

REGISTERED
SPEED POST



F.NO.195/780/11-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: 1.1.8/13

ORDER NO. 1077 /2013-Cx DATED 30.07. 2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 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. 275/2010(Ahd-I)CE/MM/Commr(A)/Ahd dated 11.8.2010 passed by the Commissioner of Central Excise (Appeals-V), Ahmedabad

Applicant : M/s. Ashima Dyecot Ltd., Texcellence Complex Khokhara Mehmedabad, Ahmedabad

Respondent : Commissioner of Central Excise, Ahmedabad-I

ORDER

This revision application is filed by M/s. Ashima Dyecot Ltd., Ahmedabad, against the order-in-appeal No.275/2010(Ahd-I)CE/MM/Commr(A)/Ahd dated 11.8.2010 passed by the Commissioner of Central Excise (Appeals-V), Ahmedabad with respect to order-in-original passed by the Joint Commissioner, Central Excise, Ahmedabad-I.

2. The brief facts of the case are that the applicant are engaged in the manufacturing of cotton fabrics and man-made fabrics, falling under ch.Nos. 52 & 55. They are using grey fabrics as input for manufacture of aforesaid products and were availing benefit of Notification No.7/2001 dated 1.3.2001, Notification No.53/2001-CE(NT) dated 29.6.2001 and 6/2000-CE(NT) dated 1.3.2002. They had procured raw material such as grey fabrics, dyes and chemicals duty free under Notification No.51/2000-Cus and 43/2002-Cus under quantity based advance licence scheme. The applicant had taken deemed credit at the time of clearance of final product for export under DEEC scheme which were manufactured out of inputs procured duty free as well as dutiable and claims of rebate under Rule 18 had been filed by the applicant which were allowed by the jurisdictional Deputy Commissioner vide his various orders. Subsequently, show cause notice was issued on the ground that as the inputs were not duty paid, the applicants were not entitled to take deemed credit at the time of clearance and hence rebate claims which were allowed, on such exports, were erroneous and requires to be recovered under Rule 12 of Cenvat Credit Rules 2002. Later on, the Assistant Commissioner vide order-in-original No.46 to 53/AC/DEM/2008-09 dated 30.12.2008 had dropped the proceedings initiated by above referred show cause notice. Being aggrieved by the orders-in-original the department had preferred appeal before the Commissioner (Appeals), who allowed the same. In the meantime Department issued show cause notice for recovery of erroneously paid rebate. The Commissioner (Appeals) vide order-in-appeal No.313/2009(Ahd-I)/CE/RLM/Commr(A)/Ahd dated 23.10.2009, allowed the department's appeal. The said show cause notice

was decided by the original authority vide impugned order-in-original, wherein he confirmed the demand of sanctioned rebate amount.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Show cause notice was issued for denying benefit of rebate of duty which was granted by separate order on the ground that the payment made from deemed credit account was not a proper payment as the applicant could not have taken deemed credit as their main raw material, i.e. grey fabric was imported without payment of duty. It is submitted that the rebate granted could not be undone merely because duty was debited from wrong head. It is submitted that if the present applicant had wrongly utilized the cenvat which was not available to them, then a show cause notice should have been issued for reversal of such credit and not for reversal of rebate benefit which was granted under different sets of rules for export of such goods.

4.2 It is further submitted that Notification No.6/2002 grants deemed credit on raw material used in the manufacture of processed fabrics. The list of raw material contains yarns/fibre and colour, chemicals and packaging materials etc. This notification nowhere covers grey fabrics which were imported by us. Hence, the adjudicating authority has correctly relied on the decisions of M/s. Damini Printers Pvt. Limited Vs. CCE, Noida reported at 2005 (191) ELT 653 and M/s. Mangal Textile Mills (I) Pvt. Limited reported at 2003 (159) ELT 464. The Tribunal in above decisions, had granted deemed credit on yarns/fibre content even when the said inputs were not directly utilized by the manufacturers like us. In this regard, it is also submitted that the deemed credit granted by above notification is a composite amount on all materials which are used in the manufacture of processed fabrics. The Notification does not bifurcate any deemed credit which is to be availed on yarn/fibres or on colour chemicals

or packaging materials. In such circumstances, if anyone of the above raw material is received, even without payment of duty, then also the manufacturer is eligible for the deemed credit as he has otherwise received other raw materials on payment of duty.

