



F. No. 195/115/2017-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 18/1/23

Order No. 30/2023-CX dated 18-01-2023 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application, filed under section 35 EE of the Central Excise Act, 1944, against the Order-in-Appeal No. 390/2016 (CXA-II) dated 21.10.2016, passed by the Commissioner of Central Excise (Appeals-II), Chennai.

Applicant : M/s IGP Engineers Pvt. Ltd., Kanchipuram.

Respondent : The Commissioner of CGST, Chennai South.

ORDER

Revision Application, bearing No. 195/115/2017-RA dated 30.01.2017, has been filed by M/s IGP Engineers Pvt. Ltd., Kanchipuram (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 390/2016 (CXA-II) dated 21.10.2016, passed by the Commissioner of Central Excise (Appeals-II), Chennai. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, set aside the Order-in-Original No.21/2015 dated 02.11.2015 passed by the Additional Commissioner of Central Excise of the then Central Excise Commissionerate-Chennai IV.

2. Briefly stated, the Applicants herein are manufacturers of industrial gaskets falling under CETH 84849000 of the Central Excise Tariff Act, 1985. During the scrutiny of accounts of the Applicants by the Audit Group of the department, it was found that the Applicants had written off export sales to the tune of Rs.1,00,88,714/-, in their financial records, for the period from October, 2009 to March, 2014 and Rs. 15,09,884/- for the period April, 2014 to March, 2015 on the ground that the exported goods were rejected by their foreign buyers. During the period from October, 2009 to March, 2014, the Applicants wrote off an amount of Rs. 44,25,507/- on which they had claimed a rebate of Rs. 4,85,359/- and during the same period they wrote off an amount of Rs. 56,63,207/- on goods exported without payment of duty under LUT. Duty involved in exports under LUT was Rs. 6,31,474/-. It, therefore, appeared that the Applicants herein had contravened the provisions of Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE(NT) dated 06.09.2004, Rule 19 of the Central Excise Rules, 2002 read with notification no. 42/2001-CE(NT) dated 26.10.2001 and Para 2.25.4 of Handbook of Procedure- Vol. I of Foreign Trade Policy. Accordingly, the Applicants were issued a SCN dated 23.09.2014 for recovery of Rs. 4,85,359/- being erroneous rebate and Rs. 6,31,474/- being the Central Excise duty involved on goods cleared without payment of duty. For the period April, 2014 to March, 2015, the Applicants were issued with a Statement of Demand dated 24.05.2015 to recover Rs. 1,64,454/- alongwith interest and penalty. After due process of law, the original authority dropped the proceedings on the grounds that the exports in question are not in dispute and nowhere in the rules 18 & 19 of the Central Excise Rules,

2002 and the notifications issued thereunder, the condition of submission of BRC is enforced. Aggrieved, the department (Respondent herein) preferred an appeal with the appellate authority who held that if the exporter fails to submit the BRC within the stipulated time period, the benefits availed by them should be recovered and, accordingly, the demand of duty on goods exported under LUT and the recovery of rebate amount sanctioned erroneously, where the Respondent (Applicant herein) had self-written off the export value and had not received any foreign exchange, is sustainable. Consequently, the Commissioner (Appeal) set aside the OIO.

3. The Revision Application has been filed, mainly, on the grounds that in terms of Rule 19 of the Central Excise Rules, 2002 or the notifications issued thereunder, there is no requirement of any realization of exports proceed, that in terms of the said rule, the only requirement is to establish that the goods cleared from the factory have been physically exported out of India and nothing else; that under Rule 18 of the Central Excise Rules, 2002 or the notification issued thereunder, the applicant was required to establish that they had paid duty on such clearances for export which has been established by them alongwith the fact that such goods have been exported physically out of India; that surrender of export incentive referred to in the master circular no. 14/2013-14 dated 01.07.2013 of RBI is applicable only to the export incentive provided under the FTP where realisation of export proceeds has been mandated as a condition and prescribed explicitly.

4. Personal hearing, in virtual mode, was held on 16.01.2023. Sh. M. Karthikeyan, Advocate appeared for the Applicants and reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. In this case, the Commissioner (Appeals) has held that rebate already sanctioned and paid has been erroneously paid/refunded to the extent the export proceeds were not realized. Similarly the demand of duty foregone has been confirmed, wherever the export proceeds in respect of goods exported under LUT have not been realised. Admittedly, in both cases, export proceeds

could not be realized as the exported goods were rejected by the foreign buyer of the Applicant. However, it is also not in dispute that the goods in both the cases were exported physically out of India. Therefore, the question that arises for consideration is whether a rebate claim sanctioned in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) can be held to have been erroneously paid/refunded and the duty foregone on exports under LUT in terms of Rule 19 of the Central Excise Rules, 2002 read with Notification No. 42/2001-CE(NT) can be demanded, if export proceeds are not realized.

