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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.198/190/16-RA 1929 Date of Issue:- 13.10.22

ORDER NO.978/2022-CEX (WZ) /ASRA/MUMBAI DATED 07.10.2022 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.

Subject :- Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SK/194/THANE -II/ 2016 dated dt. 11.04.2016 passed by the Commissioner (Appeals), CGST, Thane.

Applicant :- Commissioner, GST & CX, Palghar.

Respondent :- M/s. Starlit Power Systems Ltd.,
Om Sai Industrial Estate, Gala No 7.
Kanerphata, Virar (East)
Virar-401 303.

ORDER

This Revision Application has been filed by Commissioner, GST & CX, Palghar (hereinafter referred to as "the applicant") against Order-in-Appeal No. SK/194/THANE -II/ 2016 dated dt. 11.04.2016 passed by the Commissioner GST & CX, (Appeals-III), Mumbai.

2. The brief facts of the case are that the respondent M/s. Starlit Power Systems Ltd., holding Central Excise Registration No. AALCS6944FEM003 and falling within the jurisdiction of Range-IV of Vasai Division, Thane-II Commissionerate had filed rebate claim totally amounting to Rs. 11,95 781/-, under Rule 18 of the Central Excise Rules, 2002 in respect of Excisable goods cleared or export from the depot under ARE1-004/2013-14 dt. 28.08.13 along with all relevant documents.

3. Assistant Commissioner, GST & CX, Division-II Palghar Commissionerate, after following the due process, rejected the rebate claim vide Order-in-Original No. R/116/2014-15 dated 14.10.14 on the grounds that there were some discrepancies pertaining to duty amount claimed and duty amount shown in ARE1 and also it was not clear under which provisions the goods cleared from Haryana factory, were exported from Virar unit.

4. Being aggrieved, the respondent preferred appeal against the Order-in-Original dated 14.10.14 passed by Assistant Commissioner, GST & CX, Division-II Palghar Commissionerate before Commissioner (Appeals). The Commissioner (Appeals) vide Order in Appeal No. SK/194/THANE -II/ 2016 dated dt. 11.04.2016 set aside the Order-in-Original while observing that :-

"7.1 In the present case, I observe that the adjudicating authority has rejected the rebate claim filed by the appellants holding that there is a short payment of central excise duty and that there is no correlation between the duty paid invoice and the impugned A.R.E.1. Further, he also held the appellants have not submitted any documentary evidence in support of the

duty payment and that the jurisdictional central excise authority at manufacturer's end has send a vague reply regarding the duty debit particulars. The appellants on the other hand have contended that the allegation regarding short payment was not raised in the show cause notice. Further, they have submitted all details of payment of duty to the department.

7.2 I observe that the statute requires that two main ingredients need to be satisfied in order to be eligible for grant of rebate. One is that the impugned goods should have been exported and the other is that the duty payment character of the said goods is established in the instant case, I observe that there is no dispute as regards the export of the impugned goods, However as regards Adjudicating Authority's findings regarding short payment of duty by the appellants in their manufacturing unit at Sohana Village, Haryana, find that this allegation has not been raised in the impugned show cause notice and hence cannot form the basis for not considering the rebate claim. The impugned order has travelled beyond the scope of the show cause notice. Moreover the appellants have categorically reasoned that the said bona fide error has occurred due to calculation mistake of the duty amount payable @ 12% instead of 12.36% and further no objection was raised at the time of export. Hence, find that the adjudicating authority has erred in taking the said short payment as an ground for rejection of the rebate claim.

7.3 As regards, the contention regarding no correlation between the duty paid invoice and the impugned ARE 1, observe that the appellants have claimed less rebate amount of Rs 11,95,781/-than what amount of duty Le Rs. 14,35,561/-has been paid by them They have also attributed the cause of exchange rate fluctuation for claiming lesser rebate. Hence, find that this is not a valid ground for non-consideration of the rebate claim of the appellant.

