

**REGISTERED
SPEED POST**



F.No. 195/236/11-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... 15/2/13

Order No. 133 /13-CX dated 15/2/2013 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/40/2010 dated 29.12.10 passed by Commissioner of Central Excise (Appeals), Mumbai-I.

Applicant : M/s Jhavar International, Mumbai

Respondent : Commissioner of Central Excise, Mumbai-I

ORDER

This revision application is filed by the applicant M/s Jhawar International, Mumbai against the order-in-appeal M.I/RKS/40/2010 dated 29.12.10 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original No. 281/R/06 dated 18.4.06 passed by Assistant Commissioner (Rebate) Central Excise, Mumbai-I.

2. Briefly stated facts of the case are that the applicant filed rebate claim of duty paid on the goods exported in respect of below mentioned ARE-I's Shipping Bill's:-

S.No.	R. C. No/date.	ARE-	Date of	Amount (in Rs).
1	2254/30.09.05	322/25.01.05	04.02.05	1,75,550/-
2	2253/30.09.05	171/21.12.04	31.12.04	2,95,788/-
3	2252/30.09.05	170/20.12.04	31.12.04	2,89,293/-
4	2251/30.09.05	78/21.12.04	31.12.04	2,44,143/-
			Total	10,04,774/-

The appellants had procured the said goods from the following manufacturers:-

- 1) Sl.No.1 from M/s Glamour Dyg. & Ptg. Mills (Surat) P.Ltd., Division-I, Surat-I Commissionerate
- 2) Sl.No. 2 & 3 from M/s Dadu Processors P. Ltd., Division II, Surat-I Commissionearate
- 3) Sl.No.4 from M/s Patil Processing P.Ltd., Division V, Surat-I Commissionerate

2.1 On scrutiny of the rebate claims, it was noticed that, duty payment particulars are shown as "Payable" on the triplicate copy of the ARE-1's. However, the applicant failed to submit the duty payment certificates along with the claims except in respect of the claim at Sl.No 1. Accordingly, a Deficiency Memo was issued to the applicant to obtain the duty payment certificate from jurisdictional Range Superintendent in tamper proof sealed cover, in view of various alert regarding misuse of Cenvat credit facility by the manufactures of textiles. The applicants submitted a letter enclosing a duty payment certificate in respect of claim at Sl.No.1, from the jurisdictional Range Superintendent. In respect

of claims at Sl.No. 2 to 4, however, no duty payment certificates were submitted by the applicants. Accordingly, vide impugned order-in-original, the original authority sanctioned the rebate in respect of claim mentioned in Sr.No.(1) of the table of para (2) and rejected in respect of the three claims.

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 filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 That the order-in-original passed without furnishing copies of correspondence with jurisdictional supdt. and DCCE is illegal. When the duty payment certificate has been filed in sealed cover, the respondent cannot aver that the duty payment certificate (DPC) was not submitted in sealed cover, particularly when while accepting the rebate application no such allegation was made. When instructions exist for accepting rebate claims with DPC only in sealed cover, the respondent cannot unilaterally conclude that DPC was not submitted in sealed cover. Even otherwise, submission of DPC in sealed cover is not a substantive requirement. For this alleged procedural deviation, rebate cannot be denied as there is no dispute about the factum of exports. We rely upon the following authorities:-

- 2003 (157) E.L.T. 359 (G.O.I.)-In RE : IKEA Trading (India) Ltd.
- 1998 (99) E.L.T. 387 (Tribunal)-Birla Vxl Ltd. Versus Collector of Central Excise, Chandigarh
- 1999 (111) E.L.T. 295 (G.O.I.)-In RE : Allana Sons Ltd.
- 2001 (131) E.L.T. 726 (G.O.I.)-Krishna Filaments Ltd.

