

REGISTERED
SPEED POST



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.Nos 195/19/2020-RA
195/20/2020-RA / 362-
195/21/2020-RA
195/22/2020-RA

Date of issue: 17.01.2024

ORDER NO. 02-05/2024-CX (WZ)/ASRA/MUMBAI DATED 17.1.2024
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 Abdulla Textiles & Ors
Respondent Commissioner of CGST & Central Excise, Surat
Subject Four Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
passed by Commissioner, CGST & Central Excise, Appeals
Commissionerate, Surat

ORDER

Four Revision Applications have been filed against Orders-in-Appeal (OIA) passed by the Commissioner, CGST & Central Excise, Appeals Commissionerate, Surat as detailed hereunder -

RA No	Applicant Name (M/s)	OIA No /date
195/19/20-RA	Abdulla Textiles	CCESA-SRT(APPEAL)/PS - 719 /2019-20 dated 23 03 2020
195/20/20-RA	Imtiyaz Traders	CCESA-SRT(APPEAL)/PS - 673 /2019-20 dated 20 03 2020
195/21/20-RA	Salim & Co	CCESA-SRT(APPEAL)/PS - 672 /2019-20 dated 23 03 2020
195/22/20-RA	A C Fabrics	CCESA-SRT(APPEAL)/PS - 723 /2019-20 dated 23 03 2020

2 Brief facts of the case are that the applicants had filed rebate claims pertaining to exports done in the FY 2004-05. As the claims were returned by the concerned Range Superintendent without verification, with observation that an investigation regarding suspected misuse of DEPB & Rebate scheme was being conducted by DRI, Surat against the applicants, the rebate sanctioning authority issued show cause notices and subsequently rejected the rebate claims vide following Orders-in-Original:

Applicant Name (M/s)	No of rebate claims/ amount involved (in Rs)	OIO No /date
Abdulla Textiles	02/7,68,600/-	SRT-I/Rebate/RK-10/Div-I/2014-15 dated 20 05 14
Imtiyaz Traders	15/42,65,171/-	SRT-I/Rebate/RK-11/Div-I/2014-15 dated 20 05 14
Salim & Co	28/89,44,820/-	SRT-I/Rebate/RK-13/Div-I/2014-15 dated 20 05 14
A C Fabrics	20/65,85,433/-	SRT-I/Rebate/RK-12/Div-I/2014-15 dated 20 05 14

3 Aggrieved, the applicants filed separate appeals before the Commissioner (Appeals) who allowed the appeals and remanded the matter

back to the adjudicating authority. However, still aggrieved, the applicants have filed the impugned Revision Applications mainly on the grounds that.

(a) Ld Commissioner (Appeals) has erred in not considering the mandatory provisions of CBEC's Manual Instructions whereby the time limit fixed for disposal of rebate claims is two months. Beyond that limit any rebate claims is rejected is to be considered time barred as no show cause notice can be issued beyond prescribed limit. Hence, the findings of Ld Commissioner (Appeals) on this point alone is error of law.

(b) In this case, no deficiency memo has been issued from the date of filing of twenty rebate claims and after a period of more than ten years, show cause notice is issued that too on assumptions and presumptions ground and therefore considering the provisions of law of limitation the entire show cause notice is time barred. Ld Commissioner (Appeals) have erred in not considering settled law of limitation and judgments cited on the subject issue. Reliance is placed on — Cosmonaut Chemicals vs. Union of India -2009 (233) ELT 46 (Guj).

(c) In view of above settled position of law the show cause notice issued in 2014 for the rebate claims filed during the period 2004-05 is time barred considering that after filing of the rebate claims deficiency memo was required to issue within 15 days and rebate claims were required to dispose of within two months. Further, general law of limitation is one year and maximum five years, however, in the present case the show cause notice for denial of rebate claims have been issued after ten years. In the circumstances, on this ground alone, the order passed by the lower authorities are prayed to set aside allowing appeal with consequential relief.

(d) Ld Commissioner (Appeals) has failed to appreciate that after filing of the rebate claims, the application with all enclosures were forwarded to Range Office for verification, however, without verification of the said documents, the Range Superintendent reported. Thus, no documents were verified and report was submitted to the Assistant Commissioner. However, after a period of ten years, the show cause notice have been issued. Thus, without going into the verification of documents and based on assumptions and presumptions report, the rebate claims were proposed to deny. Thus, on merits also the findings of lower authorities are not correct and therefore also the said order is prayed to set aside allowing appeal with consequential relief.

(e) Ld Commissioner (Appeals) has failed to appreciate that there cannot be two proceedings for the same cause of action pertaining to rebate claims. On one hand it is a stand of the revenue in the present proceedings that the DRI have issued notice to deny the rebate claims and on other hand after a period of ten years further show cause notice have been issued by excise authority for rejection of the rebate claims on the same ground vide show cause notice dated 12/03/2014. This clearly shows that the present specific notice for denial of rebate claims is not maintainable in law and therefore also the orders passed by the lower authorities are required to set aside allowing appeal with consequential relief.