4.3 It is submitted that innumerable notifications have been issued by the Central Government containing various kinds of clauses. As pointed out in the show cause notice, certain notifications have clauses which provided that exemption contained would not be available if the raw-material used to make final product is clearly recognized as non-duty paid or subjected to NIL rate of duty. There are notifications which contain clause and explanations which permit the department to show that the goods are non-duty paid. What is pertinent to notice is that the legislating authority required the notification to be conditional on any such clauses, if specifically so provided. Hence, legislating authority clearly considered the issue whether the raw-material is duty paid or not as a relevant issue to grant exemption. It is submitted that the notifications in the present case, do not contain any such clauses at all. They are deemed credit notifications whose very purpose will be frustrated if the department is permitted to go into the duty paid nature of the inputs. In any view of the matter, in their eternal wisdom, the legislature of the notifications did not choose to provide any such clause while promulgating such a notification. It is obviously not open to the department to read into the notifications clause which says that if inputs are clearly recognized as non-duty paid, the deemed credit would not be available. Such an enquiry is not contemplated under the notification itself. Therefore, it is not open to the department to read such a clause into the notifications. It is submitted that the very basic exercise sought to be undergone in the SCN is erroneous and is opposed to the very language of the notification in question.

4.4 The notifications provide for a fixed rate of deemed credit on various inputs used in the manufacture of processed fabrics. The deemed credit is not earmarked for any specific input prescribed therein. It is not the scheme of the notification that if a particular input is not duty paid, then the entire deemed credit will be disallowed. The legislature has adopted a comprehensive approach and sought to provide for a composite rate of deemed credit irrespective of quantity of inputs used or irrespective

of whether relevant particular input is used or not or irrespective of the duty paid nature on any particular input. It is submitted that this scheme of the notification is writ-large from a most cursory perusal thereof. In light of the above, there is no question of going into the issue whether any particular input is duty paid or not.

4.5 It is further submitted that the Commissioner has proceeded on the assumption that all the inputs received by the applicant are non-duty paid and hence no deemed credit shall be allowed. She has further held that the intention of the legislature is to allow deemed credit only on fibres and yarns. This view of the learned Commissioner is also wrong as the notification itself mentions various inputs besides fibre or yarn such as, colour chemicals, packaging materials, etc. Hence, it cannot be said that the intention of legislature is to grant deemed credit only on fibres and yarns. Fibre or yarn are one of the several inputs which are used for processing of textile fabrics and if the same are non-duty paid, then also the deemed credit shall be granted as the same is available on composite basis on all raw-materials and not individually. It is further submitted that it is not alleged by the department anywhere that all inputs used in the export goods were non-duty paid. It is submitted that besides grey fabric, there are innumerable inputs which are procured from local markets and which are also duty paid. However, the Commissioner (Appeals) has wrongly held that all the inputs have been procured duty free by the present applicant. In light of the scheme of the notification, the claim of the department is not sustainable and on this ground also, the order requires to be quashed.

4.6 It is further submitted that the Commissioner has further held that the rebate can be denied also on the ground of unjust enrichment. In this regard, it is submitted that as submitted above, the claim of rebate itself is legally admissible as many inputs which have been used in the processing have suffered duty. In the event, question of unjust enrichment does not arise. Furthermore, the principle itself is not applicable in the facts and circumstances of the case.

4.7 It is also submitted that the notice itself is barred by limitation as we had taken cenvat much earlier and had utilized the same for export purposes. Rebate of the said

duty payment was also sanctioned much earlier before issuance of show cause notice. Hence, department cannot deny the benefit granted earlier by invoking larger period applicable when entire benefit was granted by the department and was upheld also by various authorities. Department is not supposed to open new litigation on new grounds by invoking the larger period. On this ground also the order-in-appeal requires to be dismissed.

