

**REGISTERED  
SPEED POST**



**F.No. 195/257/11-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...15/2/13.....

Order No. 132 /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 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. M.I/RKS/39/2010 dated 28.12.10 passed by Commissioner of Central Excise (Appeals), Mumbai-I.

**Applicant** : M/s Texorange Corporation, Mumbai

**Respondent** : Commissioner of Central Excise, Mumbai-I

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## ORDER

This revision application is filed by the applicant M/s Texorange Corporation, Mumbai against the order-in-appeal M.I/RKS/39/2010 dated 28.12.10 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original No. 201/R/06 dated 22.3.06 passed by Assistant Commissioner (Rebate) Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicants as manufacturer exporter filed seven (7) rebate claims in respect of duty paid on the goods exported. On scrutiny of the rebate claims, it was observed that the applicants had not followed the procedure for clearance of goods under self-sealing/self-certification for export under claim of rebate, as given in Chapter 8 and Chapter 7 respectively of CBEC's Excise Manual of Supplementary Instructions and in Board's Circular No.426/59/98-CX dated 12.10.1998. It was also noticed that the applicants had submitted the duty payment certificate in loose/open. Accordingly, a Deficiency Memo cum SCN cum call for personal hearing, was issued to the applicants asking them to submit the certificate from jurisdictional Range Superintendent/Assistant Commissioner/Deputy Commissioner confirming that the goods were cleared under self-sealing/self-certification under prior intimation to the department, and to submit the genuineness of duty payment certificate from the jurisdictional Range Superintendent. A separate Deficiency Memo cum SCN cum call for personal hearing vide letter F.No.V(15)Reb/Ch.54/2005 dated 15.12.2005, was issued to the applicants for the three other claims for submitting the duty payment certificate in sealed cover. Copies of the memo were sent to the jurisdictional Superintendent to confirm the correctness and genuineness of the duty payment certificates issued by them after verifying the Cenvat credit availed by the manufacturer in the wake of frauds committed by some textile exporters and manufacturers in various Commissionerates. The jurisdictional Range Superintendent informed that the applicants have availed Cenvat credit on the basis of invoices issued by bogus units as per the alert circular issued by Commissioner, Central Excise, Surat-I. Based on the facts, the Assistant Commissioner (Rebate), Central Excise, Mumbai-I, rejected the rebate claims vide

impugned order-in-original, on the grounds that the exported goods are not in the nature of duty paid character.

3. On being aggrieved by the above said order-in-original, the applicant filed appeal before Commissioner (Appeals), 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 That Respondent cannot seek to rely upon the Range Superintendent letter to deny the rebate claim to us without giving a copy of the said letter to the applicants. Further CBEC circular itself states that credit be taken only on the basis of duty paying documents- reasonable steps under rule 7 not applicable during the material time and the applicants seek to rely upon Para 2 of the CBEC Circular No. 703/19/2003-CX, dated 25-3-2003 which states that the manufacturers or deemed manufacturers shall take credit only on the strength of the duty paying documents and there is no need for any physical verification of premises, goods or records. That the CBEC Circular is binding on the revenue as held in the Supreme Court judgment in Collector of Central Excise, Vadodara Versus Dhiren Chemical Industries reported in 2002 (143) E.L.T. 19 (S.C.).

4.2 When the grey fabrics have been accompanied with excise invoice showing the excise registration number of the grey manufacturer, it is illegal to allege that we have not taken any steps to ensure the duty paid character of the inputs and we have suppressed the facts from the department that the suppliers / manufacturers and / or the invoices of grey fabrics are bogus /fake. Moreover, the trade practice is that the deemed manufacturers / manufacturers would buy the grey fabrics and send it to the processors for processing and then the processors shall return the processed fabrics to the deemed manufacturer/manufacturer. Moreover, it is submitted that the diluted scheme of registration of weavers/grey manufacturers etc. ushered and administered

by revenue during 2003-2004 through erstwhile rule 12B and various CBEC Circulars made it impossible for processors to take any reasonable steps as is being made out in the show cause notice under reply.