7.4 Moreover, as regards establishing the duty paid character of the impugned goods cleared for export. I observe that the appellants impugned goods have been manufactured at their registered factory at Sohana Village, Haryana and exported from their depot which is also registered with the central excise department. 1further observe that the appellants have already submitted to the department the relevant documents and the details of the central excise invoice under which the impugned goods is stated to have been removed from their registered factory at Sohana Village, Haryana and also the debit particulars reflected in their monthly returns. The said details have also been filed by them at the time of appeal with the contention that the impugned exported goods have been cleared from their factory under their duty paid invoice no. 73 dated 18.07.2013 whose debit particulars are clearly and specifically mentioned in their monthly returns filed with the department. Hence, I consider that duty payment aspect is shed in the present case. I am not inclined to accept the adjudicating authority's rection on the ground of submission of vague reply regarding duty debit and that too from the department's own jurisdictional authority situated at the manufacturer's end

In given context, I also observe that merely technical interpretation of procedures etc. is to be best avoided if the substantive fact of export having been made is not in doubt a liberal interpretation is to be given in case of any

technical lapse. The appellant has exported the goods and the documentary evidence regarding the duty paid on export goods is available on record. I draw support from the judgment of Union of India v. AV. Narasimhalu-1983(13)ELT1534(SC) where it has been held as below:

"Refund Government should avoid relying on technicalities - For refund of small amounts collected wrongly, the administrative authorities should, instead of relying on technicalities, act in a manner consistent with a broader concept of justice, if a feeling is to be nurtured in the minds of the citizens that the Government is by and for the people."

7.6 I also observe from the facts placed before me, that the jurisdictional Assistant Commissioner has sanctioned rebate claim in respect of the goods cleared for export on the same day under another A.R.E1 no. 06/13.9.2013 involving same set of facts and circumstances. Hence, I consider that two similar matters have been dealt differently by the jurisdictional authority even though they the same set of facts and procedures have been followed by the appellants.

8. In view of the above discussions and findings, hold that the adjudicating authority has erred in rejecting the rebate claim of the appellants: Accordingly, I set aside the pugned order and allow the appeal filed by the appellant with consequential relief"

5. Aggrieved by the said Order in Appeal applicant has preferred Revision Application mainly on the following grounds-

The learned Commissioner (Appeals) has ignored and failed to appreciate the following facts in the case:

Assistant Commissioner, Vasai Division in his Order-in-Original dated 14.10.2014 has stated that he had found in ARE1 that the duty payment @ 12.36% against the value of Rs. 1,19,63,015/-comes to Rs 14,78,629/- wherein the claimant had paid an amount of Rs. 14,35,562/- which appears to be short paid also the total amount of duty shown against invoice is Rs. 11,95,781/- which has no correlation with the ARE1 mentioned above. He further stated that his office had written a letter to the Gurgaon office to see the genuineness of duty debit particulars. They in return vide their letter submitted a vague reply of the duty debit particulars. Further he found that the claimant had not submitted any documentary evidence in support of duty payment particulars. He said that merely mentioning that proof of payment particulars was enclosed and submitting the same in their reply is not acceptable.

Hence, as the payment of duty itself is in doubt and in view of the above facts, the Order In-Appeal No. 5K/194/TH 1/2016 di 11.04.16 passed by the Commissioner of Central Excise (Appeal), Mumbai Zone-I does not appear to be legal and proper and merits to be quashed.

6. Personal hearing in this case was scheduled on 22.03.2022. Shri William Colaco, Assistant Commissioner duly authorized, appeared online on 23.03.2022 on behalf of the applicant. He reiterated the points mentioned in the Revision Application. He requested Revision Application may be allowed. However, the respondent did not appear for the personal hearing on the appointed dates or make any correspondence seeking adjournment of hearings despite having been afforded the opportunity and therefore, Government proceeds to decide these cases on merits on the basis of available records.

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

8. Government observes that the respondent exported goods vide ARE-1 No. 04/2013-14 dated 28.08.2013. The original authority vide Order-in-Original dated 14.10.2014 rejected their claim mainly on the grounds that there were some discrepancies pertaining to duty amount claimed and duty amount shown in ARE1. On appeal being filed by the respondent, Commissioner (Appeals) vide impugned Order set aside the Order-in-Original(Para 4 supra).

