

**REGISTERED  
SPEED POST**



**F.No. 195/424/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

**14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066**

Date of Issue.....15/2/12

Order No. 131 /13-Cx dated 15.02.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 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. M-I/RKS/36/2011 dated 01.02.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I.

Applicant : M/s Peace International, Mumbai

Respondent : Commissioner of Central Excise, Mumbai-I

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**ORDER**

This revision application is filed by the applicant M/s Peace International, Mumbai against the order-in-appeal No. M-I/RKS/36/2011 dated 01.02.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I with respect to order-in-original passed by Assistant Commissioner(Rebate), Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant has filed two rebate claim in respect of the duty paid on the goods exported which were manufactured by the manufacturer M/s Tirupati Textile, Surat, falling under the jurisdiction of Division-I, Surat-I Commissionerate. On scrutiny of the rebate claims, it was noticed that the applicants had purchased the exported goods from M/s Tirupati Textiles, Surat. The manufacturer have procured majority of inputs from the units M/s Vinita Textiles, Surat and M/s Vishal Enterprises, Surat. Both these units were declared bogus by the Commissioner, Central Excise, Surat. Hence, the Cenvat Credit availed by M/s Tirupati Textiles. i.e. supplier of the goods to the applicants, had not paid proper duty on the exported consignment. Therefore, the rebate claim was rejected by the then Assistant Commissioner(Rebate), Central Excise, Mumbai-I Commissionerate vide Order-in-Original dated 08.12.2005. Aggrieved by the said Order-in-Original dated 08.12.2005, passed by the Assistant Commissioner (Rebate), Central Excise, Mumbai-I, the applicants preferred an appeal before the Commissioner (Appeals), Central Excise, Mumbai-I, Mumbai. The Commissioner (Appeals), Mumbai Zone-I, vide his Order-in-Appeal No. CPA(312)9/MI/2006 dated 20.06.2006, remanded the case back to original authority, who again rejected the same, vide impugned Order-in-Original dated 13.10.2006.

3. On being aggrieved, the applicant again filed an appeal before Commissioner (Appeals) who rejected the same.

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

4.1 The Commissioner (Appeals) erred in relying on the findings of the adjudicating authority who has in turn relied on a report of the Range Superintendent who has reported that the manufacturer M/s Tirupati Textiles had procured majority of the inputs from Vinita Textiles and M/s Vishal Enterprises who were declared bogus vide Alter circulars issued by Commissioner of Central Excise, Surat-I. Commissioner (Appeals) failed to appreciate that a copy of the said report of the Superintendent has not been supplied to the applicants. No details of the said report have been provided. Even the date is not mentioned. The report was obtained behind the back of the applicants. Likewise, copies of the alert circulars have also not been supplied. It is significant to note that the deficiency memo dated 25.04.2005 does not refer to the Superintendent's report and to the Alert Circulars. Thus the applicants were never put to notice on this aspect and the order has been passed in gross violation of the Principles of natural justice.

4.2 The Commissioner (Appeals) failed to appreciate that even if M/s Vinita Textiles and M/s Vishal Enterprise were declared bogus that would not affect the applicants' case. Admittedly and undisputedly the applicants procured the goods from M/s Tirupati Textiles who is a genuine manufacturer. The credentials of M/s Tirupati Textiles have not been questioned or challenged. The duty paying documents viz. the invoices and the duty paid certificates are found to be genuine. The fact that M/s Tirupati Textiles manufactured the fabrics and supplied the same to the applicants after payment of Central Excise Duty has not been disputed. In the circumstances, the department was duty bound to allow the applicants' rebate claims. In this connection the applicants rely on the judgement of Hon'ble CESTAT in the case of Imtiyaz Traders reported in 2010(261) ELT 495 (Tri.-Ahd.)

4.3 The Commissioner (Appeals) failed to appreciate that the exporter is not required to verify and check the genuineness of parties who supplied the raw materials to the manufacturer (seller). It is practically not possible to do so for anyone and there is no such requirement under any law. He failed to appreciate that the applicants had applied the maxim "Caveat Emptor" in as much as Tirupati Textiles is a genuine manufacturer and the credentials of Tirupati Textiles have never been challenged by the Department. By rejecting the rebate on the grounds that were never raised in memo or notice, the Commissioner (Appeals) has travelled beyond the scope of the notice. In this connection the applicants rely on the following decisions:-

(i) Kantilal Parekh – 2003(158) ELT 678(Bom.)