4.3 It is quite probable that on repeal of erstwhile section 12B in September 2004, the grey weavers changed their names and shifted to different premises for evading income tax, etc. as the whole scheme of bringing the grey weavers under cenvat chain was opposed by them for months together in 2003. During the said agitation by grey weavers and subsequently, CBEC went on relaxing/diluting the basic requirements in regard to registration. After completely diluting the process of registration, Revenue cannot turn back in 2005 and declare all or most of the grey weavers as fake. This amounts to revenue escaping from the consequences of its wrongs, omissions and commissions during February 2003 to July 2003 and the same is impermissible in law. It is settled that nobody can take advantage of its own wrong. When there is no dispute about the exports made, respondent could not have found ARE-1 is fraudulent. ARE-1 is document covering the export goods to the port of export. The respondent's repeated findings that ARE-1 is fraudulent shows that the respondent is oblivious of the nature of transactions involved or the legality of ARE-1. For this reason alone, the impugned OIA is required to be set aside.

4.4 The impugned OIA is silent on our plea that the alleged fake credit is required to be recovered from the supplier of fabrics and our export rebate cannot be denied. Without recording any findings on this plea and without verifying the recovery orders against suppliers of fabrics located in a different commissionerate, the respondent cannot mechanically uphold rejection of rebate. It is settled law that incorrect availment of cenvat is to be recovered from the manufacturer and not by denying the rebate claim of exporters. 'Since there is no denial of the fact of the said goods having been physically exported, the applicants cannot be made liable for any alleged fake invoices issued. The applicants seek to rely upon the following:-

- Garima Enterprises (P) Ltd. Vs CCE, Delhi-IV in 2005 (182) ELT 106 (Tri-Del)

- Haryana Steel Alloys Vs CCE, New Delhi in 2002 (148) ELT 377 (Tri-Delhi)
- 2005 (187) ELT 381 (Tri – Delhi) – CCE, Chandigarh Vs Sadashiv Casting (P) Ltd.

4.5 Since the department has not taken any action against the grey fabrics suppliers, the denial of rebate to the applicants is illegal. It is surprising/shocking that the grey fabrics suppliers alleged to be fake or bogus have not even been made a party to the show cause notice. The applicants inter alia rely upon 2002 (149) ELT 908 (Tri-Del.) A.B.Tools Limited Vs CCE, Chandigarh to say that payment made to us by traders and the registration granted to the weavers by the department should be considered before acting upon the alert circular bereft of any evidence. Rely upon also on case law of CCE, Kolkata-II Vs Lalbaba Industrial Corporation – 2005 (071) RLT 0672 (CESTAT-Kol). Further that since there is no allegation of non-grant of registration to the weavers who supplied grey to the traders/brokers through whom we received the grey fabrics and invoices, only on the basis of alert circular, credit validity availed by the appellant cannot be rejected by way of non-granting of rebate . The applicants, inter-alia, rely upon following authorities:-

- 2005 (182) ELT 106 (Tri-Del) – Garima Enterprises (P) Ltd. Vs CCE, Delhi-IV
- Amasri Engineering Co. Vs CCE, Belgaum-2006 (205)ELT 0659 (Tri-Bang.) (para 6)
- CCE&C, Nashik Vs Silver Ispat (P) Ltd. – 2007(078) RLT 0240 (CESTAT-Mum)
- Circular No.670/61/2002-CX dated 1.10.2002
- CC&CE, Indore Vs Prem Textile Ltd 2005 (181) ELT 69 (Tri-Delhi)

5. Personal hearing in the case was scheduled on 20.12.2012/21.12.2012. Shri S.Suryanarayan, Advocate appeared for personal hearing on behalf of the applicants and reiterated grounds of revision application. Shri P.K.Bohra, Deputy Commissioner attended hearing on behalf of respondents and stated that order-in-appeal being legal and proper, may be upheld.