9. The point to be decided is:

a. whether mismatch in payment of duty @ 12.36% against the value of Rs. 1,19,63,015/- which comes to Rs 14,78,629/-, whereas the respondent had, purportedly, paid a lesser amount of Rs. 14,35,562/- which appears to be short payment and

b. the total amount of duty shown against invoice is Rs. 11,95,781/- is lesser than the amount of Rs. 14,35,562/- paid by them,

are valid grounds for rejection of their rebate claim.

9.1 On perusal of Order-in-original, Order-in-Appeal and as RA claimed by the applicant, the respondent has provided the proof of export evidencing that actual export have taken place to substantiate the factum of the goods being exported and cleared outside country. There is no case that the goods cleared have not been exported or the rebate claimed is higher than the duty paid thereon.

9.2 As regards the short payment in ARE1 the jurisdictional Central Excise authority at manufacturers end, when called for by the applicant, has sent reply about the duty debit particulars, albeit, vaguely but they have not denied payment. The Commissioner (Appeals) has observed that the responded has clarified that the impugned exported goods have been cleared from their factory under their duty paid Invoice No. 73 dated 18.07.2013, debit particulars of which are clearly and specifically mentioned in their monthly returns filed with the department. No case has been made out that duty has not been paid or the rebate claimed is higher than the duty paid thereon. Besides, this allegation regarding short payment was not raised in the show cause notice. Government finds that the Order-in-Original goes beyond the scope of the Show Cause Notice. A Show Cause Notice gives the noticee an opportunity to present his case, which was not given to the respondent and so this allegation is not sustainable.

9.3 As regards the total amount of duty shown against invoice which is Rs. 11,95,781/- being less than the amount of Rs. 14,35,562/- paid by them in the invoice. The Commissioner (Appeals) has observed that the responded has already clarified that it was due to the exchange rate fluctuation that lesser rebate was claimed. The veracity of this observation can be verified from the payment particulars and other documents like Invoice, BRC, etc.

The Rebate claim cannot be rejected due to, only non / vague submission of payment particulars, that too from the department's own jurisdictional authority situated at the manufacturers end. Substantive benefit cannot be denied on these grounds.

10. Government observes that in an identical case, M/s. Kaizen Plastomould Pvt. Ltd., Bhayander (E), the applicant in that case, had exported their goods under Bond without payment of duty. Show cause notices were issued to said M/s Kaizen Plastomould Pvt. Ltd. demanding duty in respect of export consignments cleared for which proof of exports was not submitted in time. The Original Authority subsequently confirmed the duty and imposed penalty on M/s Kaizen Plastomould Pvt. Ltd. The appeal filed by M/s Kaizen Plastomould Pvt. Ltd. against the Orders in Original confirming the duty and imposing penalty were rejected by the Appellate Authority. Revision Applications filed against such Orders in Appeal were also rejected by GOI vide Revision Orders No.1396-1399/11-CX dated 14.10.2011. Subsequently, M/s Kaizen Plastomould Pvt. Ltd. challenged the said GOI Order in Writ Petition No. 152/2014 before Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide judgment dated 03.03.2014 [2015(330) E.L.T.40 (Bom)] observed as under :-

> **11.** While setting out this allegation in the show cause notice, the revisional authority on its own referred to the documents submitted vide letters dated 4-1-2005 and 6-1-2005. It is clear from the order that the commercial invoice, copy of Bill of Lading, copy of shipping Bill and triplicate copy of ARE-1, duplicate copy of AR-1 and such documents are on record of the department. The revisional authority therefore, was in obvious error in rejecting the Revision Application. The Revision Application is rejected only on the ground of non-submission of statutory documents namely customs endorsed ARE-1. That would result in duty demand being confirmed. The allegation in the show cause notice is held to be proved only because of the failure of the exporter to produce these documents.
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> **12.** We see much substance in the argument of the learned counsel that insistence on the proof of exports is understood. However, the insistence on production of ARE's and terming it as a primary one has not been supported in law. Mr. Shah is therefore justified in criticizing the revisional authority on the ground that the authority was oblivious of execution of other documents and particularly in respect of the clearance of goods under bond/LUT. If there is adequate proof of exports then, non-production of ARE-1 would not result in the allegations being proved and the demand being confirmed. There is no question of penalty being imposed in such a case as well and without verification of the records. The penalty could have been imposed had there been absolutely no record or no proof of any export. The approach of the revisional authority therefore, is not in conformity with law as laid down in *UM Cables Limited* v. *Union of India*. In referring to a identical issue, the Division Bench in *UM Cables Limited* observed as under :
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> 16.....
>
> 17.....