(ii) Pawan Tyres Ltd. – 1996(81) ELT 244(Tri.)

Further Commissioner (Appeals) failed to appreciate that simultaneously however vide R.O.No. 2041 and 2042 of July 2005 the Assistant Commissioner allowed the rebate claims in favour of M/s Tirupati Textiles where exports were effected by the applicants. Further, vide R.O.No. 1936 & 1937 of July 2005 the Assistant Commissioner allowed subsequent rebate claims filed by M/s Shankar Fabrics who had procured goods from the same Tirupati Textiles. It is significant to note that no demand/recovery proceedings are initiated against Tirupati Textiles & Shankar Fabrics. This clearly indicates that the grounds for rejection of the applicants' claims are not sound or correct.

5. The personal hearing was scheduled in the case on 21.12.2012. Shri Murlidialani, P/o holder, attended hearing on behalf of applicant who reiterated the grounds of revision application. Shri P.K. Bohra, Deputy Commissioner, Division -A, Mumbai-I attended hearing on behalf of respondent department who stated that Order-in-Appeal may be upheld.

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 applicants had purchased the exported goods from M/s Tirupati Textiles, Surat. The manufacturer have procured majority of inputs from the units M/s Vinita Textiles, Surat and M/s Vishal Enterprises, Surat. Both these units were declared bogus by the Commissioner, Central Excise, Surat. The original authority has rejected the rebate claim on the ground that duty paid from such Cenvat Credit availed by M/s Tirupati Textiles on the basis of bogus invoices raised by non-existent suppliers of inputs, can not be treated as payment of duty on the exported goods. The Commissioner (Appeals) upheld the impugned Order-in-Original. Now the applicant has filed revision application on the grounds stated in para 4 above.

8. Government notes that the applicants as merchant exporters purchased/procured their export goods (i.e. processed fabrics) from different manufacturers. There is no dispute to the factual details on record for the completion of exports and filing of claims of rebate in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CD(NT) dated 06.09.2004. Government notes that such like issue has already been decided by the revisionary authority vide GOI Order No. 304-307/07 dated 18.5.07(F.No.198/320-323/06) in the case of M/s Shyam International Mumbai. In this case revision application was filed by department i.e. CCE Mumbai against the orders-in-appeal No. 326 to 329/M-III/2006 dated 18.05.06 passed by Commissioner of Customs and Central Excise (Appeals) Mumbai Zone-II. In the said GOI Order it was held that the merchant exporter cannot be denied the rebate claim for the reason that manufacturer has availed Cenvat Credit wrongly on the basis of bogus duty paying documents when there is no evidence to show that the applicant merchant exporter was party to fraud committed in fraudulent availment of cenvat credit.

9. Government notes that similar issue was involved in the case of M/s Roman Overseas decided by Government vide G.O.I. order No. 129/10-CX dated 07.01.10 relying on said G.O.I. order No. 304-307/07 dated 18.05.07 in the case Shree Shyam international Mumbai. The above mentioned G.O.I. order No. 129/10-CX dated 07.01.10 was challenged by department in a writ petition filed before Gujarat High Court. Now

Hon'ble High Court of Gujrat vide order dated 31.03.11 reported as 2011 (270) ELT 321 (Guj.) has upheld the said G.O.I. order dated 07.01.2010. The para No. 10 to 15 of said judgement are reproduced below:

"10. From the material on record noted above, we find that insofar as respondent M/s Roman Overseas is concerned, it had purchased goods after payment of duty to the manufacturer. On such duty, respondent M/s Roman Overseas was within its rights to claim cenvat credit which was passed on by the seller of the goods i.e. M/s Unique Exports. It is of course a fact that such goods were not duty paid. Fact however, remains that there are no allegations that respondent M/s Roman Overseas was part of any such fraud, had any knowledge of the fact that duty was not paid or that it had failed to take any precaution as required under sub-rule(3) of Rule 9 of Cenvat credit Rules which reads as under.

11. In view of above discussion, we find that respondent M/s Roman Overseas cannot be denied the benefit of rebate claims. Particularly, when there are no allegations that respondent M/s Roman Overseas either had knowledge or had even failed to take basic care required in law or in general terms to verify that goods were duty paid.