4.2 Non-reply by the jurisdictional Supdt. and ACCE cannot be grounds to deny rebate in as much as they have not disputed the DPC submitted, nor is there any claim of non-acceptance of proof of exports. The applicants, inter alia, rely upon 2006(74) RLT 762(CESTAT) - Hindalco Industries Ltd Vs CCE, wherein it has been

held that consignor is not liable for non-sending of re-warehousing certificate of jurisdictional Supdt. of consignee EOU. That the submission of DPC in sealed cover is not mandatory condition at all, and all the averments to this effect are illegal and void ab initio. Reliance placed on M/s. Mihir Textiles Ltd. v/s. Collector of Customs, Bombay reported at 1997(92) E.L T.(S.C.).

4.3 The respondent's reliance on [Collector v/s, Presto Industries, 2001(128) ELT 321(SC)] that onus for proof of fulfillment of condition is on the assessee, is grossly misplaced and illegal as the said case dealt with exemption for scrap imports into KFTZ under a statutory notification, whereas the appellants have claimed the rebate of goods exported, which is an incentive and substantive benefit. The DPC submitted by the appellant, but alleged to have been not in a sealed cover is not a deviation prescribed in any statutory notification. The respondent's reliance on Sales Tax officer v/s. Durga Oil Mills reported at 1998(97) ELT 202 (SC), is grossly misplaced and illegal as the said case dealt with withdrawal of exemption from sales tax, whereas the appellants have claimed the rebate of goods exported, which is an incentive and substantive benefit. The suppliers of inputs registered with Surat -1 Commissionerate have passed on the burden of duty debited by them to the appellants as per excise invoice covering the good.

4.4 Till date, neither the registration nos. granted to the fake firms have been cancelled by the Surat-1 Commissionerate, nor the credits availed by applicants have been questioned by our jurisdictional authorities. Therefore, based on alert circulars issued subsequently by the Surat-1, substantive benefit of rebate cannot be denied as such circulars are not orders as per law. Interest as per statutory notifications u/s 11 BB granted for the period commencing from three months after the date of submission of claim on 29-09-2005 to date of issue of cheque be granted as the rebate claim cannot be rejected on such frivolous, flimsy, vexatious and illegal grounds. The appellants, inter alia, seek to refer and rely upon 2005 (181) E.L.T. 69 (Tri. - Del.)-Commissioner of Cus. & C. Ex., Indore Versus Prem Textile Ltd.

5. Personal hearing in the case was scheduled on 11.10.2012, 20.12.2012 and 21.12.2012. Shri S.Suryanarayan, Advocate appeared for personal hearing on 21.12.2012 on behalf of the applicant and reiterated grounds of revision application. Shri P.K.Bohra, Deputy Commissioner attended the hearing on behalf of respondent 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 original authority rejected three out of four rebate claims filed by the applicant on the grounds that they failed to submit duty payment certificate in tamper proof sealed cover, in view of various alerts regarding misuse of cenvat credit facility by the manufacturer of textiles. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed this revision application on grounds mentioned 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 t hat 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.

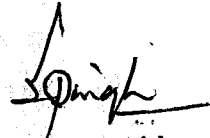
14. In the result, we are of the view that impugned orders require no interference. "

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 31.03.2011 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 facts 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 Gujarat 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.

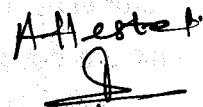
12. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Jhwar International
Supreme House, Near Krishna Petrol Pump
Udhana Main Road
Surat



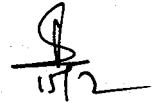
(सहायक आयुक्त/Assistant Commissioner)
सहायक आयुक्त/Assistant Commissioner
C.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept of Rev)
सरकार भारत/Govt of India
नई दिल्ली/New Delhi

G.O.I. Order No. /33 /13-Cx dated /S. 2.2013

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- 400007.
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)

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In addition, the document highlights the need for regular audits. By conducting periodic reviews, any discrepancies can be identified and corrected promptly. This proactive approach helps in maintaining the integrity of the financial system.

Furthermore, it is noted that clear communication is essential. All stakeholders should be kept informed of the current status and any changes that may affect their interests. This fosters trust and cooperation throughout the process.



Date: _____
 Signature: _____