On the above grounds the applicants have prayed to allow the appeal with consequential relief and to declare that rejection of rebate claims issuing show cause notice after a period of about 11 years in contravention of CBEC's Manual is time barred even applying General Limitation of Law.

4 A Personal hearing was held in this case on 15.09.2023. Shri Raj Vyas, Advocate appeared online on behalf of all the four Applicants for the hearing and reiterated the earlier submissions. He further submitted that

SCN was issued 10 years from the date of claim of rebate, therefore, he contended that should not sustain. He further contended that the SCN and OIO were issued without verification of the documents enclosed with the rebate claims. He requested to remand the matter for denovo adjudication to original authority.

5. Government has carefully gone through the relevant case records available in the case file, written & oral submission and perused the impugned Orders-in-Original and Orders-in-Appeal.

6. Government observes that all the applicants were holding Central Excise registration and were availing benefit of Cenvat credit of the duty paid on the inputs/capital goods. The applicants had filed rebate claims for the exports carried out by them in the year 2004. The claims were forwarded by the rebate sanctioning authority to the jurisdictional range superintendent for verification and their correctness and admissibility. However, the Range Superintendent returned the claims without verification with observation that an investigation regarding suspected misuse of DEPB & Rebate scheme was being conducted by DRI, Surat against the applicants. Subsequently, the rebate sanctioning authority rejected the claims vide OIOs detailed at aforementioned para no 3 on the grounds that the applicants had failed to correlate the exported fabrics with the documents evidencing payment of due central excise duties in the Government Exchequer.

7. Government observes that the applicants have contended that the SCNs issued in the matter are time barred as they were issued beyond the specified period of two months for disposal of rebate claims. Government finds that though ideally a rebate claim should be disposed of within the specified period, however, during the material period a large-scale scam had been unearthed in the Surat-I Commissionerate wherein fraudulent Cenvat credit was availed without receipt of inputs i.e. grey fabrics, against fake invoices and the same was utilized for payment of duty on the clearance of

goods for export under the claim of rebate. The applicants were also being investigated in the matter by DRI, Surat. Therefore, the delay in processing the rebate claims appears plausible. Further, Government observes that the Appellate authority has elaborately explained as to how the SCNs are not time barred and Government concurs with his findings. The relevant para is reproduced hereunder:

8 However, I am not convinced with the contention of the appellant that the notice issued for rejection of rebate claims is issued after 11 years and is time barred. The subject case is neither of any recovery of duty under Section 11A of Central Excise Act, 1944 or Section 11 of Central Excise Act, 1944 nor is of recovery of Cenvat Credit from the appellant. The case is related to rejection of the rebate claims. There is no time limit prescribed under any of the provisions of Central Excise for rejection of the rebate claims. Certainly, there is time limit of 3 months of sanction of rebate claims but if they are intended to be rejected, no time limit is prescribed. The case laws cited and relied upon by the appellant are in the context of different provisions of - Central Excise and in different facts and circumstances hence they cannot be applied in the instant case.

8 During personal hearing, the representative of the applicants had contended that the SCNs and OIOs were issued without verification of the documents enclosed with the rebate claims and therefore had requested to remand the matter for de novo adjudication to original authority. In this regard, Government observes that the Appellate authority has already remanded the matter to the adjudicating authority for deciding the matter afresh, inter alia, after considering following aspects:

- (i) after ascertaining the present status of the basic show cause notice issued by the DRI, Surat, and
- (ii) after considering all the submissions made by the applicant.

9 In view of the findings recorded above, Government does not find any reason to modify the impugned Orders-in-Appeal passed by the Commissioner, CGST & Central Excise, Appeals, Surat.

10 The impugned Revision Applications are accordingly disposed of.

(SHRAWAN KUMAR)

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

ORDER No 02-05 /2024-CX (WZ)/ASRA/Mumbai dated 17 / 24

To,

1. M/s. Abdulla Textiles,
11/687, Chowk Bazar,
Behind Sopari Galli, Surat
2. M/s Intiyaz Traders
Chowk Bazar,
Sopari Galli, Surat
- 3 M/s Salim & Co.
Chowk Bazar,
Sopari Galli, Surat
4. M/s A C Fabrics,
11/1005, Chowk Bazar,
Sopari Galli, Surat.

Copy to:

- 1 Commissioner of CGST, Surat,
New Central Excise Building,
Gandhi Baugh, Chowk Bazar,
Surat - 395 001.
2. Advocate Raj K. Vyas,
206, Skylon Tower, Near DCB Bank,
GIDC - Char Rasta, Vapi - 396 195
- 3 Sr P.S. to AS (RA), Mumbai
- 4 Guard file.

