rs.3,18,899/- the applicant filed appeal before Commissioner (Appeals) contending that they had filed Revision Application (No.195/808/12-RA) before the Joint Secretary, Government of India, Revision Authority, New, Delhi against Order in Appeal No. US/154/RGD/2012 dated 29.02.2012 along with the stay application. The applicant further contended that in spite of this, the Additional Commissioner confirmed the said demand of rebate sanctioned and pending before Revision Authority instead of keeping the said SCN in Call Book till the issue is finally settled.

3.3 Meanwhile, the applicant had filed another rebate claim for Rs.36,71,350/- under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 before Deputy Commissioner (Rebate), Central Excise, Raigad. The rebate sanctioning authority vide Order in Original No. 996/11-12/DC(Rebate)/Raigad dated 26.06.2012 sanctioned the rebate to the extent of Rs. 36,71,350/- but appropriated Rs. 3,18,899/- + Interest Rs. 80,934/- towards confirmed demand of Rs.3,18,899/- which was erroneously refunded to the applicant alongwith applicable interest (para 3.1 supra).

4. Being aggrieved by the aforesaid Orders-in-original, the applicant filed appeal before Commissioner (Appeals) of Central Excise Mumbai-III, who vide common Order in Appeal No. US/829-830/RGD/2012 dated 20.11.2012 upheld the Orders in Original No. Raigad/ADC/15/12-13 dated 24.05.2012 and 996/11-12/DC(Rebate)/Raigad dated 26.06.2012 passed by the Additional Commissioner / Deputy Commissioner and rejected the appeal filed by the applicant.

4.1 Being aggrieved by the said Order in Appeal, the applicant filed instant Revision Application bearing No. 195/301/13-RA under Section 35EE of Central Excise Act, 1944 before Central Government on the grounds mentioned therein.

5. A personal hearing in Revision Application No. 195/301/13-RA was fixed on 03.10.2019, 07.11.2019, 04.02.2021 and 18.02.2021 respectively. Shri Suryanarayan Iyer, Advocate attended the personal hearing held on 04.02.2021 through video conferencing on behalf of the applicant. He submitted that there are two revision applications. He mentioned that he was submitting written submission on that day. He requested for deciding both the applications together.

6. Government has carefully gone through the relevant case records available in case files & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. The Government finds that the issues involved in the instant revision application is offshoot of issues in dispute in Revision Application No. 195/808/12-RA which stands decided vide Revision Order No. 16/2018/CX (WZ)/ASRA/ MUMBAI dated 31.01.2018. The Government observes that the Revision Application No. 195/808/12 filed by the applicant against Order-in-Appeal No. US/154/RGD/2012 dtd.29.02.2012 has already been decided by this authority, vide Order No. 16/2018/ CX(WZ)/ ASRA / MUMBAI dated 31.01.2018 by setting aside the Order-in-Appeal No. US/154/RGD/2012 dtd.29.02.2012 and restoring the Order-in-Original passed by the original/rebate sanctioning authority thus allowing rebate claim of Rs.3,18,899/- to the applicant. Under the aforesaid factual background, Government takes up the instant Revision Application for final decision.

7. Government observes that a protective demand cum Show Cause Notice issued to the applicant demanding an amount of Rs. 3,18,899/- of erroneously sanctioned rebate claim, along with applicable interest was confirmed by Additional Commissioner, Central Excise, Raigad vide Order in Original No.

Raigad/ADC/15/12-13 dated 24.05.2012. The Deputy Commissioner(Rebate), Central Excise, Raigad further vide Order in Original No. 996/11-12/DC(Rebate) dated 26.06.2012 had sanctioned Rebate claims filed by the applicant amounting to Rs.36,71,350/- but deducted amount of Rs. 3,18,899/- + Interest Rs. 80,834/- being the confirmed demand of erroneously sanctioned rebate claim along with interest.

7.1 The applicant challenged both the above referred Order in Originals (confirming demand and appropriation thereof) before the Commissioner (Appeals) of Central Excise, Mumbai Zone II. The Commissioner (Appeals) rejected applicant's appeal vide Common Order-in-Appeal No. US/ 829-830/RGD/2012 dated 20.11.2012. While rejecting the appeal filed by the applicant the Commissioner (Appeals) in his aforementioned Order observed that

"The admissibility of the rebate claim amounting to Rs. 3,18,899/- has already been decided vide Order in Appeal No. US/154/RGD/2012 dated 12.03.2012. It was held that the rebate was not admissible as the manufacturer had manufactured the exported goods out of the raw material imported under Notification No. 93/2004-Cus dated 10.09.2004 which were exempt and therefore, the manufacturer could not have availed Cenvat Credit. Consequently, the goods were exempted from payment of duty under Notification No. 30/2004-CE dated 09.07.2004. The amount paid on the said exempted goods could not be considered duty of excise and was not admissible for rebate. The said Order in Appeal is in force and effective. Thus the order of the Additional Commissioner confirming the demand of the said amount erroneously sanctioned as rebate has to be held. In the circumstances, the appropriation of the rebate against the confirmed demand also has to be upheld."

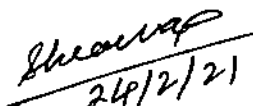
7.2 As the Order in Appeal No. US/154/RGD/2012 dtd.29.02.2012 passed by the Commissioner of Central Excise (Appeals)-II, Mumbai has already been set aside by the Revisionary Authority vide Order No. 16/2018/CX(WZ)/ASRA/MUMBAI dated 31.01.2018, confirmation of protective demand of Rs.3,18,899/- along with interest vide Order in Original No.

Raigad/ADC/15/12-13 dated 24.05.2012 and upholding of the same by the Commissioner of Central Excise (Appeals)-II, Mumbai vide Order-In-Appeal No.US/329-330/RGD/2012 dated 20.11.2012 is legally not sustainable.

8. Government has already held at para 7.2 supra that Order-In-Appeal No. US/329-330/RGD/2012 dated 20.11.2012 which has upheld Order in Original Raigad/ADC/15/12-13 dated 24.05.2012 confirming the demand of Rs. 3,18,899/- alongwith interest passed by Additional Commissioner, Central Excise, Raigad does not legally sustain. As a consequence, further recovery proceedings / appropriation of Government dues initiated vide Order in Original Nos. 996/11-12/DC(Rebate) dated 26.06.2012 passed by Deputy Commissioner(Rebate) Raigad and also Order in Appeal No. US/329-330/RGD/2012 dated 20.11.2012 upholding the said Order in Original also do not legally sustain.

9. Accordingly, Government sets aside Order in Appeal No. US/329-330/RGD/2012 dated 20.11.2012 passed by Commissioner (Appeals) of Central Excise Mumbai-III and allows Revision Application No. 195/301/13-RA filed by the applicant

10. The Revision Applications Nos. 195/301/13-RA is allowed as above.


24/2/21
(SHRAWAN KUMAR)

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

ORDER No. 93/2021-CX (WZ) /ASRA/Mumbai Dated 24.02.2021

To,
M/s Micro Inks Ltd.
907/908, Windfall, 9th floor,
Sahar Plaza Complex,
J.B. Nagar, Andheri (East),
Mumbai 400 059.

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. The Deputy Commissioner (Rebate), GST & CX Belapur Commissionerate, C.G.O. Complex, 10, C.B.D. Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.