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

7. Government observes that the applicant, a manufacturer exporter, filed rebate claim of duty paid by them on exported goods. It was observed by the original authority that the applicants have availed cenvat credit on the basis of bogus invoices issued by bogus non-existent supplier of grey fabrics as declared in the alert circular issued by the Commissioner of Central Excise, Surat-I. Accordingly, original authority rejected the rebate claims vide impugned order-in-original which was upheld by Commissioner (Appeals). Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. The applicant have pleaded that since the goods exported and their duty paid character, are not in dispute, the sole ground that the supplier of grey fabric had taken credit wrongly thereupon cannot be the basis of rejection of rebate claim. In this regard, it is observed that during investigation by department the suppliers of grey fabrics were found non-existent and accordingly vide alert circular issued by Commissioner of Central Excise, Surat-I, the said units were declared as fictitious. Nobody came forward to claim the suppliers were not fake units. On perusal of records, Government notes that what remains a fact is that due investigation were done and the proper authorities conclusively proved that what is involved in these cases were intentional fraud involving fake/fictitious identities and as such cenvat credit availed by such inputs by fraudulent means. Such documents are fraudulent documents void ab-initio. The credit taken against such fraudulent documents is null and void and payment of duty non-exist. The case laws cited by the applicant of individual facts are of no help, when till today the involved "fraud" stands tall. Unless and until duty paid character of exported goods is proved the rebate cannot be granted. In this case applicant manufacturer exporter has procured the grey fabrics from non-existent suppliers and therefore exporter himself has in a way played role in committing this fraud. When the purported persons, who have issued

the invoices of grey fabrics are factitious, whole transaction starting from procurement and ending with exports are vitiated since the applicant manufacturer exporter procuring grey fabrics on fake papers was in knowledge of said fraud.

8.1 Government notes that issuance of fraudulent bogus central invoices on the name of non-existent suppliers of grey fabrics are not contested by applicant. They are neither pleading that such suppliers existed nor produced any documentary evidence like affidavit from any of such suppliers that they are not fake and bogus. Thus the applicant knowingly that no such supplier existed, they have paid duty from such fraudulently availed cenvat credit. As such the whole transaction becomes bogus which was created on paper for availing rebate claims fraudulently. The duty paid out of such wrongly availed cenvat credit cannot be treated as payment of duty on export goods as no actual cenvat credit was available with applicant manufacturer exporter who was party to said fraud. As such the rebate claim is not admissible under Rule 18 of Central excise Rule 2002.

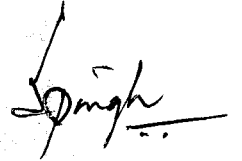
9. Government notes that Apex Court in the case of Omkar Overseas Ltd. [2003 (156) ELT 167(SC)] has held in unambiguous terms held that rebate should be denied in cases of fraud. In Sheela Dyeing and Printing Mills (P) Ltd. [2007 (219) ELT 348 (Tri.-Mum)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgement has been upheld by the Hon'ble High Court of Gujarat. In another judgement in the case of Chintan Processors [2008 (232) ELT 663 (Tri. Ahm), the Hon'ble CESTAT while deciding the question of admissibility of Credit on fraudulent invoices has held as follows:

*"Once the supplier is proved non-existent it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."*

10. In view of above, Government finds that duty paid character of exported was not proved which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. As such, Government finds no infirmity in the impugned orders-in-appeal and therefore upholds the same.

11. Revision application is thus rejected being devoid of merit.

12. So, ordered.

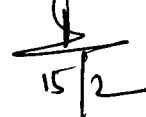


(D.P. Singh)

(Joint Secretary to the Government of India)

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1<sup>st</sup> Floor, 160 Building No.6,  
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Mumbai-400059

Attested



15/2

(Bhagwat Sharma/Bhagwat Sharma)  
आयुक्त/Assistant Commissioner  
C. S. D. (Revision Application)  
मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev &  
आयुक्त सरकार/Govt of India  
नई दिल्ली/New Delhi

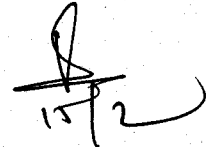


G.O.I. Order No. 132 /13-Cx dated 15-02-2013

Copy to:-

1. The Commissioner of Central Excise, Mumbai-I Commissionerate, 115, Central Excise Building, Maharishi Karve Road, Churchgate, Mumbai 400 020.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Bombay Garage, Dadi Seth Lane, Chowpatty, Mumbai- 400 007.
3. The Assistant Commissioner, Central Excise(Rebate), Mumbai-I, Meher Building, Bombay Garage, Chopatty, Mumbai 400 007.
4. Shri S.Suriyanarayanan, Advocate, U-16, Swagat Complex, Opp. Sneh Milan Gardens, Kadampalli, Nanpura, Surat-395001
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED



(B.P.SHARMA)  
OSD (Revision Application)

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