12. The language of Rule 18 however, may pose some question. In particular, it may be contended that Rule 18 envisages rebate for duty paid. Term duty paid as per the department would be duty paid to the Government and not otherwise and when no duty is paid, there can be no rebate. In our views, however Rule 18 also can be looked from this angle. Insofar as respondent M/s Roman Overseas is concerned, it had paid full duty partly by paying duty directly to the Government and partly by availing cenvat credit. To do so, they had made payment of part duty to seller of goods. Insofar as respondent M/s Roman Overseas is concerned, therefore, entire duty is paid by them of which it is claiming rebate of the duty paid on excisable goods upon eventual export.

13. ....

1) .....

2) .....

3) .....

4. Reliance was placed on decision in case of Sheela Dyeing & Printing Mills P. Ltd. vs. CCE & C, Surat-I reported in 2008 (232) ELT 408 (Guj), wherein issue involved was whether while taking cenvat credit on inputs, the applicant had taken reasonable steps to ensure that goods are duty paid. It was in this background relying on sub-rule (2) of Rule 7 of Cenvat Credit Rules, Court found that appellant had failed to take such care. In the present case, we have already noticed that such averments and allegations are not on record. In fact findings are to the contrary.

14. In the result, we are of the view that impugned orders require no interference. "

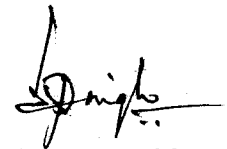
Government notes that Hon'ble High Court has laid down the principles that rebate claim cannot be denied to merchant exporter if he is not party to fraud committed at manufacturer or input supplier end and he has paid duty on valid duty paying documents.

10. Government further notes that in this matter the alleged association/ connivance of the applicant in fraudulent availment of cenvat credit neither discussed nor

any independent proof /investigation report thereof is appearing in case records before this authority. The result of investigation conducted by the department regarding involvement of applicant in fraudulent availment of Cenvat credit are not placed on record. Further it is also noted that in the background of proceedings of this matter, lower authorities have not followed the principle of individual verification of genuineness of transactions as laid down by Hon'ble Gujarat High Court in its order dated 31.03.2011 in case of M/s Roman Overseas and other in SCA No.16269/2010 wherein the careful and analytical applicability of this authority's decision in M/s Shree Shyam International [G.O.I. order No. 304-307 dated 18.05.2007] was upheld. The SLP No. CC 19577/11 filed by department against this order dated 31.03.2001 of Hon'ble High Court of Gujarat was dismissed by Hon'ble Supreme Court vide order dated 2.12.11. Applicant has also argued that he was not supplied the relied upon document like jurisdictional Superintendent of Central Excise report and alert circular issued by Commissioner Central Excise. The relied upon documents are required to be supplied to the notice to comply with the principles of natural justice. In view of totality of all the above said details and the fact of the case, Government in the interest of natural justice finds it proper to remand back the case to the adjudicating authority for fresh consideration in the light of observation and discussions made in foregoing paras. Government therefore sets aside the impugned orders and remand the case back to original authority for denovo consideration by taking into account the above observations and judgement dated 31.03.2011 of Hon'ble Gujrat High Court. The applicant will be supplied the copies of relied upon documents and a reasonable opportunity of hearing be afforded to them.

11. The revision application is thus disposed of in terms of above.

12. So, ordered.

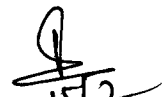


(D.P. Singh)

(Joint Secretary to the Government of India)

M/s Peace International,  
236, Sanjay Building, 5-B Mittal Industrial Estate,  
Andheri-Kurla Road, Mumbai- 400049

(Attested)



(Assistant Commissioner)  
सहायक आयुक्त/Assistant Commissioner  
C.E.C.-O.S.D. (Revision Application)  
पत्र संशोधन (संशोधन प्रस्ताव)  
Ministry of Finance (Dept. of Road)

G.O.I. Order No. 13 /13-Cx dated 15-02-2013

Copy to:-

1. The Commissioner of Central Excise & Customs, Mumbai-I, 115 Kendriya Utpad Shulk Bhavan, Maharishi Karve Road, Mumbai – 400020.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Dadi Seth Lane, Chowpatty, Mumbai- 400 007.
3. The Assistant Commissioner (Rebate), Central Excise, Mumbai-I, Meher Building, Bombay Garage, Chowpatty, Mumbai- 400 007.
- ✓ 4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.



(Bhagwat P. Sharma)  
OSD (Revision Application)