5. Personal hearing was scheduled in this case on 20.3.2013 & 27.6.2013. Hearing held on 20.3.2013 was attended by Shri H.S.Rajput, General Manager(Excise) and Shri Nirav P.Shah, Advocate on behalf of the applicant, who reiterated the grounds of revision application. The applicant during the course of personal hearing has stated that the issue of admissibility of deemed credit has been decided in their favour by the Commissioner of Central excise (Adjudication), Ahmedabad vide order-in-original No.35/Commr(Adj)/2005 dated 29.7.2005. The said order dated 29.7.2005 has been upheld by the Tribunal vide final Order A/1188/WZB/AHD/2010 dated 11.8.2010. Department's Tax Appeal No.441/11 filed against the said Tribunal order dated 11.8.2010 has also been rejected by the Hon'ble Gujarat High Court vide order dated 10.11.2011.

6. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

7. Government observes that the said rebate claims were initially sanctioned by the original authority. The department filed appeal against the said rebate sanction order, before Commissioner (Appeals) who vide order-in-appeal No.313/2009(Ahd-I)/CE/RLM/Commr(A)/ Ahd dated 23.10.2009 decided the appeal in favour of department and set aside the rebate sanction orders. Pursuant to the said order-in-appeal dated 23.10.2009, the original authority vide impugned order-in-original confirmed the demand of already sanctioned rebate claims, which was also upheld by the Commissioner (Appeals) vide impugned order-in-appeal dated 11.8.2010. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the department has contended that rebate claims were not admissible where the duty was paid from deemed credit availed in respect of inputs imported duty free under advance license scheme. In this regard, during the course of hearing the applicant stated that the issue of admissibility of deemed credit has been decided in their favour by the Commissioner of Central excise (Adjudication), Ahmedabad vide order-in-original No.35/Commr(Adj)/2005 dated 29.7.2005. The said order dated 29.7.2005 has been upheld by the Tribunal vide final Order A/1188/WZB/AHD/2010 dated 11.8.2010. Department's Tax Appeal No.441/11 filed against the said Tribunal order dated 11.8.2010 has also been rejected by the Hon'ble Gujarat High Court vide order dated 10.11.2011.

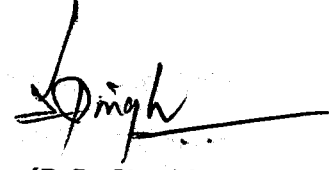
8.1 On perusal of said order No.35/Commr(Adj)/2005 dated 29.7.2005, passed by the Commissioner of Central Excise (Adjudication), Ahmedabad, it has been observed that show cause notice issued for recovery of deemed credit availed by the applicant was dropped by the said Commissioner (Adj) both on merit as well as on time limitation of show cause notice. The Tribunal WZB (Ahmedabad) vide final order No.A/1188/WZB/AHD/2010, dated 11.8.2010 upheld the said order dated 29.7.2005. Hon'ble Gujarat High Court vide order dated 10.11.2011 in Tax Appeal No.441 of 2011, filed by the CCE, Ahmedabad, upheld the said Tribunal order dated 11.8.2010. Government notes that said orders were not considered by the lower authorities while deciding the case. Hence, the case is required to be remanded back for denovo adjudication by taking into account the said judgements.

9. In view of above discussions, Government sets aside impugned order-in-appeal and remands the case back to original authority for deciding the issue afresh by taking into account the above said judgements. A reasonable opportunity of hearing will be afforded to both the parties.

10. Revision application disposed off in above term.

11. So, ordered.

M/s. Ashima Dyecot Ltd., Ahmedabad
Texcellence Complex, Khokhara
Ahmedabad – 380 021



(D.P. Singh)

Joint Secretary (Revision Application)



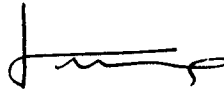
(टी. आर. आर्य / T.R.S.)
अधीक्षक, आर.ए./Superintendent
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi)

Order No. 1077 /2013-Cx dated 30-7-2013

Copy to:

1. Commissioner of Central Excise, Ahmedabad-I, Ambawadi, Ahmedabad.
2. Commissioner of Central Excise (Appeals-V), Central Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad
3. Joint Commissioner of Central Excise, Ahmedabad-I, Excise Bhavan Ambawadi, Ahmedabad
4. Shri Nirav P.Shah, Advocate, D/722, B.G.Tower, O/s Delhi Darwaja, Shahibaug Road, Ahmedabad-380004
- ✓ 5. PA to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(T.R.Arya)
Superintendent (Revision Application)