5.2 The Government observes that as per Rule 18 *ibid*, where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Notification No. 19/2004-CE(NT) dated 06.09.2004 has been, accordingly, issued prescribing the 'conditions and limitations' as well as the 'procedure' for grant of rebate. The said notification dated 06.09.2004 does not prescribe realisation of export proceeds and submission of BRC to evidence the same as a condition for sanction of rebate claim. In the present case, the appellate authority has proceeded on a premise that the Applicant herein have availed the benefits of rebate claim and the amount was sanctioned and paid to them on the bonafide belief that they will submit the BRC within the stipulated time , but after availing the benefits , they have not submitted the BRC, hence, the rebate amount availed by the Applicants herein are rightly recoverable. However, the Government observes that there is nothing in Rule 18 or the notification dated 06.09.2004 to even read the realisation of export proceeds and submission of BRC as a post-facto condition. The Government observes that the judgment of Hon'ble Allahabad High Court, in the case of Jubilant Life Sciences Ltd. vs. UOI. {2016 (341) ELT 44 (All)}, supports this view. Further, the Government has also taken similar view earlier in several cases, including in the case of Salasar Techno Engineering Pvt. Ltd.{2018 (364) ELT 1164 (GOI), Order No. 66/2021-CX dated 31.03.2021 in the case of M/s Taurus Agile Technology Pvt. Ltd., New Delhi and Order No. 15-21/2023-CX dated 05.01.2023 in the case of M/s unilever India Exports Ltd., Bengaluru etc.

5.3 In respect of demand of duty issued to the Applicants in respect of goods exported under LUT, in terms of Rule 19 of the Central Excise Rules, 2002 read with notification no. 42/2001 –CE(NT) dated 26.06.2011, the appellate authority has similarly recorded that that the Applicants herein have failed to submit the BRC and hence the duty not paid on exported goods is correctly recoverable. However, it is observed that neither Rule 19 nor the notification dated 26.06.2001 prescribe the realization of export proceeds as a condition (prior or post- export) for duty free export of goods under LUT. Therefore, even in this case, the Order has been passed by the Commissioner (Appeals) without any legal basis.

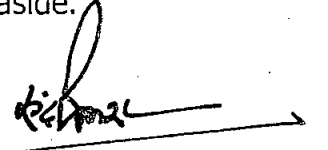
5.4 The appellate authority while allowing the appeal has found merit in Respondent department's contention that before self- writing off the export sales in their financial records, the Applicants herein should have surrendered the duty exemption benefit availed by them and also should have surrendered the rebate claim sanctioned and paid to them, when they could not realize the foreign exchange, as per RBI Master Circular No. 14/2013-14 dated 01.07.2013. However, Government finds that in absence of any condition to this effect in Rule 18/Rule 19 and the relevant notifications, the rebate sanctioned/ duty foregone cannot be sought to be recovered only on the basis of executive instructions. Further, para C.20 of the said Master Circular requires the AD Bank to ensure compliance in this regard. There is no role assigned to the Central Excise authorities in enforcing the requirement of the Master Circular. The department, therefore, if aggrieved could have approached the AD Bank/RBI instead of taking action sou-motu in the matter.

5.5 The Commissioner (Appeals) has relied upon the decisions reported in 2015 (317) ELT 209 (Calcutta) and 2015 (328) ELT 786 (GOI) in support of his findings. The Government observes that those cases relate to drawback of duties. It would be relevant to highlight here that in the case of drawback of duties in respect of export goods, there are specific provisions made in Section 75 of the Customs Act, 1962 and the Rules framed thereunder (i.e. Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995) empowering the Customs officers to recover the drawback paid

where export proceeds are not realised within the time allowed under the FEMA, 1999. Such provisions are conspicuous by their absence under Rule 18/Rule 19 or the notifications dated 06.09.2004 issued thereunder.

5.6 In view of the above, the Government holds that the Order-in-Appeal impugned herein cannot be sustained.

6. The Revision Application is allowed and the Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s IGP-Engineers Pvt. Ltd.,
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G.O.I. Order No. 30 /23-CX dated 18.1.2023

Copy to:

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2. The Commissioner of Central Goods & Services Tax (Appeals-II), Chennai, Plot no-2054, Block-I, Newry Towers(2nd floor),12th Main road, 2nd Avenue, Anna Nagar, Chennai-600040.
3. M/s Swamy Associates, Rams flats, New No.18, Ashoka Avenue, Directors Colony, Kodambakkam, Chennai-600024PA to AS(RA).
4. PS to AS(RA)
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED



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