13. In the order passed by the Division Bench (Mohit S. Shah, CJ and M.S. Sanklecha, J) of this Court in Writ Petition No. 582 of 2013 decided on 14-2-2014 (*Aarti Industries Limited* v. *Union of India & Ors.*) [2015 (305) E.L.T. 196 (Bom.)], the Division Bench has held that if there is a proof of the goods, having been exported, then, the claim for rebate of duty could not have been rejected. While we do not have a case of claim of rebate but demand of duty based on non-production of proof of export but the test is the same, namely, that there ought to be proof of exports. In the present case, this fundamental issue has not been examined and the order suffers from a patent error. It is also suffering from clear perversity and in not referring to the contents of the documents which are forming part of the two letters. If the two letters which are referred to at para 7.1 they point towards Bill of Lading and equally the commercial invoice, shipping bill. Mr. Shah would urge that the confirmation of payment by buyers is on record. Then, the Revisional authority should have expressed an opinion thereon and whether that has any impact on the claim made by the Department. That having not done, the Revisional authority failed to exercise its jurisdiction vested in it in law. The Revisional order deserves to be quashed and set aside.

14. As a result of the above discussion, the writ petition succeeds. The impugned order dated 14-10-2011 is quashed and set aside. The Revision Application is restored to the file of respondent No. 2 for a decision afresh on merits and in accordance with law.

15. The revisional authority will decide the matter afresh within a period of three months without being influenced by any of its earlier findings and conclusions. It should apply its mind independently and in accordance with the law laid down by this Court.

11. GOI while deciding the said Revision Application in remand vide Order No. 274-277/14-CX dated 20.06.2014 (para 9.2 of the Order) observed that on the basis of collateral evidences, the correlation stands established between export documents and excise documents and hence, export may be treated as completed, however, such verification has been done on the basis of copies of documents submitted by M/s Kaizen Plastomould Pvt. Ltd. and hence the original authority is required to carry out necessary verification on the basis of original documents either available with M/s Kaizen Plastomould Pvt. Ltd. or submitted to the department as claimed by M/s Kaizen Plastomould Pvt. Ltd.

12. Respectfully following the aforesaid Orders/Judgements (discussed at para 10 & 11 supra) Government directs the original authority to examine all the aspect of proof of export in this case on the basis of collateral evidences available on records or submitted by the respondent.

13. In view of above position, Government finds no infirmity with the impugned Order-in-Appeal and therefore upholds the same.

14. Government directs the original authority to carry out necessary verification on the basis of documents already submitted to the department as claimed by the respondent with the various export documents and also verifying the documents relating to relevant export proceeds and decide the issue accordingly within eight weeks from the receipt of this Order. The respondent is also directed to submit the documents, if any, required by the original authority. Sufficient opportunity to be afforded to the respondent to present their case.

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

Shrawan 7/10/22

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

ORDER No. 978 /2022-CEX (WZ) /ASRA/Mumbai Dated 07.10.2022

To,

M/s. Starlit Power Systems Ltd.,
Om Sai Industrial Estate, Gala No 7.
Kanerphata, Virar (East)
Virar-401 303.

Copy to:

1. Commissioner, GST & CX, Palghar, Sector-E, C-24, Utpad Shulk Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
2. Commissioner GST & CX, (Appeals-III), Mumbai. 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400012.
3. Assistant Commissioner, GST & CX, Division-II Palghar.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.